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Government, Military and Veterans Affairs Committee  
February 04, 2015

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[LB10 LB205 LB224]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 4, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB10, LB205, and LB224. Senators present: John Murante, Chairperson; Tommy Garrett, Vice Chairperson; Dave Bloomfield; Joni Craighead; Mike Groene; Matt Hansen; Tyson Larson; and Beau McCoy. Senators absent: None.

SENATOR MURANTE: (Recorder malfunction)...and Veterans Affairs Committee. The time is 1:31 and we are here today to hear three pieces of legislation. The bills will be taken up in the order in which they appear on the agenda out front. If you intend on testifying on any bills, we ask that you fill out one of these green sheets which are located on either side of the committee hearing room. If you are here in support or opposition of any of the bills that appear on the agenda today but do not wish to testify but would like your presence and opinion recorded for the record, would ask that you fill out this sheet, also located on either side. We can assure you that your opinions will be granted the same weight as if you had come and testified at the microphone. When you come up to testify, we ask that you state and spell your name for the record. It's very important for our transcribers. We will start by the introducer of a bill making an opening statement, that will be followed by the proponents, and then all of the opponents, then all of the neutral testifiers, and closing will be reserved for the introducer of a bill. We ask that you listen very carefully to the testimony that has preceded yours and ask that you not be repetitive. If someone has already stated a notion which you wish to express, again, we'd ask you to fill out the form and your opinions will be considered by the committee. We are using the light system. We will have four minutes for testimony. When the yellow light comes on that means you have one minute remaining and we would ask that you begin wrapping up your remarks. And when the red light comes on we ask that you stop speaking and then we will open it up to the committee for questions and commentary for you at that time. At this point, we would ask everyone in the audience to shut off or silence any electronic devices or cell phones that you may have, really anything that makes any noise. And also, we are a committee which permits the use of electronic devices by the committee members. We can assure you that we're paying attention to what you're saying. We're just taking notes and looking up the bills that are before us. We'll now proceed to the introduction of the committee members. To my immediate left is state Senator Matt Hansen from Lincoln; to his left, state Senator Beau McCoy from Omaha; to his left is state Senator Joni Craighead, also from Omaha; followed by our committee clerk, Sherry Shaffer. To my immediate right is Charles Isom, our research analyst. To his right is state Senator Tommy Garrett of Bellevue and the Vice Chair of this committee; to his right, state Senator Dave Bloomfield of Hoskins, Nebraska; followed by state Senator Tyson Larson from O'Neill, who will be joining us momentarily; and state Senator Mike Groene from North Platte. And with that, we will proceed to the first item on the agenda, LB10 by Senator Beau

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McCoy. Welcome, Senator McCoy. [LB10]

SENATOR McCOY: (Exhibits 1 and 2) Thank you, Chairman Murante, and good afternoon, members of the committee. I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District in the Nebraska Legislature. I'm here to introduce LB10, which reinstates the winner-take-all system for electing the President and Vice President of the United States. Currently, 48 states award their electoral votes by the winner-take-all system. The first handout that I think you have in front of you is a list of Electoral College legislation that's been introduced here in the Nebraska Legislature. The first bill, LB1206, was introduced in 1990 to end Nebraska's long practice of awarding our electoral votes by the winner-take-all system and change to the Congressional, or district, plan. LB1206 did not advance and it was reintroduced as LB115 in 1991. LB115 did advance to General File and was debated at length. It passed with the 25 minimum vote requirement on each round of voting, including Final Reading. It was signed into law by then-Governor Ben Nelson. An interesting side note: Of course, being 1991, LB115 was passed in a redistricting year. In 1993 two bills were introduced to return Nebraska to the winner-take-all system with one of the bills advancing to General File. In 1995 and in 1997, LB65 and LB103 were passed by the body, returning Nebraska to the winner-take-all system. Both were vetoed by then-Governor Ben Nelson. Since that time, the Government Committee has sent similar legislation to the floor for full debate four other times: in 2000, LB1179; in 2001, LB454; in 2003, LB253; in 2006, LB894. The full Legislature did not have the opportunity to debate any of these bills. In 2007, LB433 was held by the Government Committee. I introduced LB777 in 2010 and LB21 in 2011. And then the Legislature debated LB382 last session before it was bracketed by the introducer. This brings us to where we are today. So we're all on the same page and get a clear picture, when I speak of voter turnout it is not the percentage of registered voters who cast ballots. For a true picture we need to use the percentage of eligible citizens who voted. We also need to look at voter turnout over a number of years, not one election cycle. When the 2008 Presidential election is discussed, record voter turnout is mentioned, but what does the data...but does the data backup the claim? The second handout that you have in front of you, one side is a graph titled "Voter Turnout Percentage Nebraska vs. National." It shows voter turnout percentages for Presidential elections from 1952 until 2008. Nebraska's percentage, shown in red, is included in the national number shown in blue. You will notice 1952 to 1956 and 1960 had the highest voter turnout. The 2008 election is fourth in voter turnout, with 1992 less than 1 percent behind in fifth. The lines representing Nebraska versus the nation follow similar paths from 1988 to 1996, where you see the national voter turnout percentage closed the gap on Nebraska. On the backside of that same sheet is a graph titled "Voter Turnout Percentage Change." You will see that Nebraska's voter percentage mirrors what happened on the national level in 1992 and in 1996. If the district plan had a positive effect on voter turnout, the data would show the red line pulling farther away from the blue line. In fact, the blue line overtakes the red line in the year 2000. Reading through the transcripts for LB1206 in

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1990 to LB433 in 2007, there were few running arguments against Nebraska returning to the winner-take-all system I'd like to address point by point. The first one being the district plan was supposed to or was, in theory, designed to be a compromise between "winner take all" and abolishing the electoral system. The district plan is still the electoral system and Nebraska is at a disadvantage, I believe, until we play by the same set of rules as the rest of the nation. Another argument that was held up is the district plan is a trend, and I would submit to you that no state has changed to a district plan since Nebraska. Another argument for the current district plan is my vote doesn't count or voters need to feel like their vote counts. One of the best comments to refute this, I believe, from the roundtable that we conducted in 2010 from LR423 was, "Votes count as long as your vote is cast." This quote, these words, were from Vince Powers, Nebraska Democratic Party chairman. How do you evaluate a feeling? Do they mean they feel like their vote counts only if who they voted for wins? Another argument for the current system that we have is this is an experiment worth trying. And I would say that this is a policy decision, not an experiment, and we've used the district plan for 24 years. Another argument to justify the current system that we have is the district plan increases grass-roots participation and encourages more people to vote. And I would simply say that I think campaigning 101 is that it's the candidate and the campaign structure that drives volunteer support, not really anything else. And you can look at the data. If the district plan increased voter participation, the blue line would not be closing the gap on the red line in the graph that you have before you. In the 2010 hearing that we held, it was mentioned, in passing LB115 the hope was more Presidential candidates would come to Nebraska. And I would simply say we are a small state with only five electoral votes and are no longer one of the only few states to hold a primary. And, yes, President Obama and Vice Presidential candidate Sarah Palin visited in 2008, but it was in Omaha. Rural Nebraska was excluded from those visits. Returning to the winner-take-all system is in the best interest of our state, in my mind. Since 1991 many states have considered changing their allocation system. Not one has adopted the Congressional district plan that we have in place today. The district plan discourages candidates from addressing issues that appeal to the state as a whole by rewarding candidates who visit Congressional districts with higher population and income levels to the exclusion of rural Nebraska. State boundaries rarely change, where Congressional districts are usually safe for one candidate over the other and can raise the redistricting process to a whole new level of hyperpartisanship. Nebraska votes for our Governor as a state. That is "winner take all." We vote for U.S. Senator and constitutional offices as a whole state, which is also "winner take all." In my mind, the best policy decision for Nebraska is to return to voting for President and Vice President of the United States as a whole state. Thank you for your time and I'd be happy to answer any questions. [LB10]

SENATOR MURANTE: Thank you, Senator McCoy. Are there any questions for Senator McCoy? Senator Hansen. [LB10]

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SENATOR HANSEN: Thank you, Chair. Senator McCoy, my question would just be can you...throughout your opening testimony, you've definitely provided us with lots of different facts and figures, but I'm still trying to understand your motivation for this. Is it because it's ineffective or because it has a bias to, as you said, the high population centers? [LB10]

SENATOR McCOY: Well, I think, Senator Hansen, as I outlined, and I'm one who grew up in rural America and on the border between Colorado and Nebraska, and I think I know very well the feeling sometimes in rural America and certainly in rural Nebraska that you want your vote to count. You want your vote to be heard, your voice to be heard. And I think where we're a small state anyway, we further dilute our effectiveness as a state in national elections when we split our apportionment in electoral votes. And I just don't think it makes sense. You know, I, Senator, I don't have any real heartburn against the district plan if all of the states used it. In fact, there are a number of highly populated states that the outcomes of a lot of elections would be greatly different than what they are traditionally if the district plan was in place, California being one of them. But that's not what 48 other states in America have chosen to do. And as I indicated early in my opening statement, you know, the idea being that, you know, there would be this movement by other states to go to the district plan hasn't happened. And so if that hasn't happened, then why are we still operating in the district plan that we're in? I think it makes a whole lot more sense for us to return to the winner-take-all system and method of apportionment as a means by which we all make sure that Nebraskans' votes count. [LB10]

SENATOR HANSEN: Okay. So it is your feeling that by allocating by Congressional district we somehow have less connection to the voters? Is that an accurate statement? [LB10]

SENATOR McCOY: Well, I guess I don't understand what you mean by less connection to the voters. [LB10]

SENATOR HANSEN: Sorry, I...you keep saying making sure our votes count, and I'm just trying to clarify how going winner-take-all changes that compared to the district system. [LB10]

SENATOR McCOY: Well, I think it means that Presidential candidates value, and Presidential campaigns value, our state as a whole and not just one Congressional district and are able to, you know, perhaps land for a short period of time for a quick rally in one Congressional district. Where you see Presidential campaigns in other states where, with a winner-take-all system, where all of those electoral votes are desired, then you campaign all throughout the state. Obviously, our neighboring state of Iowa is a great example of that. My kids, you know, our four kids still talk about a few years ago in 2012 we were on a quick little weekend trip to some family in Minnesota

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and met the Romney motorcade coming on the middle of the highway through northwest Iowa, from Orange City, Iowa, back to Sioux City to get back on their airplane. You value all aspects of a rural part of the state in the case of Iowa where they operate with a winner-take-all system. Sadly, such a scene of Presidential campaigns traveling through rural Nebraska in order to get all of our electoral votes hasn't been the case in decades. The instances of Robert Kennedy or Lyndon B. Johnson or Richard Nixon traveling through rural Nebraska during a campaign are footnotes in history,...

[LB10]

SENATOR HANSEN: Sure. [LB10]

SENATOR McCOY: ...but they don't have to be. It could happen again and it should if Presidential campaigns valued all five of our electoral votes. [LB10]

SENATOR HANSEN: Okay. Thank you, Senator. [LB10]

SENATOR MURANTE: Thank you, Senator Hansen. Are there additional questions? Seeing none, thank you very much, Senator McCoy. We will proceed to proponent testimony on LB10. Welcome back, Mr. Secretary. [LB10]

JOHN GALE: (Exhibit 3) Thank you, Mr. Chairman. I am John Gale, J-o-h-n G-a-l-e, Secretary of State for the state of Nebraska, appearing before you today, and appreciate Chairman Murante and the members of the Government, Military and Veterans Affairs Committee in allowing me to testify. Senator McCoy introduced LB10 for the purpose of restoring to Nebraska a winner-take-all distribution of electoral votes in Presidential elections. I continue to support this measure as I did when it was introduced in 2011 and 2013. The U.S. Constitution leaves the method of distributing electoral votes up to each state. Currently, only Maine and Nebraska distribute a share of electoral votes by Congressional district. It is a method that simply has not caught on in other states. The overwhelming majority, 48 states, follow "winner take all." It has only happened once in 24 years since the current system was adopted by Nebraska in 1991 that more than one candidate received a distribution of our state's electoral votes, and that was in 2008 when President Barack Obama received the 2nd Congressional District electoral vote. I fully understand that allowing a Congressional district or a proportional distribution of electoral votes within a state might foster increased attention from both major parties in a close Presidential election year, such as 2008, and possibly bring money to the state. One can also argue that Congressional district distribution such as we have in Nebraska, or a proportionate distribution as has been promoted by some party leaders nationally, that such distribution of electoral votes might fully reflect the voting patterns of the citizens of the state. Despite all that, there are strong reasons against such a system nationwide. If such a system were to be adopted by all states, most states, or even if adopted by many of the largest states, studies have shown that it would result in a time-consuming and cumbersome complication. The likelihood of any

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one candidate receiving a majority of electoral votes greatly diminishes. Now what do I mean by that? Well, I mean, number one, that when I became Secretary of State in 2000 this system was in existence and it seemed that it had been adopted by the Legislature and it had been signed by a Governor and that it was an experiment to see if a more fair system might be possible in the country, to set an example. And I was patient to see if that example was followed and ended up being extremely frustrated because states such as California, with a number of strongly Republican Congressional districts, never were allowed to express their vote by Congressional district. So Nebraska was sacrificing something that the larger states have always refused to sacrifice. They insist on "winner take all." And it's become more and more expressed in the larger metropolitan states that they want a larger voice and a larger voice in Presidential elections, which is part of the reason that the largest states in the United States have supported national popular vote. Those 12 largest states have 59 percent of the population but only 51 percent of the electoral vote so that when we vote for President we are not following the popular vote. We are following the distribution of electoral votes. Each state determines how those electoral votes will be cast. I think we are at a greatly disadvantage as a state if we continue with the winner take...with the Congressional distribution system that we have in Nebraska. Because we're a small, agricultural state, we do have a great advantage in electoral votes because our two Senate electoral votes are just equal to those two Senate electoral votes of New York or California or Illinois. And gathered together, we tend to be a Republican population in the Great Plains and in the South and the Southwest, and we need all of those electoral votes to have an influence in the outcome of a Presidential election. We need a voice in agriculture and we're more likely to have a stronger voice if we are a winner-take-all state. Thank you, Mr. Chairman. [LB10]

SENATOR MURANTE: Thank you, Mr. Secretary. Are there any questions? Senator Bloomfield. [LB10]

SENATOR BLOOMFIELD: Thank you, Chairman. Thank you, Mr. Secretary, for coming in. And I believe you stated clearly and I just want to reaffirm, there are no states looking at going to the district system that you're aware of now? [LB10]

JOHN GALE: In fact, I think it appears, Senator, that there's a stronger and stronger assertion of "winner take all" in the larger states. They're not about to become more fair and allow their rural Congressional districts to have a separate vote and weaken the influence of the large states, which is somewhat at a disadvantage anyway because of the Electoral College system. And by attempting to follow Nebraska's example, they would weaken the influence that they insist they should have as large states. [LB10]

SENATOR BLOOMFIELD: I remember clearly when this concept that we work under now came around. We were promised that there were eight or ten more states going to jump right on this, and we've never seen it happen. [LB10]

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JOHN GALE: We have not seen that and we've watched it. What we've learned from some of our research, Senator, is that indeed if every state were suddenly to adopt the Congressional distribution system and that we would agree that that would be a more fair expression by Congressional district of how people felt, the election of a President would much more likely fall into the hands of the U.S. Representatives. Why? Because you're going to have third parties emerging in Congressional districts where they think they might be able to win. It may be just a splinter party. It may be a Green Party or Libertarian Party. But if they think they can step up and win a Congressional district and get an electoral vote, they're more likely to do that if you have a nationwide system. Suddenly, you're not going to have a strong, two, vibrant party system. You're going to have a multiple party system similar to Europe. And what happens if you don't get 270 electoral votes in the United States? It goes to the House of Representatives. And who knows how long and cumbersome and complicated that may be to resolve the election of a President. I think it further weakens our system if we were to continue to say this is the example that all states should follow. At the time that I first became Secretary of State, I didn't see that risk, but I think it's an enormous hazard to pursue that because of the complication of resolving a Presidential election. But I'm even more convinced the smallest states need to stick together based upon the predominance of a party in their state because that gives them a regional influence. And it's so important for us in international agricultural sales, international ag business sales, international relations that the Great Plains have a strong voice in terms of selection of a Secretary of Agriculture in terms of international trade policy. I don't think we get that by being overly fair, contrary to what the larger states are trying to do. [LB10]

SENATOR BLOOMFIELD: Thank you, Mr. Secretary. [LB10]

JOHN GALE: Thank you, Senator. [LB10]

SENATOR MURANTE: Thank you, Senator Bloomfield. Senator Groene has a question. [LB10]

JOHN GALE: Yes. [LB10]

SENATOR GROENE: Secretary, thank you, Chairman. I'm sure you read some of The Federalist Papers and our Founding Fathers. Aren't we a federal system? And wasn't the idea by Hamilton and some of those in The Federalist Papers that the states elected a chief magistrate, I think they called it, to run the government? Which system do you think more reflects that the states do it? [LB10]

JOHN GALE: Well, I certainly agree that in The Federalist Papers that was a very vigorous debate over the Great Compromise. We would not have ever become a nation out of the 13 original colonies if there hadn't been that compromise. The smaller states

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were insisting that they did not want to be dominated by the large states and if you were going to create a system of representative government that you were going to have to have a system that allowed them at least a significant voice if they needed to stand up against the larger states. And so they ended up then with the two-house system, with a Senate in which each state has an equal two Senators, regardless of population, and that was supposed to be somewhat of a barrier or at least somewhat of a tempering house against the voice of the... [LB10]

SENATOR GROENE: Population. [LB10]

JOHN GALE: ...House of Representatives, which is simply based upon population. And that's the system we have. The electoral votes were distributed according to the total of the Congressional districts and the Senate seats, and that's the system we have and it's worked well for us for 230 years. And it seems that to talk about either a popular vote, I think weakens that system dramatically. I think if you're going to have a federal system with a balance of federal rights and states' rights, you need to recognize the states in the ways that the founders insisted and compromised, and that's allowing the smaller states to have a stronger voice in the Senate and in the Electoral College. [LB10]

SENATOR GROENE: Thank you. [LB10]

JOHN GALE: Thank you. [LB10]

SENATOR MURANTE: Thank you, Senator Groene. Senator Hansen. [LB10]

SENATOR HANSEN: Thank you, Chairman. I just wanted to clarify something that actually came up in response to your question to Senator Bloomfield. You brought up the issue of fairness a couple times. Do you consider the district system as we have it to be a fair system? [LB10]

JOHN GALE: I believe it would be a fair system if all states were to do it. I think to have Maine and Nebraska the only exceptions to "winner take all" puts them really on the outer fringe of fairness. You can look at fairness to the individual Congressional district, or you can look at fairness to the individual voter, or you can look at fairness to the system as a whole. And I would say that if 48 states are going to say that "winner take all" is the dominant and prevailing and future practice of distribution of electoral votes, we should be playing in that system. We're playing a different game. We've hampered ourselves where we have one arm tied behind our back, we have our legs tied together because we can't express the same fullness of our electoral system that the other 48 states can. Nebraska has a vibrant, two-party system. I don't think the Electoral College is where a vibrant, two-party system gets expressed. It gets expressed in a statewide system of election. If you look back and you realize that we had a Democratic Governor, Bob Kerrey, we had Governor Ben Nelson, we had Senator Exon, we had Senator

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Kerrey, we had Senator Nelson, we've had quite a diversity of election on the federal level and in the state executive branch. So it's not that this kills the Democratic Party in any degree at all. In fact, only having one, one electoral vote in 24 years can't be claimed as a great victory for the vibrancy of the Democratic Party. I think the Democratic Party has to work hard on looking at statewide races and Congressional district races and not focus on electoral vote if you're going to have a vibrant, two-party system. [LB10]

SENATOR HANSEN: Okay. I guess I was sticking more not necessarily the viability of the parties, because I think you've made it clear that you think "winner take all" is a benefit because it helps party...states with kind of dominant parties, as I believe you referenced earlier. [LB10]

JOHN GALE: Well, let me say that was how I felt the first ten years I was Secretary of State. I didn't support this measure. I was neutral on this issue until 2011, when I finally realized that this was of great detriment to Nebraska to continue with the system that we had. It was not benefiting our state. It was not benefiting our strong agricultural industry, and it was not benefiting us as a small state. And in terms of fairness, I thought maybe it was a fair system if other states would adopt it. Nobody has followed suit. [LB10]

SENATOR HANSEN: I guess my question would then be to...you brought up the three different levels. Do you consider this fair to the individual voters of Nebraska? [LB10]

JOHN GALE: Well, I think the fact that everyone has the opportunity to be a registered voter and to vote, that's the fair system that I insist upon as chief election officer. I want the most fair, transparent, accountable, reliable, modern system of election to allow every citizen to register to vote. Now that's fairness to me. In terms of electoral votes, I think the fairest system is to play the game that everyone else is playing, and that is "winner take all" of your electoral votes if you want to have a voice in Washington, D.C. [LB10]

SENATOR HANSEN: Okay. Thank you. [LB10]

SENATOR MURANTE: Thank you, Senator Hansen. Any additional questions for the Secretary? Seeing none, thank you very much for coming down today. [LB10]

JOHN GALE: Thank you, Chairman Murante. Thank you. [LB10]

SENATOR MURANTE: Much appreciated. We continue with proponent testimony on LB10. Welcome, Mr. Evnen, to the Government, Military and Veterans Affairs Committee. [LB10]

ROBERT EVNEN: Thank you, Mr. Chairman. It's a pleasure to be here. My name is Bob

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Even, B-o-b E-v-n-e-n, and I am here today representing the Nebraska Republican Party, speaking in favor of LB10. We've tried this experiment of Congressional district voting and it has failed. We should return to the "winner take all" Electoral College vote that is present in every other state of the Union except one. You know, one of the thoughts was that the Congressional district split would draw Presidential candidates, but we had Presidential candidates in our state before this change. Richard Nixon visited our state more than once. Ronald Reagan was here. Bobby Kennedy was here and he spoke at the UNL Coliseum. I heard him there. And as a point of lore and history, so did another high school student at the time and that was U.S. Senator Deb Fischer. A variation of this thought is that after the change, Presidential candidates would be drawn to contested districts. In Nebraska, that's the 2nd District. George W. Bush was here, but he went to the 3rd District, not the 2nd. In 20-plus years, no other state has followed suit. Every other state except Maine plays by different rules than we do, and all that this has done is to dilute the relatively small impact that we have anyway. And they haven't followed suit for good reason. Voting the Electoral College by Congressional district actually increases the possibility that the popular vote winner would not be elected by the Electoral College. That's because Congressional districts are gerrymandered and they're drawn to comply with federal law. Now people have groused a little about gerrymandering around here, but really we're just pikers at it and I, in that connection, invite you to look at a map of the Congressional districts in Chicago. You can see this effect here in the city of Lincoln in the city council districts here in Lincoln. In Lincoln, it is...if you said that the Electoral College was composed of the four city council districts in Lincoln, you could envision a circumstance in which the popular vote in the city of Lincoln would favor one candidate but that that candidate would lose in Lincoln's four-vote Electoral College three to one. And it's based upon the way that those districts were drawn. The drawing of Congressional districts is really a function of the same political process. So the idea that Congressional districts are the sine qua non of Electoral College existence is just not correct. Now, and I would say, in response to a question that Senator Groene posed to Secretary of State Gale, yes, it appears to me that a statewide result is more consistent with what the framers and the founders intended. You know, one of my colleagues in opposition to LB10, Vince Powers, has said that we have a right to be relevant, and I would respectfully remind Vince that we also have a right not to be ridiculous. And our continued pursuit of district voting is unwarranted. Thank you very much for your attention. [LB10]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions for the testifier? Seeing none, thank you very much for coming down today. Are there additional proponents wishing to speak on LB10? Seeing none, we'll move to opposition testimony, opponent testimony on LB10. Senator Schimek, welcome back to the Government, Military and Veterans Affairs Committee. [LB10]

DIANNA SCHIMEK: Thank you. It's a pleasure to be here. And congratulations to you too. [LB10]

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SENATOR MURANTE: Thank you. [LB10]

DIANNA SCHIMEK: (Exhibit 4) Good afternoon, Mr. Chairman and members of the Government, Military and Veterans Affairs Committee. For the record, my name is DiAnna Schimek, that's D-i-A-n-n-a S-c-h-i-m-e-k, and I'm here to testify in opposition to LB10. I don't have time to go into detail. I made a mistake before this committee every once in a while, thinking I was still a senator and I could talk as long as I wanted to (laugh), but I found out that you can't. But I did introduce LB115 in 1991, which established our current system of allocating electoral votes, because I believed that a more proportional representation would be fairer. My cosponsors at the time, incidentally, were equally divided between Republicans and Democrats. I had two Democrats and two Republicans cosponsoring it. And when it was first introduced, it wasn't immediately partisan nor was it immediately controversial. As a past student of government, and incidentally, I should ask the page to...as a past student of government and teacher of civics and history, I believe strongly in the one person, one vote concept. At the time there was a lot of talk about doing away with the Electoral College and changing it to a popular vote, which would definitely be more in keeping with the one person, one vote concept. But realistically, I decided, and I didn't think at the time and I don't think now, that it's going to happen, at least anytime soon. Also, at the time there was a movement to encourage states to move to introduce bills like LB115. Now I would like to interject that nobody can say what another state is going to do. I mean sometimes Senators and Representatives in that state can't even predict. But in some cases they did come close but they were never successful in both houses. There were other reasons for introducing the bill. Nebraska had lost its advantage in Presidential campaigns. We were no longer among the handful of states holding primaries and we were late in the process. It used to be we were one of the few states that held primaries. With the possibility of contests in one or two districts in the general election, the hope was that more candidates would come to Nebraska and more candidates would establish campaign organizations in our state, and that did happen in 2008. One side effect of all the activity was a modest economic impact. Another was that on election night, commentators were watching to see what might happen in Nebraska. But the most important reason for enacting the bill, the reason we should not undo the provisions of LB115, is that it encourages grass-roots activity and it encourages more people to vote and that is very, very important in this era of depersonalization of politics. It is critical that citizens know that their votes count. As one testifier said on LB21 in 2001, "I can tell you, growing up in Omaha, that we never had a representation from the black community until we got district elections. So it was a winner-take-all system, and we were never the winner." As Yogi Berra once said, "It's deja vu all over again." Since Nebraska passed this legislation, there have been 13 bills introduced to repeal it. I think it's time to put the issue to rest and to assure the people of Nebraska that, until such time as the popular vote decides the Presidential elections or until a better idea comes along, Nebraska will continue its populist tradition with the

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district election system. We have a strong tradition of doing things our way in this state, as evidenced by the Unicameral itself and by our public power districts and, to some extent, by our NRDs. And finally, Michael Kelly, in his Omaha World-Herald column in February of 2001, said "No one likes to be ignored, and certainly not in something as important as a Presidential campaign. Let's keep things interesting." [LB10]

SENATOR MURANTE: Thank you, Senator Schimek. Are there any questions for the senator? I have one or two for you, Senator Schimek. You and I share a passion for the reform of redistricting process in Nebraska. I believe you introduced the first redistricting reform act in the state and I've introduced the latest redistricting reform act in the state. [LB10]

DIANNA SCHIMEK: Yes, and several in between. [LB10]

SENATOR MURANTE: And there have been numerous in between. So it seems like there's a recognition, we may disagree on the level of partisanship that's taken place in redistricting processes of years past, but at the very least a recognition that the lines are perhaps drawn in an arbitrary way. There are instances where there isn't a lot of perhaps thought to traditional redistricting processes and accepted methods that are used around the country. Would you accept that as... [LB10]

DIANNA SCHIMEK: Yes. [LB10]

SENATOR MURANTE: ...as something that's fair to say? So if we acknowledge that the way that the Congressional district maps are drawn today are, at the very least, imperfect, why would we want to elect the President of the United States based on those lines? [LB10]

DIANNA SCHIMEK: Well, if we had a choice, we wouldn't. (Laugh) I mean... [LB10]

SENATOR MURANTE: I think that's what Senator McCoy is proposing. (Laughter) [LB10]

DIANNA SCHIMEK: I think community of interest are very important,... [LB10]

SENATOR MURANTE: Uh-huh. [LB10]

DIANNA SCHIMEK: ...and even though with the new district lines, they may not be as perfect as they were in the past, there is still some continuity and affiliation within that district. So I would rather...I mean if you look at the 2nd Congressional District, I think there is certainly a community of interest there. Now perhaps it's not as good as it once was. I do remember some testifiers from the hearing, I think it was in 2011, I'm not sure, who were really upset about the fact that they were not still in the same Congressional

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district as their neighboring community right down the road, and yet they were still in the same county and so forth. So that's a long-winded answer to your question. [LB10]

SENATOR MURANTE: Sure. But, I mean to me, it still doesn't get to the fundamental question. We have...no matter how you...no matter how perfect, no matter how ideal of a redistricting system we come up with, they are still humans with imperfections drawing maps and, in the best case scenario, to the best of their abilities. But it's an...but they are arbitrary lines drawn by individuals rather than static lines which cannot be subverted by any sort of outside interests. [LB10]

DIANNA SCHIMEK: Right. [LB10]

SENATOR MURANTE: So, Senator McCoy is offering a system which cannot be...the election for President cannot be perverted or subverted by any sort of nefarious interest. It is as pure as you can get. You can't pollute the system. The system we have now, where we have people drawing the lines and those lines are the basis by which we elect a President of the United States, if you believe that the redistricting process is corrupt you are saying, in essence, that the process by which we elect a President of the United States is also corrupt. So why would we employ a system, if we believe, as I think you and I do, the redistricting process has some flaws, why would we use the system that can be perverted when we have a system that can't be perverted? [LB10]

DIANNA SCHIMEK: Well, if you're saying that the winner-take-all system can't be perverted, meaning that no matter how you draw the lines, still everybody is in the same basket is what you're saying. [LB10]

SENATOR MURANTE: Yeah, state of Nebraska, no politician can change our state boundary lines. [LB10]

DIANNA SCHIMEK: And that may be true but there is...you know, all politics is local, really. And the more people feel attached to their local area, the more they feel that they're a participant. I think the exception may be young people who traditionally get really excited about Presidential elections and they get all steamed up and they go out and work as hard as they can. I think as you move on in life you realize that you can really have more impact at the local level than you can at the Presidential level. And you may, I mean, that's been my experience anyway. I can...my energies are better put into local elections because I know those people and I've got their ear and they've got mine and so on and so forth. So I think that if people feel that they're invested in a more local kind of subdivision, they're going to feel more a part of it and they're going to feel that, as in any state where one particular part of the state may be different from any other part of the state politically speaking, they may feel that they...their voice really is being heard. And we're not the only state that has peculiar...well, I shouldn't say peculiar. I don't want anybody to get the wrong idea. But we have different pockets of different

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influence, and I think there's other states just like us. I do think there were a couple of things that were...and maybe I shouldn't go on because you're not asking the questions. I'll wait and see if you have any more questions. [LB10]

SENATOR MURANTE: Well, I don't. Does anyone else? Senator Groene does. [LB10]

SENATOR GROENE: Senator Schimek, why didn't you try to put this into the constitution? I would think this would be a constitutional issue. [LB10]

DIANNA SCHIMEK: Constitution of what? [LB10]

SENATOR GROENE: Of Nebraska. [LB10]

DIANNA SCHIMEK: Well, it's governed by...really by federal law. It says that the states shall choose how their electors will cast their votes. [LB10]

SENATOR GROENE: And the state...and the state could put it in their constitution that it's... [LB10]

DIANNA SCHIMEK: Well, I suppose they could. [LB10]

SENATOR GROENE: Do you think it would have passed on a constitutional amendment in the state of Nebraska? [LB10]

DIANNA SCHIMEK: That's a little hard to predict. [LB10]

SENATOR GROENE: I think I know the answer. But also, isn't part of being a state, unity, build unity? [LB10]

DIANNA SCHIMEK: Of course. [LB10]

SENATOR GROENE: We have this east versus west rural split. Doesn't this kind of just exaggerate that? [LB10]

DIANNE SCHIMEK: No, I don't see how it exaggerates it. I think this whole thing is blown out of proportion (laugh), frankly. In 24 years, as has been pointed out several times, only once has one electoral vote ever been siphoned off, so to speak. If it had been in effect before 1991, we'd have had to go clear back to the 1964 election, the Johnson-Goldwater election, for an electoral vote to be siphoned off, so to speak. It's not going to happen very often and nobody ever predicted that it would. I think it's worked just exactly the way it was supposed to work. There was a huge, huge kind of outpouring of support for President Obama in the 2nd District in 2008. Well, it wasn't there in 2012 and he didn't get the electoral vote in 2012. I think it will be the exception

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rather than the rule whenever that happens. And so maybe it's, in a way, maybe it's a way to blow off steam. Maybe it's a way to have people's voices be heard. [LB10]

SENATOR MURANTE: Thank you, Senator Groene. Are there additional questions? Seeing none, thank you very much for coming back down. [LB10]

DIANNA SCHIMEK: Thank you. [LB10]

SENATOR MURANTE: It's good to see you, Senator Schimek. [LB10]

DIANNA SCHIMEK: Thank you. You too. [LB10]

SENATOR MURANTE: We continue with opposition testimony to LB10. And welcome to the Government, Military and Veterans Affairs Committee. [LB10]

PEG O'DEA LIPPERT: (Exhibit 5) Thank you. I'm Peg O'Dea Lippert, P-e-g O-'-D-e-a L-i-p-p-e-r-t, from Papillion, Nebraska. I'm here to testify against LB10. I'm opposed to eliminating the split electoral vote for three specific reasons: first, reputation. Nebraska has national recognition in three areas: football, the nonpartisan Unicameral, and being one of two states with a split electoral vote. I might add momentarily and currently two more: the outstanding work of Nebraska medicine in the care of Ebola patients, both nationally and internationally; and the infamous XL Pipeline. First, regarding football, it is the one thing that truly unifies this state and hopefully the Huskers are on the rise. The nonpartisan Unicameral, however, may be at risk due to out-of-state funding for local elections and the elimination of caps on campaign funding for Unicameral seats. That leaves us with the split electoral vote, something that you, this committee and the Unicameral, can immediately control. It can save us from just being another fly-over Great Plains state. Now secondly, over time the tables will turn and those who oppose the split electoral vote will want it back. Regrettably, this may not happen in my lifetime; possibly in some of yours. Do we want to be fickle and blowing in the wind, added to the otherwise negative adjectives used to describe our great state of Nebraska. I don't think so. Third and lastly, the vote is the voice of the people. Is there a fairer way than to hear the voice of the people across this vast state and their diverse opinions than listening to the voices--the votes--in each of our three Congressional districts? And this is not about voter turnout, as Senator McCoy indicated. It's about fairness. And the popular vote that some people have brought up is not even on the table at this point. And if the redistricting is flawed, let's correct the redistricting. And this isn't about all the states, as some have indicated. It's about Nebraska. So I'm asking you to think about it. Don't be foolish. And thinking back to 2008, sour grapes and being bad losers are not reasons to fix what isn't broken. Thank you for your time today. [LB10]

SENATOR MURANTE: Thank you for your testimony. Are there any questions? Senator Bloomfield. [LB10]

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SENATOR BLOOMFIELD: Thank you, Chair. Ma'am, you, I believe in your testimony, said that we are in danger of losing our Unicameral because out-of-state money is buying elections. If you have evidence of that, I would like to see it away from this hearing. [LB10]

PEG O'DEA LIPPERT: Thank you. [LB10]

SENATOR BLOOMFIELD: Thank you. [LB10]

PEG O'DEA LIPPERT: And the other part of that is removing the cap of expenditures on Unicameral campaigns. [LB10]

SENATOR MURANTE: Thank you. Any additional questions? Seeing none, thank you very much for coming down today. Much appreciate it. Additional opposition testimony to LB10. Welcome to the Government, Military and Veterans Affairs Committee. [LB10]

WILLIAM FORSEE: (Exhibit 6) Thank you. William Forsee, W-i-l-l-i-a-m F-o-r-s-e-e, Bellevue, Nebraska. In 2010, Bellevue got gerrymandered out of the 2nd CD and replaced by a heavily Republican area of Gretna and rural Springfield. That makes the third time in 30 years that that area had become part of a different Congressional district. In 1990 they were part of the 2nd; in the year 2000 they were put into the 1st Congressional District; and in 2010 again they were shift back to the 2nd, putting Bellevue in with Lincoln. We have a lot in common in Bellevue with the greater Omaha area because of Offutt. We don't have a lot in common with Lincoln and the university system. Sorry, I appreciate the university system, it's a fantastic system, but as far as the city, our benefit is with the city of Omaha and connection. I realize that this 2010 reapportionment did save Lee Terry in 2012 and made sure the electoral vote went to Mitt Romney. After what happened to Mr. Terry in the last election, the Republicans of Nebraska did not want to take a chance of allowing the 2nd CD electoral vote ever going to anyone but a Republican. I know I'm not supposed to ask a question of the senators here, but if I had a question to the committee, does it make good fiscal sense to give up the millions of dollars that were brought in to the Omaha metropolitan area and that and lose that revenue coming into the 2nd CD to have one electoral vote? I thought the Republicans, according to their press releases, that they're a party of small business. To me, this takes money away from the business community of Omaha and what is Omaha getting in return? Nothing financially. We lose the electoral vote. To use a quote from the Sunday New York Times February 1, they ran a nice little article in reference to that. If you want to go on The New York Times, you can print this off. They took my quote and then the quote, "I look at the Republicans in this fashion, of being sort of a spoiled child. We didn't get our way, we didn't get our vote, now we're going to change the rules." I was the person to cast the electoral vote for Obama, in case you're wondering. Thank you. Any questions? [LB10]

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SENATOR GROENE: Sir? [LB10]

SENATOR MURANTE: Thank you. [LB10]

WILLIAM FORSEE: Yes. [LB10]

SENATOR MURANTE: Senator Groene. [LB10]

SENATOR GROENE: Do you see any different behavior by the Democrats nationally when redistricting comes up in a prominently Democratic state? And do you think the Democratic Party in Nebraska would act any differently if they were in charge? [LB10]

WILLIAM FORSEE: I would love to see Nebraska follow the Iowa position where they have an outside group, not connected to the house or senate in Iowa, draw up the lines. If you looked at the last election in Iowa, it came out and it changed. They now have two Republican Senators, three Republican Congressmen, and only one Democratic Congressman. It is a very fair way of doing it because they took the politics out of reapportionment. And if you looked at the '64 election and if we had this electoral vote, you would have had a vote for Goldwater coming out of this state from the 3rd Congressional District area, so he would have picked up an electoral vote, which is sort of the opposite of what happened in 2008. [LB10]

SENATOR GROENE: Thank you. [LB10]

WILLIAM FORSEE: You're welcome. [LB10]

SENATOR MURANTE: Thank you, Senator Groene. Are there any additional questions? Seeing none, thank you very much for coming down today. [LB10]

WILLIAM FORSEE: Thank you. Appreciate your time. [LB10]

SENATOR MURANTE: Are there any additional opponents wishing to speak on LB10? Welcome to the Government, Military and Veterans Affairs Committee. [LB10]

NANCY SCOTT: Thank you. My name is Nancy Scott, N-a-n-c-y S-c-o-t-t, and very simply I've always, ever since I learned about government back in junior high, thought that the Electoral College was the stupidest idea in the whole wide world, and I still think that. I think it's just unfair because if we went by the popular vote then people would just directly vote for the President, and I think that's the way it should be. Well, that's not the way it is. And if we're going to have districts, people over here might not be thinking the same way people over there do. So if we go by districts, then you have a little bit of "closer to"--not exactly--popular vote, but it's closer to having a popular vote. And it

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seemed to me by listening to what the people who were talking about "winner take all," they were more talking about political parties. And to me, I mean you have to sign up to be a political party or not or whatever, but I don't think that's the most important thing. The most important thing is each person being able to have a vote, have a choice. And the one thing that when I moved to Nebraska I thought was the coolest thing in the whole wide world is that we have a Unicameral and that I thought, and I know there's some senators that kind of are...they are in one party or another party, but you're supposed to be representing me, and I don't care what your party is and I don't even vote for you by your party. And I think that's something that we need to be thinking more about rather than worrying about one political party is going to win because we've got the districts this way or that way. And very simply, I think that "winner take all" is wrong and that we should go by districts if we can't have popular vote. Thank you. [LB10]

SENATOR MURANTE: Thank you very much. Are there any questions? Seeing none, somewhere Senator Larson agrees with you completely. I don't know where he is right now, but he agrees with you completely. Thank you very much for coming down today. [LB10]

NANCY SCOTT: (Laugh) Thank you. [LB10]

SENATOR MURANTE: Is there additional opposition testimony? Welcome to the Government, Military and Veterans Affairs Committee. [LB10]

GWENDOLEN HINES: Hi. Thank you very much. Good afternoon. My name is Gwendolen Hines, it's G-w-e-n-d-o-l-e-n, last name is H-i-n-e-s, and I oppose this bill. I think that it's more...it's more fair to have the electoral votes by district. I think that that way your vote counts more. I don't think your vote counts less. The people in the west have their district and they can vote for whoever they want to vote for and they'll be represented, and if the people on 2nd Congressional District want to vote Democratic then they should be allowed to. And I think it just...it makes it so that each person's vote is more important than it would be if it was the "winner takes all." I guess that's all I want to say. [LB10]

SENATOR MURANTE: Okay. Thank you very much for coming down today. Are there any questions for the testifier? Seeing none, thank you very much for coming down, much appreciated. Are there any additional opponents wishing to speak on LB10? Seeing none, is there any neutral testimony? Seeing none, Senator McCoy is recognized to close. [LB10]

SENATOR McCOY: Thank you, Chairman Murante. You know, a couple of things that I would point out, and one of the reasons that I think that it's as important as it was to not only provide you the handout that shows the number of times that this legislation, the repeal of the district plan that we have in place has been introduced, but to give you that

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handout, is to display that this issue and the robust diversity of viewpoints on it existed long before 2008 and one of our electoral votes being picked up by President Barack Obama. And I would...I bring that up because I think that's an important part of this discussion, is that this is not, in my opinion, any sort of a sour grapes argument or, as it's maybe been characterized, that we're going to take our marbles and go home or we're going to change the rules. This is merely a situation in which you can look at 2008...and it happened with both parties, I might add. As I mentioned in my opening, you had Vice Presidential candidate Sarah Palin who was only in Nebraska and only in Omaha in the 2nd Congressional District for I think less than two hours, as I recall, and now President Barack Obama being here for a very brief period of time also, both only in Omaha. My contention would be, as I mentioned in my opening, were we a winner-take-all state once again, would have they...would they...both of those Presidential campaigns, the McCain campaign and the Obama campaign respectively, would they have campaigned perhaps later on that day or earlier that day in other parts of the state? I believe they would have. And I believe that other campaigns would in the future. And I think that's an important distinction. The other brief thing that I would mention is, to me, this is about voter turnout. That's why I also provided you...why we provided you with those numbers. The numbers do bear out that this is not increasing voter turnout. And to have the current system that we have, I don't think this is fostering some groundswell of greater voter turnout. The numbers just don't bear that out. And with that, I would conclude. [LB10]

SENATOR MURANTE: Thank you, Senator McCoy. Are there any final questions? Seeing none. Before we close the hearing on LB10 I do have three letters of opposition to LB10: one from Jason Effinger of the Nebraska Broadcasters Association; one from Kathy Wilmot of Beaver City, Nebraska; and one from Julie Condon, the cofounder of the Western Nebraska Citizens Caucus. (Exhibits 7, 8, and 9) And with that, the hearing on LB10 is closed. To any media or any interested parties in the room, it is my intention to have an Executive Session and a vote on LB10 later today. And with that, we will proceed to LB205. Senator Schilz's staff is here. [LB10]

BRENT SMOYER: (Exhibit 1) All right. Good afternoon, Mr. Chair and members of the Government, Military and Veterans Affairs Committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r. I work for Senator Ken Schilz. He sends his apologies that he had to leave you guys with the B team. He's in Natural Resources introducing two bills of his own, so he sent me on his behalf to introduce what certainly should be a little less controversial than the previous matter. I'm here to introduce LB205. The page will have handed around AM198. It is Senator Schilz's intention that this become the bill, replace the green copy. AM198 comes from the work with multiple interested parties, including the irrigation districts, public power, wind power, a number of interested entities to try and come up with the best possible legislation we could find to deal with this issue and, of course, not ruffle too many feathers in the process. AM198 or LB205, whichever way you want to look at it, comes as a solution to low-flying aircraft. These towers,

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meteorologically...it started with a concern about meteorological towers which are very low to the ground, under 50 feet usually, and very hard to see. Now with that, crop dusters, low-flying aircraft, not usually passenger aircraft but private aircraft were having trouble seeing them and a danger existed, the possibility there could be a crash, there could be injury and, of course, death. So this bill is brought to try and remedy that situation. Some of the highlights include that, first off, to clarify and make sure everybody interested knows, and I know there's folks behind me who are definitely interested. This bill does not apply to any tower above 100 feet because those are under FAA regulations and are dealt with in a separate manner. It does not apply to electric utilities transmission lines, structures licensed by the FCC or the support telecommunications equipment in line with the FCC, windmills for power production with a blade radius of more than six feet, and street lights put up by the Department of Roads. I believe that covers most of the concerns that anyone had regarding these towers. The towers that do fall into the purview of this view are required to be painted in seven alternating bands of equal width. Of course, these equal widths would adjust based on the height of the tower to fit the seven bands. They must be painted in aviation orange and white beginning with an orange band at the tower top and ending with an orange band at the tower bottom. They may also have at least two spherical orange marker balls of at least 21 inches in diameter attached to specific locations on the guide wires. And I'll spare you the details. Of course, it's all in AM198. You can look through it for yourself. But essentially these are to increase the visibility of any sort of shorter towers, especially meteorological towers, as much as possible, so that way those operating crop dusters or a small private aircraft can see them and avoid a collision at all cost. Of course, tower owners subject to LB205 must register the tower location and height with the Nebraska Department of Aeronautics and violation, of course, of this proposed statute would be a Class III misdemeanor. With that, I would seek to answer any questions you might have. Otherwise there are experts following me who can certainly tell you a lot more about airplanes than I could. [LB205]

SENATOR MURANTE: Okay. Let's hold off on the questions for staff and see if we can...just a committee policy, so. [LB205]

BRENT SMOYER: Not a problem. Not a problem at all. [LB205]

SENATOR MURANTE: Thank you very much. [LB205]

BRENT SMOYER: Happy to help and of course the senator would waive his closing since he does not believe he will be back in time. [LB205]

SENATOR MURANTE: Okay. Sounds great. [LB205]

BRENT SMOYER: Thank you. [LB205]

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SENATOR MURANTE: Thank you very much. And we will proceed to proponent testimony on LB205. [LB205]

TOM MAY: (Exhibit 2) Good afternoon, members of the Government, Military and Veterans Affairs Committee. My name is Tom May, T-o-m M-a-y. I'm the president of the Nebraska Aviation Trades Association, which is the Agricultural Pilot Association of Nebraska. I am representing the N-A-T-A and appear before you today in full support of LB205. We greatly appreciate its introduction by Senator Ken Schilz. LB205 requires the marking and registration of towers greater than 50 feet and less than 200 feet in height. These towers fall just short of U.S. Federal Aviation Administration requirements mandating evaluation for safety enhancements, such as lighting and marking. Unmarked towers are of great concern to low-level aviation as towers and guy wires blend into the background and cannot easily be seen. In some gray sky conditions, towers are nearly invisible until too late to avoid. Certain types of these towers can be constructed within hours. Even though a pilot may know his territory, he can still be caught off guard by the rapid construction of these towers. Also, towers under 200 feet are not placed on sectional charts which are used by pilots for cross-country flight. On June 24, 2011, the FAA recognized the need for certain types of towers to be marked. So at this time, they placed a national guidance for marking of these towers. LB205 incorporates the FAA guidance as a requirement for the marking of these towers in Nebraska, plus the registration of such towers with the Nebraska Department of Aeronautics. Unmarked towers have caused deaths of pilots in California, Oklahoma, Oregon, and Texas. As an agricultural pilot, I've personally worked in very close proximity to these towers knowing the inherent dangers these unmarked towers pose not only to the life of the pilot and the aircraft but also from a liability standpoint to the landowner and the owner of these towers. I strongly see a need for marking these towers to be mandatory. In 2012, our association provided a grant and worked with UNL extension to produce two YouTube videos about the dangers presented by unmarked towers and how to properly mark them according to FAA guidance, which was forwarded to you by our lobbyist Tim Keigher on Monday. In the insert, there's also a cost analysis of marking these towers. But in reality, does a cost analysis really reflect the life of a pilot or the equipment that would be damaged by the collision of an aircraft? Recently in the state of California, a widow and her children were rewarded a \$6.7 million wrongful death lawsuit that resulted from her husband's colliding with an unmarked tower, her husband's aircraft colliding with an unmarked tower. We feel the cost of marking these towers is insignificant. Several states have already passed legislation that requires marking of these types of towers. These states include California, Idaho, Kansas, Mississippi, Missouri, South Dakota, Washington, Wyoming, Colorado, Minnesota, and Oklahoma. Several other states are currently seeking to put legislation in place for marking of these towers. The National Transportation Safety Board has also encouraged states to enact legislation requiring these types of towers to be marked. With the implementation of LB205, we're not solely protecting the lives of agricultural pilots but helping to ensure the safety of other types of low-level aviation

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crews. Our association has identified 22 different types of low-level aviation impacted by unmarked towers, such as life-flight crews, military training operators, law enforcement, utility crews, and the list goes on. The N-A-T-A and myself appreciate your time and thoughtful review of this issue. Moving forward, this bill will not only help ensure the lives of low-level aviators but also to give security to those entities who have a financial stake in this matter. Thank you for your time and I'd be glad to answer any questions. [LB205]

SENATOR GARRETT: Thank you, Mr. May. Are there questions from the committee? Senator Bloomfield. [LB205]

SENATOR BLOOMFIELD: Thank you, Mr. Vice Chair. I find the language a little confusing here. Section 2, the owner of the tower will mark according to subsection. Then it gets into towers that are/are not covered and we seem to jump back and forth quite a little which tower is covered and which one isn't. When we get down to line 7 on page 2, wind-powered electrical generators with a rotor blade of radius six...greater than six feet, is that or is that not covered? Because in line 4 we jump back that does include towers or poles used for providing mobile radio services other than commercial mobile data services defined where, and then we jump back to the wind-powered thing. And I lose track of which ones are and which ones aren't. [LB205]

TOM MAY: The freestanding wind-powered electrical generators with rotor blade over six feet in radius are not...they are exempt from this bill. [LB205]

SENATOR BLOOMFIELD: Okay. I think we're going to have some language issues here, then I'll talk to Senator Schilz about that. [LB205]

TOM MAY: Okay. [LB205]

SENATOR BLOOMFIELD: Thank you. [LB205]

SENATOR GARRETT: Is that because there's already requirements, federal requirements that...on the wind power? [LB205]

TOM MAY: As far as the wind generators with the six-foot diameter, a lot of that is due to they're already highly visible towers, even ones that people use as personal generators around their farmsteads, buildings, you know, a commercial industry areas and stuff. With that wind blade out...with that rotor blade out there, it creates a higher visibility to aircraft, you know, coming onto that area. That would be the reason for the exemption of those structures. [LB205]

SENATOR GARRETT: I'm familiar with how the military typically does their flight obstruction, you know, do NOTAMs and other things and we used to go out and do

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vertical flight obstruction surveys. How is it that a private ag pilot who might be flying from his or her ranch or farm, how is it that you get updated on new towers, new vertical obstructions? [LB205]

TOM MAY: Well, a lot of the agricultural pilots, we work in a certain area, you know, and again like I had said, we're really familiar with the area we work in with, you know, landmarks, landscapes, you know, terrain, everything out there, but some of these towers, in particular the meteorological evaluation towers, you know, can be constructed within a matter of hours. You know, for us the one thing that we can try to do to help mitigate and know where these towers are going to be erected in our working area is through them registering with the Nebraska Department of Aeronautics. We are able to access that information and that registry through the Nebraska Department of Aeronautics to help educate ourselves as to where these towers will be placed, you know, that will give longitude, latitude, and everything that we can even plug those into our GPS's that we use to navigate to and from our fields, you know, to be able to identify where these towers are at in a short amount of time. And the registration process obviously takes place before the construction of the tower. So at that time, you know, we would be aware that there is going to be a tower put in that area. [LB205]

SENATOR GARRETT: Is that something you do before every flight everyday that you're going to go out and fly? [LB205]

TOM MAY: No, sir. It's generally not something that we do prior to a daily preflight deal. It's something we'll check, you know, weekly or possibly biweekly or monthly, you know, just to keep on top of...you know, that's just kind of protocol and how we do it. [LB205]

SENATOR GARRETT: There's no automated reports from the Nebraska aviation folks that would go to ag parts? [LB205]

TOM MAY: No. We, ourselves, have to get on the registry and be able to check it ourselves. But by having that registry there it gives us that tool to be able to identify where these towers are going to be placed. [LB205]

SENATOR GARRETT: I'm thinking that might not be a bad idea for us to implement something like that to actually push that information out to ag pilots. [LB205]

TOM MAY: Sure. [LB205]

SENATOR MURANTE: Thank you, Senator Garrett. Did you have any questions, Senator Bloomfield? [LB205]

SENATOR BLOOMFIELD: I did and I already answered or had one answered, but I'm going to ask another one. I assume you're wanting to have preexisting towers done, too,

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and not just new construction. So if a farmer has an existing tower, he's going to have to find somebody to go out there and paint his 50- or 60-, 70-foot tower? [LB205]

TOM MAY: That's correct. [LB205]

SENATOR BLOOMFIELD: Okay. Thank you. [LB205]

SENATOR MURANTE: Thank you, Senator Bloomfield. Any additional questions? Seeing none, thank you very much for your testimony today. [LB205]

TOM MAY: Thank you, committee members. [LB205]

SENATOR MURANTE: We are still on proponent testimony for LB205. Any opposition testimony to LB205? Any neutral testimony to LB205? Welcome to the Government Committee. [LB205]

STEVE HENRY: (Exhibit 3) Thank you. Thank you, senators. My name is Steve Henry, spelled S-t-e-v-e H-e-n-r-y. I'm representing Frenchman-Cambridge Irrigation District. Officially, we are neutral to this legislation but it has been subjected to a flurry of amendments over the last 28 hours that caused some concern. After visiting the testimony of the first proponent, if that intent, indeed, is carried out it's pretty hard to argue with safety and trying to monitor the stealth erection of towers in short order that does present a threat to public safety and we certainly think that it's prudent to monitor and make sure that this is done appropriately. However, sometimes bills get amended and come out of committee and the falconer's web gets cast a little wider than it was originally intended to. And what I passed around is our FCC license. We think probably excludes us from surveillance of this bill under Section 2(b), and I'd like you to take a look at that and see if it would be your understanding of this as well. Our tower has 190 feet approximately. It is not lit. It's been there for 40 years and so certainly does not qualify as one that was recently erected that people are not aware of. As long as we're excluded from the requirements here and follow the original intent of the bill, we have no opposition to LB205 whatsoever. And with that, I would take questions if there are any. [LB205]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for coming down today. [LB205]

STEVE HENRY: Thank you for your time. [LB205]

SENATOR MURANTE: (Exhibit 4) Thank you. Is there any additional neutral testimony on LB205? With Senator Schilz waiving closing, I have...before we close the hearing on LB205, I have a letter of support from David Levy of Baird Holm law firm representing Sandhills Wind Energy, Bluestem Energy Solutions, and Geronimo Energy. And with

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that, we close the hearing on LB205, and welcome Senator Burke Harr to introduce LB224. Welcome, Senator Harr. [LB205]

SENATOR HARR: (Exhibits 1-4) Thank you, Mr. Chair, members of the Government, Military and Veterans Affairs Committee. My name is Burke Harr, H-a-r-r. I represent Legislative District 8 located in midtown Omaha. Two years ago, I introduced LB576 and it had a public hearing before this committee. I modestly thought it had a compelling case, I had a compelling case, to advance the bill further to debate. But six members did not agree with me and it was IPPed. However, I'm back with the same bill only improved. Fortunately, five of those six senators are no longer serving on this committee (laughter) and that Chairman Murante voted against killing my bill. So thank you, Mr. Chair. Let me start by saying I have an amendment to the bill, if I can pass that around, and I'll get to that in a minute. Summarize LB224. LB224 would require the placement of flags on the day of any election at the direction of the election commissioner or county clerk to indicate the area within 200 feet of a polling place unless that area is across a public thoroughfare, or private way. In other words, the 200-foot zone that is currently in state law would need to be marked so that anyone wishing to do any electioneering near the polling place would know where that 200-foot zone ends. However, if the 200-foot zone crosses a street or enters a private property, the zone ends at that point. And I'll explain that, why I came up with that in a minute. This amendment addresses, number two, is if you have a building that doesn't have a 200-foot zone around it, it would require...and this was a drafting error on my behalf. I didn't read it well enough before I introduced it. But what I'd do is if 200 feet around your building you don't get any electioneering spot, it would require a zone approximately ten feet by five feet designated within the area of the building where yard signs would be allowed for any person to display campaign signs in the zone beginning at 7:00 a.m. ending at 9:00 p.m. on the day of the election. The election commissioner or county clerk would consult with the owner of the polling place location to determine a proper and adequate place. The third thing this does is...and this was an issue for me, is it says, hey, you have to allow campaign signs. There are a couple of places in my district that allow no campaign signs even though they're a polling place. They voluntarily agreed to allow electioneering on their property and then they're saying but we don't want the elections either. The other thing that has happened is there are certain polling places that will say we want that candidate, we don't want that candidate, which, you know, there's a letter from John Gale saying he doesn't think that's an issue. Well, you guys have all ran for election. Imagine how fired up you'd be if you were in a close election and you saw that a polling place took down your yard sign? I guarantee you, you wouldn't go, huh, not really a big deal. You're right, John Gale. It is a big deal. Running is very, very personal, and you want to make sure that everyone has a fairness and everyone has the same chances and the same opportunity. That's what this does. So LB224 would remove the 200-foot polling place prohibition in Nebraska statute 32-1524 for certain election activities by ending at the zone once it crosses a public thoroughfare or enters private property. Now you might think, well, that's kind of a policy

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question. We have to decide whether we want private property or electioneering. Well, it isn't. It's a constitutional issue not a policy issue. And we have a handout here on that direct issue. So the Supreme Court has said in Burson in 1992, hey, electioneering, a limit of 100 feet, that's constitutional because of the bill, law. Over 100? We don't know. We're kind of in a gray area. Well, we know 500 is too far. So between 100 and 500 we're in a gray area to begin with. Whether 200 feet is even constitutional, that is somewhat of a judgment call. But last fall in Kentucky, and I got to find my notes, there was a case involving political signs, and I'm passing it around. It's John Russell v. Allison Lundergan-Grimes. And if I can just read you the facts of the case, these were the stipulated facts by both parties. John Russell is the owner of an auto body shop. And his body shop is located...he owns the property that his shop is located on. It's within the zone. In Kentucky, it was 300 feet. In 2012, he gave permission to place signs in the actual area prior to the primary and election on the day of the primary and general election 2012. He did it again in the primary of 2014. He intended to do it in the general election of 2014. In between the polling place and where he wanted this yard sign is a distance of approximately 150 feet as well as a four-lane U.S. highway and his personal property, a public thoroughfare. He went on to say, well, he intended to provide in the future elections as well. A federal district court came back and said...well, and then their electioneering law said no person shall electioneer at the polling place on the day of election within a distance of 300 feet of an entrance to a building which a voting machine is located if that entrance is unlocked. Very similar to ours. The only difference is they allow bumper stickers on cars within the zone. We technically don't. I don't know how much that's enforced. The issue is this is a First Amendment challenge. The court said that this is a...court looking at having concluded and explained below that the statute under consideration is not nearly tailored and does not survive exacting scrutiny entering a preliminary injunction. And I'll let you read it, but it says some restricted zone for electioneering is necessary in order to serve the state's compelling interest in preventing voter intimidation and election fraud. Because the restrictions on electioneering activities, and I'm on page 8 at the bottom, electioneering activities regulate content-based expression, they must be subjected to exacting scrutiny. The state must show that the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. And that's based on Supreme Court ruling Burson. The real question then is how large a restricted area is permissible or sufficiently tailored. In order to establish narrow tailoring in this specific context, the state must demonstrate that the statute is reasonable and does not significantly impinge on a constitutionally protected right. In this case, free speech. In that case, they allowed for, they said 100 feet was okay given the conflict between the necessity of preventing fraud and intimidation versus the exercise of free speech. We hold the requiring 100 yards from the interest to a polling place does not constitute an unconstitutional compromise. So then we go on and it states that they do not find that covering private yards may not even be visible by the polling place and prohibits activities in private homes. Indeed, the court fails to see how the typical statutory...or stationary yard sign could ever intimidate a voter or abet election fraud unless it was blocking the entrance

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to a polling place. Now this finding was done on October 17, 2014, district court. The state, Allison Lundergan-Grimes, as you might recall, was running against Mitch McConnell, immediately appealed that ruling and said, hey, I don't like it. Well, the Sixth Circuit Court of Appeals, the United States Court of Appeals, looked at that and they said that a special respect for individual liberty in the home has long been a part of our culture and our law. That principle has special resonance when the government seeks to constrain personal ability to speak there. Most Americans would be understandably dismayed given that tradition to learn that it was illegal to display from their window any signs expressing their political views. Folks, that's exactly what our current law does. The court said, hey, we're not going to eliminate the 300-foot buffer. We'll let that stand. But we think it's important that people also have personal property right. And so they enjoined that and said, hey, if you have personal property within a 300-foot zone, you can display a sign. The U.S. Supreme Court last June in McCullen v. Coakley had a similar issue of buffer zones around abortion clinics. The state of Massachusetts had a 35-foot buffer zone from the entrance of an abortion clinic and said is this constitutional. Is this too much, too little, or just right? Supreme Court ruled 35 feet, too far. And I encourage you to look it up because one of the things they talk about in here is the importance of...and it ends, by the way, at a public place, because it's important for individuals to be able to speak publicly on a public property such as a sidewalk. It's part of the tradition of our country that we promulgate and we speak our mind on public places such as sidewalks. So they said, 35 feet, too much, and definitely buffer zones end where public property begins, which is what my bill does. I have a letter here from the ACLU as well that signifies the same. I kind of went off script, so I got to look at my notes, see if I missed anything. Oh, the appeal on the Court of Appeals Sixth Amendment will be heard later this year. But it's only a matter of time before something like Kentucky comes here. I believe in individual property rights. I'm a strong proponent, have been for a long time. Two years ago when I brought this bill, it's funny, the woman from Hall County admitted that, hey, we are violating people's rights but it's only for one day. Folks, it isn't just for one day. It's a violation, period. And so that's my concern with this. I'm trying to bring us up to constitutional speed as far as what the zone should be. I think 200 with a cutout for property, personal property or public highway, I think that's just...brings us up to constitutional speed. The eight-by-ten or five-by-ten area, that's so we all have a chance to show our signs one more time so we can look at it and say, oh, yeah, right on. Joni Craighead, Senator Craighead, elect, maybe. I know her. I remember seeing her signs. I remember that logo. Okay. That's the person I'm voting for. I couldn't remember. I was trying to remember who to vote for. It's a way to get one last chance. It doesn't allow for people to stand in that area and yell or chant. It just allows for stationary signs. And again like I said, I think it's only fair and just that if one person can have a sign, they both have to be there. Now some people say we might lose some campaign polling places because that folks are paid. All right. And if you think you have a duty or an honor to have a polling place and then you say I'm not going to do it because I can't control whose signs are on there, how genuine are they? They're doing it because they have a political means. They're not doing it out the kindness of

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their heart. They're doing it because they want to take down somebody's sign. So it's only fair that it's all signs are allowed on there. I think with that, I would close and entertain any questions you may have. [LB224]

SENATOR MURANTE: Thank you, Senator Harr. Senator Craighead. [LB224]

SENATOR CRAIGHEAD: Thank you, Senator Murante. Thank you for being here, Senator Harr. I have a couple of questions here. Okay. If we were going to put flags out, what's the cost of the flags? [LB224]

SENATOR HARR: Cost of flags. [LB224]

SENATOR CRAIGHEAD: Yeah, if we're going to have the flag at whatever fee, what's the cost of the flags? [LB224]

SENATOR HARR: Well, you know, the answer is you'd have to ask...maybe we'll have someone come here, but as you are familiar, in Douglas County they already put up flags. So it's a de minimis cost. I mean, they put flags when they till my yard to know where my sprinklers are. The cost...I wouldn't be as concerned about the cost as I would be if you want to talk about fiscal, it'd be the...it would probably be the labor involved in having those flags put up. Now fortunately... [LB224]

SENATOR CRAIGHEAD: Well, yeah, the whole...yes, the whole realm of it. [LB224]

SENATOR HARR: Yeah, fortunately all those people are already there working for the whole day. And, you know, they are...some are volunteers, some are required to be there. But we already have a requirement of 200 yards and it's already marked in Douglas County. What other counties do I can't speak to. I can only speak to what we do. [LB224]

SENATOR CRAIGHEAD: What do...let's say there's not 200 feet of frontage, what happens then? [LB224]

SENATOR HARR: And that's what this amendment addresses. That's where you get that five-by-ten space, somewhere on there we can mark. I don't know if you watched World Cup where you saw the umpires going fth to mark the foul line. You know, you just grab something like that that washes away and you just mark it fth, fth. I hope that sound effect, I hope they like that. But you mark it and that's the area you can be in. [LB224]

SENATOR CRAIGHEAD: Okay. Did this bill, because obviously this was here before I was... [LB224]

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SENATOR HARR: Yeah. [LB224]

SENATOR CRAIGHEAD: Did this bill come out of a personal experience? Was this brought to you? [LB224]

SENATOR HARR: Good question. I would say part yes, part...part yes to each. The taking down of my signs was my experience. And I'll be honest with you, I didn't like it at all that a janitor would take down my signs. I approached him and he said, eh, nothing says I can't. And I said, oh, you just wait and see. (Laughter) You know, so that part was but then in researching this that's when I started finding...doing a little more constitutional reading and find out that, you know, 200, oh, we're in the gray area. I think we're probably okay, but you know we definitely are probably outside the constitution in not allowing...having that zone extend past property line or onto private property and onto public thoroughfares. And you know where the Douglas County Election Commissioner's office is on about 113th and Burke Street. And there's a house across the street there and I know the family and they're good people. And they can't have political signs once you have...once you can do absentee balloting. And they don't like it. You know, if you ask me who the signs were for I would say they would be more...this isn't a partisan issue for me because I would say they probably...I mean, I know the family there, more likely lean Republican than Democrat. [LB224]

SENATOR CRAIGHEAD: Yeah. It's my district. I know it real well. [LB224]

SENATOR HARR: Yeah. And so you know who it is. And so, you know, here I am helping them, I mean, because it...but it's the right thing. It's what the constitution says. [LB224]

SENATOR CRAIGHEAD: No, you can keep signs out after you vote absentee. You just don't get any more mailers in the mail. [LB224]

SENATOR HARR: No, no, no. The property is across the street and it's within the 200-foot zone because that's a polling place. [LB224]

SENATOR CRAIGHEAD: Yes. Okay. [LB224]

SENATOR HARR: They can't have political signs. [LB224]

SENATOR CRAIGHEAD: But the next ones to them sure can. [LB224]

SENATOR HARR: And do, and do. And so we have one person who has a political right to speak and another person that right isn't denied for just one day. It's denied for, what is it, 30 days before an election, they can't put it out there. There's something wrong with that in my opinion and in the courts' opinion. [LB224]

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SENATOR CRAIGHEAD: I would love to see you also have...you got great constitutional information, but one on stealing another candidate signs. That would be a good one too. [LB224]

SENATOR HARR: Yeah, right. [LB224]

SENATOR CRAIGHEAD: Yeah. [LB224]

SENATOR HARR: Yeah, I wouldn't mind that. [LB224]

SENATOR CRAIGHEAD: Thank you, Senator Harr. [LB224]

SENATOR HARR: Thank you. [LB224]

SENATOR MURANTE: Senator Groene and Senator Bloomfield, then Senator Garrett. [LB224]

SENATOR GROENE: Senator Harr. [LB224]

SENATOR HARR: Yes. [LB224]

SENATOR GROENE: Thank you, Chairman. I'm confused. Out where we come from it's pretty much a rule nobody has any signs within 200 feet of a polling place, and you're telling me you have polling places where they have signs in some... [LB224]

SENATOR HARR: They have signs, not within 200 feet. [LB224]

SENATOR GROENE: What's that? [LB224]

SENATOR HARR: Not within 200 feet. [LB224]

SENATOR GROENE: All right. [LB224]

SENATOR HARR: That's the current law. But what I'm saying is the U.S. Constitution or an interpretation thereof says, hey, where there's a public thoroughfare or where there's a yard, private property, that zone has to stop. That's... [LB224]

SENATOR GROENE: What was the janitor doing taking down your sign if it was out 200 feet? [LB224]

SENATOR HARR: It was outside the...it was on the property outside the 200-foot zone. [LB224]

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SENATOR GROENE: All right. [LB224]

SENATOR HARR: And he said I can take it down. I said, well, you know, then you got to take them all down. He said, no, I don't. [LB224]

SENATOR GROENE: Why wouldn't he? [LB224]

SENATOR HARR: What's that? [LB224]

SENATOR GROENE: Why can't he take down the ones he wants? [LB224]

SENATOR HARR: Why can't he? Well, I just don't think that's...you know, to Senator Craighead, she doesn't...in essence, it's stealing because you're saying who can and who can't. I think you should have...if you're... [LB224]

SENATOR GROENE: Well, I knocked on doors and people have my opponents sign and then they say, well, I hadn't talked to you before, Mike, and they put my sign out and they took theirs down. Can that opponent come in and say, well, you can't take that sign down? [LB224]

SENATOR HARR: Now, what was the difference there? The difference is that was private property. So you're here. You have voluntarily used up and you're getting paid to be a polling place. Okay. [LB224]

SENATOR GROENE: Churches, we got a lot of churches that don't... [LB224]

SENATOR HARR: Right, and they get paid for that. And on top of that a lot of them, I don't if they do this out in North Platte but in Omaha they have bake sales as well. And so they make money off of not just renting their place out but also by having bake sales. So it's a cash cow. And, you know, you say, oh, they're doing...if you ask them why they're doing it, oh, I'm doing it out of the kindness of my heart and we don't want to lose these people. Well, they're not doing it out of the kindness of their heart. They're doing it because they want you to win and they want him to lose. You can't...you got to have...on the day of electioneering, I think you can't pick winners and losers. If you're a polling place, you're a polling place and you need to be neutral on that property. [LB224]

SENATOR GROENE: So you have polling places because the church can't do it anyway because they can't endorse anybody, but you're talking about businesses... [LB224]

SENATOR HARR: But, in essence, they are. [LB224]

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SENATOR GROENE: ...in Omaha that agree to be a polling place that have signs up. [LB224]

SENATOR HARR: No. In Omaha, churches have signs up and they are, in essence, endorsing, you're right, one candidate over another because they're pulling my signs and using another's. You can't do that. [LB224]

SENATOR GROENE: So you're saying on their extended property. [LB224]

SENATOR HARR: On their extended property. And they'd given up the right that day. And, you know, this is a contract, you know. And so all I'm saying is we got to add to that contract the right that, hey, if you're going to do this you can't...because it is what you're talking about. They're, in essence, picking winners and losers. And, hey, I never thought about that. They might be violating their 50(c)(3) (sic) status by doing that. And so let's just take that temptation away from them. [LB224]

SENATOR GROENE: I still don't understand the controversy but... [LB224]

SENATOR HARR: What's that? [LB224]

SENATOR GROENE: I don't understand the controversy, but sometimes I... [LB224]

SENATOR HARR: Well, how would you like it if I took your sign down? [LB224]

SENATOR GROENE: Well, if you're running against me, fine. But I better not catch you doing it. (Laughter) [LB224]

SENATOR HARR: Exactly. [LB224]

SENATOR GROENE: No, I understand. I've been through that too, so. [LB224]

SENATOR HARR: Yeah. [LB224]

SENATOR GROENE: Thank you. [LB224]

SENATOR HARR: Thank you. Appreciate the questions. [LB224]

SENATOR MURANTE: Thank you, Senator Harr. Senator Bloomfield. [LB224]

SENATOR BLOOMFIELD: Thank you, Chair. I'm going to have a couple questions. I think I was probably one of the six that voted to IPP this thing. [LB224]

SENATOR HARR: Yeah, I thought you were here last time. I remember there was a bar

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you were upset about last time, and I... [LB224]

SENATOR BLOOMFIELD: And that issue still is there and that was part of my question. The local watering establishment is next door, two feet away from the polling place. [LB224]

SENATOR HARR: Yeah. [LB224]

SENATOR BLOOMFIELD: Is he allowed or not allowed to have a sign in his window? [LB224]

SENATOR HARR: By the U.S. Supreme Court, he is allowed. [LB224]

SENATOR BLOOMFIELD: That was part of the issues we had last time. [LB224]

SENATOR HARR: Yeah, and I wasn't as educated last time. [LB224]

SENATOR BLOOMFIELD: That's a good thing that you get more educated as we go along. We've got a lot of work to do in that area yet. [LB224]

SENATOR HARR: Yeah. [LB224]

SENATOR BLOOMFIELD: When you're talking about putting the flags out there, did you design or do you have in mind a size of a flag or a style of a flag? So if I put out one of these little survey flags this big, that's adequate versus a... [LB224]

SENATOR HARR: Not only do I think that's adequate, that's what we do in Douglas County. And, you know, we can work on the wording, you know, it can be a line. You know, you can take a little spray paint, mark it. And what's amazing is once one sign goes up, everyone else's, right down the row right next to them so it's respected. So...but, yeah, we can work on that. [LB224]

SENATOR BLOOMFIELD: Okay. And your five-by-ten-foot space, if I go in with a four-by-eight sign, what happens to everybody else? [LB224]

SENATOR HARR: If you go four-by-nine? [LB224]

SENATOR BLOOMFIELD: If I go into this five-by-ten-foot space you have... [LB224]

SENATOR HARR: Yeah. [LB224]

SENATOR BLOOMFIELD: ...and I'm the first guy there and I put up a four-by-eight-foot sign... [LB224]

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SENATOR HARR: Yeah. [LB224]

SENATOR BLOOMFIELD: ...what's that do to everybody else? I don't... [LB224]

SENATOR HARR: Early bird gets the worm, right? [LB224]

SENATOR BLOOMFIELD: I don't see anything that... [LB224]

SENATOR HARR: Nothing would prevent that, you know, if you put it on the ground. But let me tell you, I don't think it would be too popular because you're probably voting, blocking other people. And so those are with you and some of those are against you, but I guarantee you, you put one of those up and you're running for Governor, if I'm running for the Legislature I'm not going to be happy with you. And if I'm running...and I'll remember or if I'm running for, you know, elephants don't forget. Or If I'm, you know, running for U.S. Senate and the Governor is. You're going to remember. [LB224]

SENATOR BLOOMFIELD: My question, I guess, would be your concern would be do we need to put some regulations on the size of the signs that would go into that five-by-ten space so that we can get more than one sign in there. [LB224]

SENATOR HARR: Yeah, we can. Yeah. We can work on that, yeah. I'm more than willing to work with the committee. This is...that part is, gosh, I can't remember if I did sign up for another state. I think that was just idea from scratch for me. [LB224]

SENATOR BLOOMFIELD: Okay. [LB224]

SENATOR HARR: So I'm more than willing to work on that. I don't think...I'm going to admit my LA did some research on this as well and I'll have to check with him. [LB224]

SENATOR BLOOMFIELD: My LA does most of my research. [LB224]

SENATOR MURANTE: Thank you, Senator Bloomfield. Senator Garrett. [LB224]

SENATOR GARRETT: Thank you, Mr. Chairman. I had several questions. How did you come up with the five-by-ten area? Because most of the polling places that I've been at, there are so many signs that it would overwhelm a five-by-ten area. [LB224]

SENATOR HARR: Yeah. Arbitrary. From scratch, I think. And I'll get back to you on that. I think I just came up from that whole scratch, trying to come up with an area that we could put them in but not too big that it would prohibit. And, you know, the other question, and this is a valid question, is let's say there isn't grass that's five-by-ten area, and do we put it on cement? Do we have to have a requirement for that? I think there

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needs to be...I need to do some work on that language that says a reasonableness clause in there shall work with the landlord to reasonably determine a five-by-ten area that is available. But I would say that you have very well picked out the weak point in my bill. And I think I'll work on that some more. [LB224]

SENATOR GARRETT: And then I think I'd put language in there that would limit it to a yard sign not a big four-by-eight that Senator Bloomfield said. But, you know, once they... [LB224]

SENATOR HARR: Yard sign no larger than, yeah. I think that's exactly right. [LB224]

SENATOR GARRETT: And then the language in your bill says the bill would prohibit any person from removing any lawfully displayed electioneering materials. What kind of penalty might there be if I catch someone pulling up one of my signs? You know, we pay a lot of money for these signs. [LB224]

SENATOR HARR: Yeah. I move it actually, you'll enjoy this, from a Class IV, V to a Class IV misdemeanor. And I'm starting to look that up and I totally forgot to see what the penalty is for a Class IV misdemeanor. But I can get you all a handout that says what that is. It's...I'm pretty sure it's 90 days in jail and a \$250 fine. No judge is going to give more than \$250 fine. [LB224]

SENATOR GARRETT: I think we've all had signs disappear. Some people did some very unnatural things to some of my signs. (Laughter) [LB224]

SENATOR HARR: Yeah, yeah. [LB224]

SENATOR GARRETT: It was ugly. [LB224]

SENATOR HARR: Yeah. [LB224]

SENATOR GARRETT: I love elections. (Laughter) Another question. Big electronic billboards on the back of trucks, I think you've seen them, that they use for advertising. [LB224]

SENATOR HARR: Yeah. [LB224]

SENATOR GARRETT: I mean, these things are huge and driving right in front of a polling place, right along the sidewalk there. Would that not be prohibited like you said... [LB224]

SENATOR HARR: No, and it currently isn't. You couldn't be prosecuted under that right now because the U.S. Constitution says if you're in a public thoroughfare it's legal.

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[LB224]

SENATOR GARRETT: Okay. Even though it's within ten feet of the door? [LB224]

SENATOR HARR: Exactly. Yeah, food for thought. But, yeah, that's what the U.S. Constitution says right now or interpretation by the Supreme Court of the U.S. Constitution. [LB224]

SENATOR GARRETT: Okay. But... [LB224]

SENATOR HARR: And that was a...that's in McCullen last year and that's a...well, it's a 9-0 decision but it's 7 and then 2 concurring. [LB224]

SENATOR GARRETT: Okay. So they can't just be parked there. They have to be passing through. [LB224]

SENATOR HARR: No, no, it's fine. Whenever that is. Yeah, that's this McCullen... [LB224]

SENATOR GARRETT: So if there's on-street parking, this big truck with an electronic billboard can just park right outside of...they'll get an early parking place right in...and just let it rip. [LB224]

SENATOR HARR: We encourage political discourse in public places. [LB224]

SENATOR GARRETT: Boy, I can see having...there are going to be ten billboard trucks out parked in front of a polling place. [LB224]

SENATOR HARR: Start fund-raising now, yeah. (Laughter) It's...yeah. And that's from just last summer. You know, and the makeup of our Supreme Court, right, has been there is a strong emphasis when there is regulation of campaigning versus free speech. I think we all know the emphasis has been on free speech. And so, you know, McCullen v. Coakley was abortion law, a line for protestor on abortion clinic. Again, there is an overwhelming belief in free speech and this is some of the consequences of that. It's not bad. I mean, I'm not judging, I'm not saying it's good, I'm not saying it's bad, but that is a direct result of that. [LB224]

SENATOR GARRETT: Okay. Thank you. [LB224]

SENATOR MURANTE: Thank you, Senator Garrett. Any additional questions? Seeing none...oh, excuse me, Senator Bloomfield. [LB224]

SENATOR BLOOMFIELD: Just a follow up. Senator Groene and I come from a different

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world than you folks that campaign in Omaha. My opponent had a sign right next to mine in a public place on a windy day that was blowing down. We happened to have a meeting that afternoon and I told him that his sign was in danger of blowing away at that. I would have fixed it on the spot except had I touched it somebody would have seen me and accused me of tearing down that sign. Barry Kennedy will tell you the whole story about that some time if you want. [LB224]

SENATOR HARR: Yeah. I mean, there's a reasonableness with everything in prosecutorial discretion and a burden of proof beyond a reasonable doubt that you were taking it down, and they have to prove intent. You know, you get up there and say, I wasn't doing it. Now... [LB224]

SENATOR BLOOMFIELD: But if I was out there monkeying with his sign, somebody saw me, they're all of a sudden going to pretty well assume I was taking it down or damaging it. [LB224]

SENATOR HARR: Yeah, well, and they could right now accuse you of theft anyway. I mean, right now that's theft. If they thought it was theft, it's theft now. It's just what level and what the value of that campaign sign is. But if they thought you were stealing it now, they could go after you now. [LB224]

SENATOR BLOOMFIELD: That's why I told him about it instead of doing anything with it. [LB224]

SENATOR HARR: Yeah, yeah. [LB224]

SENATOR MURANTE: Okay. Is that it? Wonderful. Thank you very much, Senator Harr. [LB224]

SENATOR HARR: Thank you. [LB224]

SENATOR MURANTE: We'll proceed to proponent testimony on LB224. Are there any proponents wishing to speak? Seeing none, opposition...how many people are going to testify in opposition to this bill? Okay. Would you folks come forward for us, sit in the front couple of rows, please? Mr. Shively, welcome to your Committee on Government, Military and Veterans Affairs. [LB224]

DAVID SHIVELY: Thank you. I appreciate the opportunity to be here. Senators, my name is David Shively. I'm the Lancaster County Election Commissioner. My last name is spelled S-h-i-v-e-l-y. For those that are new to the committee, I've been election commissioner in Lancaster County for 15 years. And I'm here today and I learned a lot from Senator Harr today on some issues as well. As frustrated as he is on his end, we also as election officials get frustrated on election morning on the number of phone calls

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we receive about yard signs that are in wrong locations and dealing with that and trying to take care of that. So I can certainly understand frustrations on both sides. One of the things that we as election officials do and I think I do here in Lancaster County is try to create a positive relationship with our polling sites. I think that's really important. Of course, any public facility like a school or a city-owned or a county-owned facility is required to be a polling site without any type of payment to that site. But, of course, we don't have enough of those facilities in the county to meet all of our needs, and so we do use a variety of churches, a number of churches. I believe we have about 79 in Lancaster County that serve as polling sites as well as some businesses as well. I find this bill to be very...might be very difficult for us to enforce. I would be interested if there would be a possibility in looking at this to do on the property where a polling location is to have no political signs whatsoever. I like the idea about crossing the street. That's always been an issue. We've had people that have complained about that before. If it crosses a street or in the thoroughfare, we...our poll workers sometimes don't know how to deal with that because they...we tell them that they shouldn't go out and pull a sign out of someone's private property. And that's the other thing, although it did say there was no fiscal impact, there would be a small impact on the price of the flags. Manpower to do this, currently we ask your poll workers to be at the polling site here in Lancaster County at 7:00 a.m. They have a number of things that they have to get done in that first hour, and so putting those flags out prior to that is going to take some additional time. Depending on how big the facility might be, putting 200 feet...and the law actually says that we have 200 feet from the building. So if you're familiar with...I use this as an example when I do training with our poll workers, even if it's 200 feet from the building and you're at, like, Southeast High School where they vote on the north end of it, that school is big and it's 200 feet from the south end of that as well where the site is to be. So when you start marking it and following the statute, I think that would be very...could be very time consuming for someone that morning. I know...and Senator Harr referred to this, too, that we might lose some polling sites. And I know in the May election I had two or three because we had some overzealous, over...campaign volunteers that were trying to put signs out all over town and they were putting them in spots and some churches were very upset about it, were calling us and a couple of them threatened to quit doing that, although they calmed down after that and didn't do that. But I think there would be a...if we're going to require beyond that 200 feet to do that, that they would...they might turn us down. As an election official, I'm opposed to this. I think there will be others up here to testify as well. But I would be more than happy to answer any questions on an election official's point of view on this if you have any. [LB224]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Senator Bloomfield. [LB224]

SENATOR BLOOMFIELD: Thank you. Did you say that you do or don't pay for use of a facility? [LB224]

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DAVID SHIVELY: We pay \$35 for any facility that's not tax supported, so like a church or a business. If it's the school or a city-owned park building or something like that, we don't pay. The statute is clear on that is that they have to make their facility available for us and not charge us anything for it. [LB224]

SENATOR BLOOMFIELD: Okay. We use the community center and/or a legion hall. Are they... [LB224]

DAVID SHIVELY: A community center would probably be tax supported where a legion hall wouldn't be, and so they would receive that. We've maintained that since I've been here we've had our pay to those nontax supported has been \$35. We've not increased that. I think in Douglas County, I'm not sure, they may pay \$50. And it just varies. There's nothing in statute that says how much you pay the polling sites. And I think many of them provided as a community service or a civic responsibility of the churches that do that. [LB224]

SENATOR BLOOMFIELD: Okay. Senator Harr mentioned they have bake sales and whatnot inside. Every poll I've ever been in they have the ladies or whoever is counting the votes or watching the place may have brought in something for them to snack on, but I've never seen anything. [LB224]

DAVID SHIVELY: I don't know that we've ever had a bake sale in Lancaster County but I do know that there are some churches that may provide cookies and coffee or drinks for people after they get done voting, but I'm not...I'm not aware that they are charging for that. [LB224]

SENATOR BLOOMFIELD: Does the term "cash cow" sound right to you? [LB224]

DAVID SHIVELY: (Laugh) You know, we're not paying a facility very much to hold that and to be a polling site. And we're doing \$35. And in my 15 years, I've never had a polling site stop being a polling site because we weren't paying them enough or asked for more money. [LB224]

SENATOR BLOOMFIELD: Okay. Thank you. [LB224]

SENATOR MURANTE: Thank you, Senator Bloomfield. Are there any additional questions? Seeing none, thank you very much for coming down today. Much appreciate it. [LB224]

DAVID SHIVELY: Thank you. [LB224]

SENATOR MURANTE: Additional opposition testimony to LB224. Welcome to the Government, Military and Veterans Affairs Committee. [LB224]

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CHAD LUNDERS: Hello, committee members. My name is Chad Lunders, spelled C-h-a-d L-u-n-d-e-r-s. I have been an election inspector in Lancaster County since 2006. The first item concerning the flags I feel it could be a little bit difficult for the board members to accurately place the 200-foot flags 200 feet away, especially if it's weather like we had today. And according to this, it seems like if that flag was placed a little bit too close or too far according to Section 6, that board member technically would be guilty of a Class IV misdemeanor. The burden of placing signs a proper distance needs to remain with the people placing the signs. Concerning the ten-by-five-foot area, the building owners who graciously allow us to use their facilities would have no say in the materials placed on their property within these areas. For example, a Catholic church could do nothing if a pro-choice sign was placed on their property within these areas. Some places may have other objections to a candidate or subject matter. Because of this, locations may decide that we can no longer use their facilities, and I don't believe that would be disingenuous. In Lancaster County, over 40 percent of the precincts are located within churches. Signs, according to this, may be placed in the designated area up until 9:00 p.m. and are not allowed after 9:00 p.m. Any person who does not remove their sign by 9:00 p.m. would be guilty of a Class IV misdemeanor. But because it is impossible to know who placed the sign, it is completely unenforceable. It would be the building owner's the next morning that will end up picking up all of these signs. I could find no other states which allow this type of electioneering zone. The last item would cause the 200-foot electioneering free zone to not extend past a public thoroughfare or private property. Currently, polling sites all have equal buffer zones. This bill would cause inequality in electioneering due to the polling site's property lines. In the case of some locations, people could be electioneering within only a few feet from the doors. In closing, the time we have to set up the polls before they open is always down to the wire. Additional task and regulations would make things even more difficult and could increase the workday to over 15 hours. Polling places should be on equal footing and owners should not be forced to display material they find objectionable or offensive. Nebraska's current balance of free speech and fair elections is on par with other states. This bill is an attempt to solve a problem which does not exist and in doing so would create many real problems. I hope that you would not allow this bill to go any further. [LB224]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you for coming down today. Much appreciated. Additional opposition testimony to LB224? Welcome back to the Government Committee. [LB224]

BETH BAZYN FERRELL: Thank you. Chairman Murante, members of the committee, for the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials and I'm appearing in opposition to LB224. I would just like to echo the comments of Mr. Shively. His comments really reflect the

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concerns that election commissioners have about the logistics and the process of flagging polling places. With that, I'd be happy to answer questions. [LB224]

SENATOR MURANTE: Wonderful testimony. (Laughter) Are there any questions? Seeing none, thank you very much for coming down today. Is there any additional opposition testimony to LB224? Is there any neutral testimony? Senator Harr, you're recognized to close. [LB224]

SENATOR HARR: Thank you, Chairman Murante, members of the committee. You know, it was interesting, right? Difficult to enforce, never said what was difficult to specifically to enforce. You know, if 200 feet is difficult, we do it in Douglas County. It's not difficult. Heck, if you don't live in Douglas County and you're running for office, don't you do it? I mean, if they don't mark it, how do you know where the sign can and can't go? We can all figure it out. And I'll speak for myself, I'm not the brightest guy in the world but I can do it. It just...we want certainty, right? And they're saying we're going to hold these candidates accountable for this 200 feet and yet they can't...how are we going to know what that 200 feet is? Are they going to let us come on with a measuring stick? These are the guys that have the know-how and the knowledge and the time. They want the enforcement of the law. They want the area that is free from politicking. I can't read my own handwriting, something about might turn down. I don't know what that means. (Laughter) The second guy who testified, person who testified, he said we got to have everyone on equal footing. And if they want to take down a sign, someone's sign, they can take down someone's sign. Well, then the candidates aren't on equal footing. I mean, here you are on church property, right, and that church has waived its rights to free speech on that day because it can't testify...have pro-life or pro-choice signs within the 200 feet. They've waived that right, right there. But outside that 200 feet, they still have control according to this. Well, guess what, folks? They take down a political sign, they're campaigning. They can't do it. They shouldn't be allowed to do it currently because they're picking winners and losers. They're saying, hey, this person has the endorsement of the church because it's up; this one doesn't. That's why you have to have them all. They're already saying, hey, we understand part of being a polling place is we have to get rid of some of our rights. They've agreed to that. And now they're saying, well, but that's equal footing. I'm not quite sure, I think that we have a different definition of equal footing. No one likes more rules or regulations, but you know what people do like? Certainty. That's what this law provides. Certainty. It puts on the books what already is the law. Private property, you can put it there. Second testifier stated it may be ten feet away and he didn't like that. Well, don't take it up with me, don't take it up with this committee. Take it up with the U.S. Supreme Court and issue a constitutional amendment. But that's the law of the land. It already is. Not the law, it's a constitutional right. That's what we're doing here. So, you know, I'd like to see the whole bill advanced. I can kind of understand the ten-by-five. That needs some work and maybe you strike that area and use the 200, but I do think it's only fair if you have one...allow one sign, you got to allow them all. And the other is just putting into statute

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what the law of the land already is. That's what I'm trying to do today, folks. It's nothing exciting. It may not be the sexiest. Yeah, it does require more work. You bet. But all it is, is having them do what's already being done in the largest county in the state, marking where that 200 foot is so that you and I know what the law is. He was saying if they mark it wrong, that person may be up to a Class IV, that's not the intent of the bill. I reread it. I didn't...I'd like to talk with him and see how he came up with that interpretation. I'll work with it if that's what it is. There are no other states, by the way, that had yard sign zones. And then Class IV to Class V...Class V to Class IV is zero to \$100 fine to \$100 to \$500 fine. And I actually was going to introduce a bill but I forgot to make it zero to \$500 for Class IVs. So know you know something I got to do next year. With that, I would entertain any questions you may have. [LB224]

SENATOR MURANTE: Thank you. Senator Craighead. [LB224]

SENATOR CRAIGHEAD: Thank you, Senator Murante. Senator Harr, did any of your opponents signs ever get stolen? [LB224]

SENATOR HARR: By me? (Laughter) [LB224]

SENATOR CRAIGHEAD: I didn't say it. I just asked you if... [LB224]

SENATOR HARR: Not to my knowledge, you know, I can't speak for her. I can only speak for myself. [LB224]

SENATOR CRAIGHEAD: I just asked the question. [LB224]

SENATOR HARR: Yeah. And the answer is I don't know. I can tell you not by me. I don't know if any of hers were stolen. Yeah. [LB224]

SENATOR CRAIGHEAD: Candidates don't steal the other guy's signs. We know. [LB224]

SENATOR HARR: No. We're honorable. [LB224]

SENATOR MURANTE: All right. Senator Bloomfield. [LB224]

SENATOR BLOOMFIELD: I just need a little clarification on this. If the church allows themselves to become a polling place, in my mind they're renting out, if they're getting paid the \$35 or whatever the fee is, the place inside the church and the 200 foot around it. And you, I believe, are telling me that they have to allow anybody to put up any sign they want on any other property that's connected to the church? Am I understanding that right? [LB224]

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SENATOR HARR: What I'm saying is you have a church, you have a 200-foot zone around it. And I think it's from any part of the building. I think that's exactly right about Lincoln Southeast or the high school. That's exactly right. And inside that zone they've waived the right to have any political signs. And so to say that they haven't...to go outside is unreasonable. We've already established they're willing to waive a right. So my issue is outside of there I just want to make sure we have neutrality so that if someone puts a sign up it isn't taken. And to be honest with you, there is an issue of keeping your charitability if you put a...look, I'm not going to pick on the Catholic church, but, you know, if you do put up a pro-choice sign, life sign, that church is pro-choice and you take that down, you know, they're picking. They're endorsing one over the other and you can't...then, in essence, they're campaigning and I'm not sure you can do that if you're a (c)(3). [LB224]

SENATOR BLOOMFIELD: If you are outside the area that you have rented out I would think you would maintain your right to say what you want when you want. [LB224]

SENATOR HARR: So the answer is maybe. So the answer is maybe because right now what we're saying is we're not just renting...in essence what we're saying is we're changing the rental zone from a polling place and 200 feet from outside the building to all of your property. Okay. So that's one change we're making. [LB224]

SENATOR BLOOMFIELD: That is the intent of the bill though. So if the church was setting on a 40-acre property land, they can't put up a sign? [LB224]

SENATOR HARR: But I'm also saying is I don't think currently they can choose which people to post and which ones not to post. [LB224]

SENATOR BLOOMFIELD: But I would certainly think they... [LB224]

SENATOR HARR: Because then there's an issue of campaigning because implicit in that, if I'm taking down a sign, implicit in that is that I don't endorse that person and those...therefore, they're campaigning. And if you're a (c)(3), you can't campaign. So I'm not even sure right now they can if they wanted to. They do, but I'm not sure they can. And I think what we're trying to do is provide some clarity so they can sit there and say, yes, I can or no, I can't. And maybe the answer is we eliminate all signs. But I don't know if that passes the strict scrutiny requirement of our constitution because we want to encourage free speech. We want...that's a First Amendment right and there has to be a reason for it and it has to be narrowly tailored. So the narrowly tailored would be an emphasis towards posting signs but having all of them and not towards eliminating all. [LB224]

SENATOR BLOOMFIELD: Okay. I might take it one step further, then you and I can discuss this elsewhere. If we're on a church again and that church happens to own

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another piece of property a mile down the road, can they put their sign up there?  
[LB224]

SENATOR HARR: Doesn't apply. [LB224]

SENATOR BLOOMFIELD: Okay. Thank you. [LB224]

SENATOR MURANTE: (Exhibits 5 and 6) Thank you, Senator Bloomfield. Any additional, final thoughts? Seeing none, before we close the hearing on LB224, I have letters of opposition, one from John Gale, Secretary of State; the other from Diane Olmer, Platte County Election Commissioner. And with that, we close the hearing on LB224. And thank you for coming down, Senator Burke Harr. [LB224]

SENATOR HARR: Thank you. I always enjoy it here. Appreciate it. [LB224]

SENATOR MURANTE: And with that we close our hearings for today and thank everyone for coming down.