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Government, Military and Veterans Affairs Committee
February 07, 2007

[LB268 LB284 LB289 LB310 LB312]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 7, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB268, LB284, LB289, LB310, LB312, and a gubernatorial appointment. Senators present: Ray Aguilar, Chairperson; Mick Mines, Vice Chairperson; Greg Adams; Bill Avery; Russ Karpisek; Rich Pahls; and Kent Rogert. Senators absent: Mike Friend.

SENATOR AGUILAR: Good afternoon, everyone. Welcome to the Government, Military and Veterans Affairs Committee. My name is Ray Aguilar, represent District 35, Grand Island, Nebraska. On my far right is Senator Russ Karpisek from Wilber, Nebraska; seated next to him, Senator Mick Mines from Blair, also the Vice Chair of our committee; my immediate right is Christy Abraham, our legal counsel; my immediate left is Sherry Shaffer, the committee clerk; followed by Senator Rich Pahls of Omaha; and Senator Greg Adams of York. Bills will be taken up in the following order: LB268, LB284, LB289, LB310, and LB312. If you're going to testify but would like to be on...if you're not going to testify but would like to be on the record, either as a proponent or an opponent on the bill, there is a sheet by the door that you can sign. Sign-in sheets are also there. Sign in only if you're going to testify and put the sheet in the box up on this table in front of me. Print your name and indicate who you are representing. Before testifying, please spell your name for the record. Introducers will make an initial statement, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for an introducing senator only. Please listen carefully to the testimony ahead of you and try not to be repetitive. If you have a prepared statement or an exhibit, give it to the page and he will distribute it to us or make copies. Turn off all your cell phones and pagers. Our pages today are Adam Morfeld of Sioux Falls, South Dakota; and Bri McLarty of San Antonio, Texas. Before we get started on our bills today, we do have a confirmation we need to dispense with. The gubernatorial appointment of Keith Deiml, who is appointed to the State Emergency Response Commission. Keith, would you like to come up and tell us a little bit about yourself? Welcome.

KEITH DEIML: (Exhibit 1) Senators, my name is Keith Deiml. I taught adult education for 28 years. The latter years, I taught emergency management. I am a certified emergency manager through NEMA, Nebraska Emergency Management. I have taught hazardous materials education. I am also a FEMA adjunct instructor, teaching emergency management classes for them. It's kind of a long list of emergency kinds of things. I'm an EMT instructor, CPR instructor, and a lead instructor for SERC, and this is another spelling of that same phrase, this is CERT, which is the Community Emergency Response Teams. I have served on LEPC's over the last ten years; on three at one time, currently serving on two. My request to participate on the SERC was just a furtherance of my interest in training and education in hazardous materials and response to there. That's basically my background. [CONFIRMATION]

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SENATOR AGUILAR: Thank you. It sounds like you're extremely qualified. At this point we'll take any questions or comments from the committee. [CONFIRMATION]

SENATOR MINES: I do have one. Thank you for being here today. What would your role then be in the organization? How do you view that? [CONFIRMATION]

KEITH DEIML: The subcommittee that they've placed me on is schools. [CONFIRMATION]

SENATOR MINES: Okay. [CONFIRMATION]

KEITH DEIML: And because of my background, I taught at the college level for 28 years, and my associations with various school districts, I have already been in contact with the committees. And we're looking at furthering the education of youth when it comes to hazardous materials. [CONFIRMATION]

SENATOR MINES: Um-hum. [CONFIRMATION]

KEITH DEIML: We have some programs, what is it, don't touch it. It's a...in this particular case, it's a little video game that we can distribute to the schools, where the children can go, open up a cabinet, theoretically in a kitchen, and look at what's underneath there and find out what's good and what's to be left alone. [CONFIRMATION]

SENATOR MINES: Okay, thank you. [CONFIRMATION]

KEITH DEIML: So children, unfortunately, as you know, get into the wrong chemicals and we lose children because of poisonings and the like,... [CONFIRMATION]

SENATOR MINES: You're right. [CONFIRMATION]

KEITH DEIML: ...as well as adults mixing... [CONFIRMATION]

SENATOR MINES: As well as senators. [CONFIRMATION]

KEITH DEIML: Okay. [CONFIRMATION]

SENATOR MINES: We should have this on the floor. We should have the video on the floor. Thank you. [CONFIRMATION]

SENATOR AGUILAR: Mr. Deiml, what do you view is the biggest challenges of the commission? [CONFIRMATION]

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KEITH DEIML: The commission right now is furthering the education of first responders, those folks in our communities that go and respond to a situation which is hazardous. And the commission is furthering their education, their opportunities to better prepare themselves to protect our communities and themselves. [CONFIRMATION]

SENATOR AGUILAR: Thank you. Further questions? Senator Pahls.
[CONFIRMATION]

SENATOR PAHLS: Yeah, I will admit of all the applicants I've seen, your background is phenomenal. I only have one question. By looking at your e-mail, am I to assume you're a Cub's fan? [CONFIRMATION]

KEITH DEIML: Yes. [CONFIRMATION]

SENATOR PAHLS: Okay. [CONFIRMATION]

_____ : That's not bad, that's not bad. (Laughter) [CONFIRMATION]

_____ : All right, that does it for me. [CONFIRMATION]

KEITH DEIML: Grew up in Chicago, it's kind of stayed with me. They'll always do better next year. [CONFIRMATION]

SENATOR PAHLS: Okay. [CONFIRMATION]

SENATOR AGUILAR: Further questions? Seeing none, thank you for being here today, Mr. Deiml. [CONFIRMATION]

KEITH DEIML: Thank you for the opportunity to serve. [CONFIRMATION]

SENATOR AGUILAR: Have a good day. We're now ready to open the hearing on LB268. Senator McGill, please. While she's coming up, can I see how many plan to testify on this bill with the raising of hands? I see one. Thank you. Welcome, Senator McGill. [CONFIRMATION LB268]

SENATOR MCGILL: (Exhibits 1-5) I've got several things to pass out. Thank you. Thank you for welcoming me, Chairman Aguilar. Members of the Government Committee, I'm Amanda McGill. Last name is M-c-G-i-l-l. I'm from District 26, and I'm here to introduce LB268. Under current state statute, counties under county commissioner organization with populations under 150,000 and over 300,000 nominate and elect county commissioners from the districts in which they reside. These population thresholds encompass every county in the state, except for Lancaster County. Thus Lancaster

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County elects its commissioners in a process not found in almost any other form of Nebraska representative government. In the primary, candidates for Lancaster County Commissioner are nominated from within the district in which they reside. In the general election, they are voted on by the registered voters of the entire county. The intent of this bill is to bring Lancaster County into line with the other counties which offer a truly district form of nomination and election. Let me mention a few facts about this bill before I continue. This bill does not require changes to any of the current district boundaries found in Lancaster County. This bill will not displace any currently serving Lancaster County commissioners, and this bill will not question the validity of the term of office which the current commissioners in Lancaster County now serve. It is the sole intent of this bill to bring Lancaster County into line with all other counties in the state which offer a district form of nomination and election. District elections will provide constituents with more access to candidates during the election cycle, unwavering and responsive direct representation on the board, and an election process that is fair to all of those who wish to run. Under the current election process, candidates campaign during the primary in their districts that make up roughly 53,000 constituents. From the general election, that number expands to 265,000 residents. Under this bill, candidates for commissioner would focus on their districts throughout the election cycle, allowing for maximum candidate access for constituents during the critical general election cycle. An interesting circumstance exists under the current system. In Lancaster County you could have a candidate who is popular amongst the constituents of their own district. This candidate could receive a majority of the votes in the primary and move onto the general election. Then during the general election the candidate could win a majority of votes again from within their district, but lose the greater general population of votes in the other four districts, and thus lose the election. As shown in the election results that we will be providing to you, could I get one of you to pass out these. When you get those results you'll see that, compiled by the Lancaster County Election Office, this example has happened three times in Lancaster County, since 1990. The opposing side, and in these cases in all three, two times it was a Democrat, and once a Republican. And so it has happened on both sides of the party ticket. We should not allow for an election system that overrides the intentions of the people who reside in the district which will be represented. The current system is not only adverse to those who seek representation, but to those who wish to represent as well. District elections would allow access to perspective candidates who otherwise would not choose to run under the current system. While on the campaign trail over the last year, I spoke with active members of the community that shared interest in running for Lancaster County commissioner, but were deterred by the daunting task of facing an countywide general election. While being great stewards of their communities, they do not have the name recognition, political capital, or personal funds to support a countywide race to represent the district in which they live. This is not the landscape that should be presented to the people of Lancaster County who wish to participate in representative democracy. Representative democracy should not be at the will of those from areas who one does not represent. Representative democracy should be representative of the diverse

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economic, ethnic, and multifaceted makeup of the districts which are being represented, and not approved by standards of the entire county. I urge you today to bring to the floor of the Legislature LB268. I thank you for your time, and I'd more than willing to answer any questions you might have. [LB268]

SENATOR AGUILAR: Thank you, Senator. Questions for Senator McGill? Senator Pahls. [LB268]

SENATOR PAHLS: Senator, here's the question I have, let's say that we say this is the way to go. [LB268]

SENATOR MCGILL: Yes. [LB268]

SENATOR PAHLS: Then I have to reflect on other parts, or other bodies throughout the state. For example, I'm not that familiar with it, but Westside, they have a caucus system, which is even way different than this, for the school board. [LB268]

SENATOR MCGILL: Okay. [LB268]

SENATOR PAHLS: They caucus and then they vote. It's really an interesting system. And I know they don't want to change that. Then I'd almost have to go back to the district that I represent is District 31, which is a part of the Millard School System. If you run for the Millard School System, it's for the whole district. It's actually three times, almost three times the size of my district. So then I'd have to say that we ought to make them do district races also, if I agree with your philosophy here. [LB268]

SENATOR MCGILL: Well, when it comes to school boards, they do have the control to change...those districts have the ability to change the form of election style that they have. Right now, we have spent a lot of time talking to the officials, Secretary of State's Office dealing with elections. And from what we understand, there really is no way guaranteed in law, even for the folks here in Lancaster County, to vote to change this system, because the law explicitly talks about the ability of changing from a district system to an at-large system, and vice versa, you can get that changed. But we have a mixed system right now where we don't qualify as either of those. So the law isn't even clear in allowing the people within a district or within the county to change that form of representation or how the folks are elected. In the school system they could vote, I'm assuming, to change how that is... [LB268]

SENATOR PAHLS: Yeah, I don't know (inaudible). Because I know, I think Omaha at one time was at-large, and then I think Senator Chambers was responsible for making... [LB268]

SENATOR MCGILL: Yes, it was, it was. We...one of the forms that I have to pass out is

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a history of how the law has evolved since the...well, since the beginning of Nebraska. And it's moved towards this form as far as county commissioners are concerned. And Senator Chambers did make that exception. And one thing I didn't bring up in my opening testimony here yet is that because of the boundary limitations, Lancaster County is...boundary population limitations as far as...that we fall into this bubble of electing folks in this manner. As soon as we reach a population of 300,000 or more, then we have to bump up into the way that Douglas County elects their county commissioners, which is direct district representation. And Sarpy County is only two years or so away from jumping into our bracket. So they're going to have to change from their direct representations from their districts to our form, from direct representation in the primary to voting for the whole county in the general. And so we're looking at cases here where something is going to have to be done unless they're okay with changing their form of election process. But from what I understand, they prefer to keep it the way it is for themselves. [LB268]

SENATOR PAHLS: Okay, thank you. [LB268]

SENATOR AGUILAR: Further questions? Yes, Senator Mines. [LB268]

SENATOR MINES: Thank you, Mr. Chairman. Senator McGill, would you oppose an amendment that would change all counties to district elections? [LB268]

SENATOR MCGILL: Well, what you see on that list is that some of them are at-large, because the law does allow them to just...for them to change it to at-large within their counties. But again, we have that mixed system that doesn't... [LB268]

SENATOR MINES: But if we were to offer an amendment, would you oppose the amendment? [LB268]

SENATOR MCGILL: It would be something I would have to look at, but right off the gun, no, I'm not opposed to that. [LB268]

SENATOR MINES: Okay. Thank you. [LB268]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator McGill. [LB268]

SENATOR MCGILL: Um-hum. [LB268]

SENATOR AGUILAR: (Exhibit 6) First proponent of LB268. Seeing none, are any opponents? Are there any neutral testimony? While he's coming up, I would announce that we've been joined by Senator Kent Rogert of Tekamah, Nebraska; and Senator Bill Avery of Lincoln. I'd also like to read into the record a letter of support for LB268 from

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the Sarpy County Board of Commissioners. Welcome. [LB268]

KERRY EAGAN: (Exhibit 7) Thank you, Senator. Good afternoon, Senator Aguilar, members of the committee. My name is Kerry Eagan. I'm the chief administrative officer for the Lancaster County Board of Commissioners. The board has asked me to come and testify today in a neutral capacity. We're presently handing out a letter which sets forth the basic position of the Lancaster County Board. When the board asked me to write a letter on this issue, the first thing I tried to do was research the legislative history of how county boards have been elected in the past. I got virtually no help from looking at the statutes, because it didn't go back past 1994. I knew there was election law prior to 1994. At that point I called Greg Butcher, in Senator McGill's Office, and he was of enormous assistance in providing me with a very lengthy history of how county board elections have been conducted in the past. I would like to thank him for that information. I think the committee has access to the same information. What it does show is that it has not been uniform throughout the history of Nebraska how county boards are elected. And this probably stems from the fact that a county board is a unique body that doesn't perform just one function of government. Usually, you have your Legislature, you have your executive and judicial branch. But a county board is all three rolled into one. They're legislative in enacting zoning codes and other types of legislation like that; they're also executive because it's the chief governing body of the county. So they're in charge of creating the budget and administering the budget and administering all the various programs and powers which are given to counties. They also act in a quasi judicial function, particularly when they sit as the Board of Equalization. If the board was just legislative, electing by districts entirely would make perfect sense, because you want to distribute the representation as broadly across the county as possible. It gets complicated a little bit when you throw in the executive function and the judicial function. Just as the chief executive for the state is elected statewide, it makes sense to elect your chief executive for the county on a countywide basis. The same would probably hold for the Board of Equalization too, where you don't want the individual commissioners sitting as the Board of Equalization to have a regional bent or a bias towards their clients; you want them to act in a judicial capacity and make decisions based on the law that apply all across the county. And being elected across the county helps to facilitate that process. But recognizing that this is a complicated issue, the board has adopted a neutral position. I would like to note, however, though that the system that we have in Lancaster County, while different than perhaps most of the other counties, has worked very well for Lancaster County. I can speak from experience, since about 1992 as the chief administrator, that the board likes it as elected officials; they hate it as candidates. When you have to campaign countywide, it really does add quite a burden. But when it comes to administering their duties, they're much more comfortable when they know that they have been elected and are responsive to the entire electorate. With that in mind, the board would like you to consider an amendment that perhaps gives some authority to the individual counties, and how they choose in our situation, as Senator McGill pointed out, we're kind of a hybrid that we can't opt in

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for the district system or the countywide system, because we're both a district and a countywide system. So we would like you to give some consideration to allowing Lancaster County the opportunity to maintain the system that we have...that we've had for years, that we think works very well. This, of course, criteria could be applied to other counties, such as Sarpy which maybe doesn't want to go to a countywide election. So it would provide some more flexibility. I'd close in saying that we may be unique in how we do it, but that's really not the issue. What needs to be debated is, what is best and what best serves the citizens? Of course, the Unicameral is a unique body. Probably in the United States you usually have two houses, and I think the Unicameral has worked very well through the years. So the fact that we are different, I don't think, is the argument that the committee needs to focus on, it's what is really best for the citizens of the counties. I'd entertain any questions. [LB268]

SENATOR AGUILAR: Thank you. Questions from the committee, other than are you sure that was neutral? [LB268]

KERRY EAGAN: Yes, it was neutral, yes. (Laughter) Officially, neutral. [LB268]

SENATOR AGUILAR: Senator Pahls. [LB268]

SENATOR PAHLS: Yes, I have a question. Bob (sic) I'm reading the last sentence on the second paragraph. Is that what you're telling us to do? [LB268]

KERRY EAGAN: Well, we're asking you to consider the options of...and it's there for most counties now that they can choose to be district or countywide. It may not apply to us, because we nominate by district and elect countywide. So, yes, I guess that's what the board's position was that if the board...or if the Legislature does want to change it, it would be nice to still have some individual flexibility, for the counties to choose whether they wanted to retain that system. [LB268]

SENATOR PAHLS: And that in turn would keep Sarpy from running up against the wall when they get so high in population? [LB268]

KERRY EAGAN: That's correct, yeah, then Sarpy would be free to maintain their district system that they have now. [LB268]

SENATOR PAHLS: Okay, thank you. [LB268]

SENATOR AGUILAR: Senator Avery. [LB268]

SENATOR AVERY: Thank you, Mr. Chair. Would you agree that districtwide elections probably produce people who are more closely tied to their constituents, therefore more likely to reflect the attitudes, values and interests of their constituents? [LB268]

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KERRY EAGAN: Yes, Senator, I would agree with that. And I think that if we were just a legislative body I think that argument would clearly carry the day. [LB268]

SENATOR AVERY: Would you also agree that if districts had a fairly large concentration of minority voters that it's much more likely a minority might be produced by that district than by countywide election? [LB268]

KERRY EAGAN: I think in that hypothetical, yes, that's clearly the case. [LB268]

SENATOR AVERY: Thank you. [LB268]

SENATOR AGUILAR: Further questions? Seeing none, thank you for coming today. [LB268]

KERRY EAGAN: Thank you, Senator. [LB268]

SENATOR AGUILAR: Any other neutral testimony? Seeing none, Senator McGill, to close. [LB268]

SENATOR MCGILL: I'll waive, unless there are questions. [LB268]

SENATOR AGUILAR: Senator McGill waives closing. That closes the hearing on LB268. We're now ready to open on LB284. Senator Karpisek, please. Welcome. [LB268 LB284]

SENATOR KARPISEK: (Exhibits 1 and 2) Thank you, sir. Chairman Aguilar and members of the Government, Military and Veterans Affairs Committee, my name is Russ Karpisek, R-u-s-s, Karpisek K-a-r-p-i-s-e-k and I represent the 32nd Legislative District. I'm here today to introduce LB284, which relates to mandatory manual audits in close elections. I know that this is a very controversial bill, but it's fairly simple to talk about. LB284 would change Section 32-1119 of statute, would require a manual recount if any candidate failed to be nominated or elected by a margin of 1 percent or less of the votes received by the winning candidate, if there are more than 500 total votes cast. Gets a little mucky there, but if it's in the 1 percent with over 500 votes cast, or 2 percent or less of the votes received by the winning candidate if 500 or fewer votes were cast. I would like to point out that candidates in Nebraska have no opportunity of a manual recount as law stands now. The only way our recounts can be conducted is by putting the ballots through the same machine a second time. The use of VVPAT's, or Voter Verified Paper Audit Trails, or paper ballots, is required in 25 states. Audits, as opposed to recounts, are used in 12 of these states. Trends are beginning to merge in which between 1 and 10 percent of all precinct voting machines will be audited around the country. By auditing, I mean they take the ballot and make sure that...most of these are

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done on computer touch screen, which is not what we have, but they check that to the paper ballot to make sure that it is what the voter intended to vote. Again, a lot of these already have where they do a certain percentage to make sure that it's coming out the way it was intended. Nevada requires hand counts in 2 percent of the machines in the less populace counties, and 3 percent of the more populace counties. The percentage of machines and/or votes that are studied in a manual recount varies from state to state. Colorado audits no fewer than 1 percent of voting machines, and New York audits 3 percent of voting machines. I am not asking for that much scrutiny. I know that our machines are checked, double checked. But I do feel that manual recounting on the races with only 1 percent margin is not overkill. My concern is that if a voting machine has been manipulated or is being manipulated, what good does it do to run the ballots through again? Same results. It is amazing to me that we would go through all of the trouble having paper ballots for a paper trail, and then use them for nothing. I think these days government is viewed as not being on the up and up. Senators, we feel that every day. Some transparency in our elections would help alleviate this problem. I think it's nice to see how something works, even if you feel that it isn't broken. Don Eret, former Senator from my District 32, and former candidate for Secretary of State will also be giving testimony today, along with Jay Stoddard, also a former candidate for Secretary of State. I would just like to say that I feel when we have no way of having a manual recount that it makes people wonder what's being hidden. With that, I would take any questions. [LB284]

SENATOR AGUILAR: Questions for Senator Karpisek? Seeing none. Senator Avery, I'm sorry. [LB284]

SENATOR AVERY: Thank you, Mr. Chair. Have you heard from the County Commissioners on this yet? [LB284]

SENATOR KARPISEK: Oh yeah. [LB284]

SENATOR AVERY: Just for curiosity, did any single one of them support what you're proposing? [LB284]

SENATOR KARPISEK: No, none did. I think that there was one that did say, though, if the candidate were to pay for the manual recount that they would not be opposed to it. Right now, you know, we can...there's the 1 percent recount, Lathrop's, Senator Lathrop's case, and they run back through the machines. [LB284]

SENATOR AVERY: Um-hum. [LB284]

SENATOR KARPISEK: Now, anyone over that, if they want to have a recount, they can ask for one at their expense. So what we're asking for here is that 1 percent to be manually recounted at the county's expense. [LB284]

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SENATOR AVERY: I served on a task force, maybe two years ago now, Help America Vote. [LB284]

SENATOR KARPISEK: Um-hum. [LB284]

SENATOR AVERY: No, no, it was the Vote Nebraska Initiative. It was prompted by the Help America Vote Act. And we had a lot of discussions about ways to improve turnout. We had a lot of discussion about the reliability of voting machines, things of that sort. My impression was that county election commissioners don't want to change anything. So I suspect that your mailbox has been pretty hot with opposition. (Laugh) [LB284]

SENATOR KARPISEK: And that's true. I guess I heard one thing on the floor today, maybe not on the mike, but a fellow senator was saying, we're the ones here making the laws, don't have the tail wag the dog. If we think that this is a good bill, something definitely to look at, then I think we need to look at it that way. Obviously, would make some jobs maybe a little harder. But I think the bottom line is just the appearance of no way to manual recount. The feeling is, why? What are you trying to hide? And that's my point to this bill. [LB284]

SENATOR AVERY: Well put. [LB284]

SENATOR KARPISEK: Thank you. [LB284]

SENATOR AGUILAR: Further questions? Senator Adams. [LB284]

SENATOR ADAMS: So, in effect, what you would be saying in this bill is that if that 1 percent margin is hit, the recount ought to be done manually rather than by the machines that we have gone to because we thought they were more accurate than manual counting? [LB284]

SENATOR KARPISEK: The state has gone that way. [LB284]

SENATOR ADAMS: Okay. [LB284]

SENATOR KARPISEK: As I have gotten farther into this and learned more about the VVPAT's, or whatever the acronym how you say that, VVPAT, I don't know, where they do kind of watch as they go along maybe would be another way at least for a backup. You know, you can test and retest, but if the thing just keeps coming up the same all the time, how do you know that it's right or wrong without any double check? [LB284]

SENATOR AGUILAR: Further questions? Senator Mines. [LB284]

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SENATOR MINES: Thank you, Mr. Chairman. Senator Karpisek, this isn't new. I mean this has been...I was on the committee last year and we heard something like this last year. And thank you, Christy, for the note. We had a task force on this in 2002, and in response to Gore v. Bush (sic) and the Supreme Court decision, we're doing it without manual recounts and following that guideline. Why would we not continue to follow that guideline and the recommendation of the task force? Why would we change now? [LB284]

SENATOR KARPISEK: I guess in my mind, what I've seen of some task forces that have been created around here, they're created for a special end result. And the makeup of the task force may be a foregone conclusion to what is going to happen. [LB284]

SENATOR MINES: Okay. [LB284]

SENATOR KARPISEK: I would like to note, I passed out the different states, how they do things, their manual recounts, their recount triggers, there's a lot of different ways. A lot of states do still have manual recount. [LB284]

SENATOR MINES: Okay. [LB284]

SENATOR KARPISEK: And, I guess, I would just like to bring it up again and shine another light on it, because it seems like every time we have an election, there are problems and people yell and scream and distrust government even more. [LB284]

SENATOR MINES: Okay. [LB284]

SENATOR AGUILAR: Further questions? Senator Pahls. [LB284]

SENATOR PAHLS: Yes, thank you, Chairman. But, Senator, can you remember a couple of years ago everybody was holding up to the light, and that was about as manual as you could get. And there still seemed to be confusion. [LB284]

SENATOR KARPISEK: The hanging chads and all those things... [LB284]

SENATOR PAHLS: Yeah. [LB284]

SENATOR KARPISEK: ...was a poor version of the voting machines. I think our voting machines are much better than that. And I think all of them are now. My concern is some of these voting machines can be ordered with a modem, because news crews can call them and see how the count is going. Concern, if there's a modem in them, can things go back and forth both ways? I'm not trying to make this sound like there is some witch hunt here and everything is wrong. [LB284]

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SENATOR PAHLS: No, I understand. [LB284]

SENATOR KARPISEK: But I just think that the public's concern is that things just don't look like we're telling the whole story. [LB284]

SENATOR PAHLS: Thank you. [LB284]

SENATOR AGUILAR: Senator Avery. [LB284]

SENATOR AVERY: One more question, sir, thank you. It's my understanding that in Nebraska virtually all of our voting machines are scanners, optical scanners. And that means that you mark the space on the ballot and then the computer scanner, computer operated scanner will read that. [LB284]

SENATOR KARPISEK: Correct. [LB284]

SENATOR AVERY: I presume that in a manual recount someone could have an imperfectly marked ballot, imperfect in the sense that you didn't color in the whole square, or circle, or oval, or whatever it is, and a visual inspection of that ballot would allow the person doing the recount to say the intent of the voter was to vote this way. Whereas the computer operated scanner may not read it that way. Is that one of your concerns? [LB284]

SENATOR KARPISEK: It is. I do think that our scanners are pretty good. And I'm sure the Secretary of State will vouch for that. Again, it just seems like we're...we have the paper ballots. If we don't, you know, what do we need the paper ballots for if we're not ever going to use them to actually check, just keep running them through a machine? [LB284]

SENATOR AVERY: So you think if the machine makes a mistake the first time, it will make it the second, the third, and fourth time? [LB284]

SENATOR KARPISEK: Right, right. How many fingers? [LB284]

SENATOR AVERY: You can't ask a question, remember. (Laughter) [LB284]

SENATOR KARPISEK: I can. (Laughter) Anyway, you might of thought two, but I'm going to tell you, no, it was three. No, it was three; no, it was three; no, it was three. Just because he got caught on that when he was sitting in the chair. [LB284]

SENATOR AGUILAR: He's observant. Thank you, Senator Karpisek. [LB284]

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SENATOR KARPISEK: He is observant, he's tough. [LB284]

SENATOR AGUILAR: No more questions? Thank you. [LB284]

SENATOR KARPISEK: Thank you. [LB284]

SENATOR AGUILAR: First proponent of LB284. [LB284]

JOHN HANSEN: (Exhibit 3) Chairman Aguilar, members of the committee, for the record, my name is John K. Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union and I appear before you today in strong support of LB284. This is an issue that my organization has taken a very clear stand on for some number of years. And we thank Senator Karpisek for bringing this bill forward. And from our view, from our vantage point, at the end of the day the primary objective of any kind of election outcome is first and foremost accuracy, because accuracy is, at the end of the day, really speaks to the integrity of the ballot box and the election process. So as we hear arguments about speed, we hear arguments about cost, we really don't think those, when we're talking about the integrity of the election system, are really the primary concerns. If there is in fact a question, if there is in fact a problem, then you do need to have the opportunity to go back with a clear paper trail and do what we've always done, which has always been accepted, which is to count the votes manually, and have physical inspection, and have people from both sides of the political isle look at them and say, yep, we think that's what it is. And so that process has served us well. And what our concern is, is that if in fact there is a technical problem, if there is a scanning glitch, and we've all heard of stories in the newspaper where there, in fact in the commercial sector there are also scanning glitches from time to time that show up, but if there is, to just redo the recount procedure by running it back through the same software or the same scanning will yield the same results. It just simply doesn't fix what's wrong. And so from our standpoint we have always felt like at the end of the day, if there is a question, we need to have the opportunity to absolutely verify the will of the voters, and that that is first, foremost, and should be the only real primary consideration at the end of the day relative to protecting the long-term interests of our democracy. With that, I would be glad to close and answer any questions in the off chance I might be able to answer them. [LB284]

SENATOR AGUILAR: Questions? You're off the hook. [LB284]

JOHN HANSEN: Boy, this is good. I like your committee. You're nice guys. You're a lot nicer than Revenue. (Laughter) [LB284]

SENATOR AGUILAR: Next proponent, please. Welcome. [LB284]

DON ERET: (Exhibit 4) Senator Aguilar and members of the Government Committee,

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my name is Don Eret, and that's spelled E-r-e-t. I reside in Dorchester. I'm here to testify in support of LB284, a bill to amend the current election recount statute to require that election recounts be done manually. Statute 32-1119, subparagraph (6), on the procedure of conducting a recount is not logically worded. It does not present an outward purpose for accomplishing a true recount audit. The current recount procedure of a close race depends on optical scanner printout, instead of a manual inspection of ballots to tabulate voters intent. The optical scanner printout is a product of proprietary programming done for each county by the scanner vendor company. A public eye-opener, and it's on the second page there, was in the Lincoln Journal-Star, February 2004 editorial, titled "Electronic voting must deserve trust." Although the editorial addresses touch screen voting devices, it is equally addressable to optical ballot scanners that are used in Nebraska because both employ proprietary programming. The editorial stated that companies that manufacture the electronic machines consider the programs to be proprietary information and refuse to let them be examined. The editorial concluded, public confidence that votes will be counted fairly is essential. The clincher to requiring a manual recount is the fact that electronic election devices can contain wireless communication modems. For an enlightening experience, go to your Internet computer and type in ES&S Model 650 Modems, and you will get about 175 reports and published articles, most of which report on the Model 650 optical scanner and enough of which refer to communication modems to make you believe. One print of a completed order form indicates that the scanner was ordered with a modem. I understand that a modem can be contacted with a remote laptop computer and is featured for the purpose that news media can monitor the progress of an election vote count without having to wait for a report from the election officials. But it is also apparent that messages can be sent to the modem to marginalize the vote count with the proprietary programming capabilities. So did Nebraska order its Model 650 and Model 100 scanners with or without modems. On my last page, I indicate the models of these that are in each county. The Virginia State Senate just approved Senate Bill 840 to ban the use of wireless communication devices inside voting machines because they represent a great threat by hackers disrupting the voting system. There may be election officials testifying here today that requiring manual recounts is too burdensome and expensive. The fact is that an automatic recount occurs very seldom, and that a candidate requested recount would be paid for by the candidate. On the other hand, continuing to prohibit a manual recount as the current statute does makes 100 percent of everything on our ballots nonauditable and thus invites undetectable manipulation of the vote count. It is high time that Nebraska amend it's election recount statute to require manual recounts in order to detect any irregularities of using the equipment that has been selected to tabulate our votes. Quoting from the Lincoln Journal-Star March 26, 2006 article, on page 3C, Doug Jones, a University of Iowa computer security expert, also believes no one should place absolute faith in machines. Nebraska has a good system, one that provides a paper ballot for every voter, the computer science associate professor said, but Nebraska doesn't take the next logical step--using that paper trail to ensure the machines are giving accurate results. Some states require a

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post-audit--checking 1 percent to 3 percent of precincts through a hand count, he said. That's the best, he believes. At least the state ought to allow a candidate willing to pay the cost to ask for a hand recount, he said. Jones says faith in machines is not uncommon among elected officials who have just spent millions on new equipment and are reluctant to admit the machinery may be less than perfect. That concludes my statement. [LB284]

SENATOR AGUILAR: Questions for Mr. Eret? Seeing none, thank you. [LB284]

DON ERET: Thank you. [LB284]

SENATOR AGUILAR: Appreciate you being here today. Next proponent. [LB284]

JAY STODDARD: (Exhibit 5) Jay Stoddard is my name, that's spelled J-a-y, middle initial C, Stoddard S-t-o-d-d-a-r-d. I want to thank Senator Aguilar for chairing this committee, he's from our district and a nice man. [LB284]

SENATOR AGUILAR: Welcome, Jay. [LB284]

JAY STODDARD: This will not take very long because what I'm saying will not be very complicated. I do have...I would like to read from the Lincoln Journal-Star, March 26, 2006. It is a quote of mine. There is plenty of information indicating potential security problems with modern voting equipment. Every voting system should allow for a hand-count audit and give candidates the option to seek a hand recount. I have here, and there's enough here, I'm sorry I didn't get 12, I didn't know that you had to have 12, but there are 8, and it's an authentic, and some of those I've checked on myself, people who say that every voting machine can have problems. During my campaign I spent \$700 for an attorney to tell me about voting machines. And he lives here in Lincoln. And I wanted to know exactly what his opinion was. And he said, Jay, every machine can break down, doesn't make any difference what it is, whether it's a voting machine or an automobile, or what have you, it can break down. Now right now this particular subject is a very hot issue. As we are sitting here going over to LB284, they are going over things in the Senate, the United States Senate. They're asking for \$300 million to improve the voting process. Probably a break off of HAVA or what have you. But they're concerned, you know, the 18,000 votes in Florida are missing, they can't find them. Well, that may not be the machines fault, it may be the people who are operating it. But we must have honest people in the voting process. And maybe what we're wanting here may not be the answer, but it would be a start. Our election process must count every vote that the person casts it for and make sure it's counted right. And it's going to get more complicated, because we have an influx of Hispanics, we have an influx of other people, and they're...we stand out as being the beacon of freedom, that people can vote and that it will be counted properly. And so that's all I have to say. That brochure there has nine pages. If you read it all, it's not me talking, it's experts talking. And I'm

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convinced that we do need to have some changes made in our voting process. Now somebody mentions cards that they're going to have, require to vote. That may not be the best thing either. We have a lot of people in our country that appreciate the freedom that our country offers, and votes should be counted, every single one. We might not like the way the popularity went, but that's part of our life. Thank you. [LB284]

SENATOR AGUILAR: Questions for Mr. Stoddard? Seeing none, thank you for coming down today, Jay. [LB284]

JAY STODDARD: Okay. Well, thank you. And I only got eight copies of that. [LB284]

SENATOR AGUILAR: We got some more. She made some more. Any other proponents? Welcome. [LB284]

GEORGE BURROWS: My name is George Bill Burrows, B-u-r-r-o-w-s. I'm from District 30, I served eight years from that district in this body. And I do have a great respect for the Legislature of Nebraska, that the integrity of it has been really without much question. And I think that's one of the most important things we can have is to maintain the integrity of elected officials. We have one of the most open bodies here in the state of Nebraska, where the press is available on almost all the committees and floor debate and coverages there. And I think it's something we really want to defend. And I think that our present election law is a sham. It provides for a recount, and that recount is running the paper through a machine that counted it correct, and these machines are, I feel, quite accurate in doing the same thing over and over without very few mistakes. But then we place our total trust, it goes to the people that make the machines and set up the machines. Now if I go to a casino it gets down to this simplicity to me, if I go to a casino I'm not going to make the assumption that that machine is going to be fair to both me and the casino. And I think these machines are really a quite comparable deal. The one thing I have had trouble understanding has been why election commissioners, some of them, and the election people, some of them, have opposed a hand recount, which would cause some problem and some money but would also, for that time and trouble it would cause them, would give a confidence on the integrity of that office for the public. The fact that they know these can be checked by hand with people from both political parties coming in and checking the account. And to me this integrity of the election process is tremendously important. And I think this is one of the more important bills before the Legislature, that we see that there is no possibility, I would say it affects that totally, but it certainly puts a big checker in the way of some time somebody corrupting the system by setting up machines to control a good share of the elections in the state. I really thank you for your time, Mr. Chairman, members of the committee. I do appreciate this opportunity to come before you. [LB284]

SENATOR AGUILAR: Thank you. Questions for former Senator Burrows? Seeing none, thank you for joining us today. [LB284]

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GEORGE BURROWS: Thank you. [LB284]

SENATOR AGUILAR: Thank you. Further proponents? [LB284]

CHARLES RIEDESEL: (Exhibit 6) Chairman Aguilar, senators, thanks for letting me be here today, have something to say. I'm...my name is Charles Riedesel, that's R-i-e-d-e-s-e-l. I live in Beatrice, LD30. I'm a chief undergraduate advisor for computer science and computer engineering at the university. I'm speaking today in favor of LB284. While I teach computer science and computer engineering at UNL, and while I may refer to my experiences there, I'm here today as a private citizen, not as a representative of UNL. I'll begin providing some perspective on where I am coming from, which is based on my mathematics and computer engineering studies and my research into electronic voting systems. I've studied enough mathematics to recognize that elections are loaded with subtleties that have been the subject of a lot of research. Here's an example. Consider a three-way primary race with Alice, Bob, and Carol. Voters base their preference in this instance on three issues: abortion, betting, and cops on the street. On abortion voters prefer Alice, then Bob, then Carol. On betting voters prefer Bob, then Carol, then Alice. On cops voters prefer Carol, then Alice, then Bob. Now, assuming only two of them advance to the general election, Alice would beat Bob, Bob would beat Carol, Carol would beat Alice. This means that the low one out from the primary determines who the ultimate winner will be, regardless of which one came in first and second in the primary. Weird. And just very quickly, here's a list of principles, some which conflict, fight with each other, that a good election should have: voters need to know that their vote is accurately recorded, that it's included in the total, that it is anonymous, that is there's no way to track back who voted how, and private, in other words there's no evidence for the voter to prove to a hypothetical coercer how he or she voted. My point here is that elections are much more complicated than what they may initially appear. The course that I am missing today in order to be here is CSCE 230, Introduction to Computer Organization. It's mainly freshmen and sophomores who are taking it. For their final project in my lab, they will design and implement a working processor, basically this is the circuitry on a computer chip. With just one more course, they will have enough knowledge and experience to design and hide microscopic Easter eggs on counterfeit chips that could be routed to DRE manufacturers that I doubt anyone is likely to detect. Exactly how to do this and what to include in the Easter egg is part of my ongoing research. Now everyone knows what an Easter egg is, it's a treat that is hidden from you, and when you find it, it's a surprise. An example of a commercial Easter egg, if any one of you would want to check, is the flight simulator that was hidden in Excel 97. Enter a particular sequence of characters into a cell at a particular column and row, and surprise, flight simulator. Okay. The legitimacy of elections as a means of selecting people for leadership positions and for deciding issues is based on trust. Essentially, people must buy into a system that is mathematically and statistically very complex. The best way to maintain that trust is to

make the system as transparent and intuitive as possible. Unfortunately, relying on technology is not the solution. In the process of making voting and vote counting faster, more convenient, and in many cases, yes, more accurate, machines are miniaturized and made to hide their internal processes. The resulting loss of transparency leads to greater mistrust with voters no longer assured that their votes were recorded correctly or included in the final tallies. Even computer experts who are allowed close scrutiny of the machinery and programming of electronic voting systems cannot guarantee its correctness, its resistance of accidental mistakes, or to deliberate tampering. A magician, sleight of hand artist, may be able to fool observers in an all paper election with physical ballot boxes, but it is intuitively obvious that his secrets can be discovered by means such as rerunning a video tape at slow speed. However, this is not possible with computer based systems, and I can testify to that. Realistically, again realistically, the chances of mistakes and tampering, changing the results of an election are small, but it can happen. And especially with close elections, it becomes very important that voters have confidence in the recount. That means transparency which machines are not yet able to provide. The best recourse we have is the manual recount. Now, as a practical matter, consider why we do a recount at all. When people were doing the original counting, a careful recount was likely to reveal and correct for human error. A recount, even done by the original counters, made sense. However, the modes of failure in a machine tend to be different than the modes of failure for people. In many cases, recounting by machine will merely replicate any errors that were generated during the original count. Generally, DRE recounting is done by reconstructing the tallies from an activity log, optical scan recounting by rerunning the ballots. A recount done by the same machine is unlikely to result in many changes or in higher confidence in the tallies. Unless more ballots were found, or some calibration in the machine is discovered and adjusted, recounting becomes almost meaningless. Now in an informal poll of my colleagues, there was unanimous incredulity that anyone would insist on using the same mechanism for a recount as for the original count. On the other hand, having multiple modes of doing the counting is by far the best way to detect and fix sources of miscounts, and it makes sense to people, thereby enhancing trust in the system. Thank you. [LB284]

SENATOR AGUILAR: Questions? Senator Avery. [LB284]

SENATOR AVERY: Thank you, Mr. Chair. Dr. Riedesel, what is to stop those people who might wish to rig one of these machines from simply rigging it in a way to ensure that the vote spread is greater than 1 percent, and thereby circumventing the automatic manual recount? And would that be a problem? I mean you could in fact rig it in that way. [LB284]

CHARLES RIEDESEL: Yes, yes, it could happen. Most likely it's going to be a probabilistic type thing to try to hide problems. There are vote-flipping techniques, there are a lot of things that can be done. But the greater the spread, the more the natural

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trust that you have in the machines. If a spread is bigger than say what post polling might give, then you become suspect, if one district votes a lot higher. There's nothing to stop it. But the smaller the changes that you can make that can turn the election, the safer it is, the more protected the perpetrator is, basically. [LB284]

SENATOR AVERY: Good point. Yeah. So that's likely to be the avenue they would take. They'd make the smallest amount of changes necessary to get the desired result, and it might not actually trigger a recount on a current...manual recount under current law? [LB284]

CHARLES RIEDESEL: That's right. [LB284]

SENATOR AVERY: Thank you. [LB284]

SENATOR AGUILAR: Further questions? Seeing none, thank you. Further proponents. Welcome. [LB284]

JAN WRIGHT: (Exhibits 7 and 8) Senators, good afternoon. My name is Jan Wright, J-a-n W-r-i-g-h-t, and I reside near Indian Cave State Park in Richardson County. I've been very involved in voter enrollment, getting kids to vote, voter registration and this type of thing. I believe very strongly in exercising our citizen responsibilities. I moved to Barada, Nebraska ten years ago and was surprised to be casting a ballot, marking an X in pencil, you know, on a paper ballot that could have been easily changed. And I felt that the punch card method that I was used to in Houston, Texas, was by far superior and safer. Of course, with the 2000 election, I was disabused of that notion. And it made me look more closely at our voting system. I have voted in every single election since I was 21 and able to vote, and I was very proud of that record. And it was extremely confidence-shaking to realize that my votes may very well have not been counted, even though I was voting. And it's imperative that confidence in the integrity of our voting system be restored. That's the foundation of our democracy. Technological advances can certainly streamline the process, but we must not sacrifice accuracy for the sake of speed, and I know cost is a factor. And now with electronic voting and vote counting it's even more important. It's been studied by experts at such respected institutions as Johns Hopkins, University of Maryland, University of Iowa, and many, many others. And the systems have been found wanting. And consensus recommendations have been for the verifiable paper trail and the ability to manually recount votes. Nebraska does require a paper ballot, which is wonderful. But it doesn't allow any recourse to that paper ballot in the even of closer contested races. The only way to ensure that the machine count is correct is by having a manual recount. This is the last check that is necessary to restore full faith in our voting system, and we owe that to the good citizens who faithfully cast a ballot every election. At the summer fairs, I set up a Kid Vote voting booth with the help of Mary Eickhoff, the Richardson County Clerk, and we hold a pretend election for the kids, usually with cartoon character candidates, but they also

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have a write-in line. And the kids get very excited about this. We had one kid who wrote his name in and he went out and he solicited all his friends to come back and vote for him. And they were all very excited about it. We posted the results every day. Usually, fairs run for about three days, and of course they get a piece of candy if they vote, and you know, so they like this idea. And it gets them used to what goes on in our actual system and get them used to voting. And it was a really close race between the write-in candidates in this particular Richardson County Fair. And they wanted to see the ballots, so I got them out, and we had a manual recount right there, you know, with all the kids around. And it's really good that I was accurate, I was glad to say. But what would have happened if I had told them no? Also, during the summer, I had a petition for people to sign, a petition to my senator, Lavon Heidemann, who I'm very thankful has cosponsored this legislation and the Nebraska Legislature. I testified last year on LB1013, and of course that did not get out of committee. And I would like to present to the committee the signature of 90 voters from southeast Nebraska who would support a bill reinstating manual recounts in Nebraska. Last year it was LB1013 that didn't get out of committee. There was another year, another bill before that that failed. This year it's LB284. This is a basic, good government issue that will not go away and I beg for your support in this. [LB284]

SENATOR AGUILAR: Questions for Ms. Wright? Senator Pahls. [LB284]

SENATOR PAHLS: Jan, I just have a question. Now when did...this petition you gave? [LB284]

JAN WRIGHT: I did that through the summer. I started with the Cobblestone Festival, which is in Falls City, and also the Richardson County Fair in Humboldt. [LB284]

SENATOR PAHLS: Okay. And you said these are people from southeast...you said... [LB284]

JAN WRIGHT: Southeast Nebraska, yes. [LB284]

SENATOR PAHLS: Okay. And I'm just going to show you how things can, even though it's...I mean I trust you; I'm not saying you're trying to pull anything here. But you said southeast, and I look here, and there are places here not from southeast. [LB284]

JAN WRIGHT: Well, they were all Nebraska, they were all Nebraska was what I asked. [LB284]

SENATOR PAHLS: Yeah. But you see what I'm saying? Even by doing something by paper/pencil, how errors can be made, you know, because... [LB284]

JAN WRIGHT: Well, and there were also machine errors. Anybody who has a computer

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knows there are glitches in those things. [LB284]

SENATOR PAHLS: But that's what I'm trying to...the point I'm trying to get across. Just because we did it by paper/pencil, there are errors there. And I'm not trying to trap you, I'm just trying to say that counting errors can be made also as machine. That's my point. [LB284]

JAN WRIGHT: That's correct. Of course, usually if you're counting, manual counting, typically you'll do it more than once to make sure you're coming out with the same number each time. And, hopefully, that, you know, will correct any manual errors. With a machine, if you run it through a second time, it's going to count it the same way it did the first, but machines are very consistent in that regard, they'll make the same mistake every time. So that's the concern. [LB284]

SENATOR AGUILAR: Further questions? Seeing none, thank you for coming today, Jan. [LB284]

JAN WRIGHT: May I add, Mary Eickhoff, who's the Richardson County Clerk, wasn't able to get here. And she had e-mailed a letter to the committee. I'm not sure if the committee received it. She copied Lavon Heidemann on it, and I was able to get a copy. And I just wanted to, if I may, may I read it into the record or... [LB284]

SENATOR AGUILAR: We'll make sure it gets into the record. [LB284]

JAN WRIGHT: You'll make sure. [LB284]

SENATOR AGUILAR: Yes. [LB284]

JAN WRIGHT: Okay. And also, the County Clerk, Joyce Oakley, from Nemaha County, I spoke with her this morning. We didn't know about this committee meeting until Sunday evening, so we're a little behind the ball. I apologize. And she was sending a letter in, too, and it hasn't gotten here yet. But in discussing, we've had numerous discussions. In fact, she was a presentation at the YCM on our voting system and electronic voting and vote counting. And she did mention that in Nemaha County, in this past election, they had a lot of write-ins for the school board. And they had to do a manual count for the school board election because there were so many write-ins, and different write-ins and so forth. And they could not get the ballot count to match back to the machine count on the school board members that were on the ballot, you know, and not written in. So I hope that as soon as her letter gets here that the committee will...and she's supposed to be copying all of you on that. [LB284]

SENATOR AGUILAR: We can allow that to be part of the record. [LB284]

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JAN WRIGHT: Thank you very much. [LB284]

SENATOR AGUILAR: Thank you. Next proponent. Can I see how many more proponents we have? I see one, two. Welcome. [LB284]

DON TILLEY: (Exhibit 9) Don Tilley, and I'm passing these out to you. [LB284]

SENATOR AGUILAR: Can you spell your name, Mr. Tilley? [LB284]

DON TILLEY: D-o-n T-i-l-l-e-y. [LB284]

SENATOR AGUILAR: Thank you. [LB284]

DON TILLEY: I think I testified before this committee last year. But I listened to the Foreign Affairs Committee a week or so ago, national level, Senate, and I thought I've got all these arguments down, if I could list them 1 through 40, then when each one testifies they can just say, 2, 15, 30, and that's it. So I made it very brief for you here today, very brief. I've worked here in Lincoln four of the last six elections. Please enact a law that never, never, never will permit the use of an electronic voting machine without backup paper, maybe a hand count, I suppose, for reliable recount, if necessary. That's it. [LB284]

SENATOR AGUILAR: Questions for Mr. Tilley? Seeing none, thank you for coming today. Next proponent. [LB284]

JACK GOULD: Senator Aguilar, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I represent both Common Cause Nebraska and Common Cause National on this issue. Common Cause National has taken the position that recounts in all states need two major requirements, one being a paper trail, which we have, the other a manual recount. And I, for all the reasons that have already been presented, there is no use my going into all of it, but the primary concern is public confidence. We've had enough concerns at the national level, as well as at the state level, where the public is beginning to lose confidence in the election process. And one way of reinstating that confidence is by having a manual count. And I think that's critical to this state. Thank you. [LB284]

SENATOR AGUILAR: Questions for Mr. Gould? Seeing none, thank you, Jack. Any more proponents? [LB284]

CHRISTINE REISSER: (Exhibit 10. Exhibit referred to was not left with committee clerk or delivered to Senator's office.) Good afternoon. I'm Christine Reisser, 311 South 52nd Street, Omaha, Nebraska. And the reason I've come forward today... [LB284]

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SENATOR AGUILAR: Could you spell your last name, Christine? [LB284]

CHRISTINE REISSER: R-e-i-s-s-e-r. [LB284]

SENATOR AGUILAR Thank you, go ahead. [LB284]

CHRISTINE REISSER: The reason I've come forward today is because as a regular, ordinary citizen, something feels wrong. The reason I'm here is because something is wrong in Denmark. And I'm not a computer programmer, even though we have here scores and scores of the top minds in MIS who have examined these voting machines. Princeton University came out and said that they evaluated the top three vote count company machines, and they said it's so easy to steel an election, even a cave man can do it. Now you know, moving along with idioms that we can all understand, I was listening to the comment of Senator Pahls, and he was mentioning that there could be mistakes when human intervention, in our most sacred right that we have in a democracy, that could occur. And it does remind me of another popular idiom we've all seen, which is the commercial where a young man has gone out on the town and, you know, he's kind of a geeky type of a guy, and he can't understand why these hot babes, in the commercial, have not called him. So he asks the telephone expert, is there a chance, is there a chance that these two hot babes were trying to get ahold of me and couldn't? And the telephone expert says, yes, there's one in a billion. So to say that the people who prize the lifeblood of democracy couldn't make a mistake, I suppose there is maybe a one in a billion chance, anything could happen. But that is kind of a farce, so to speak. The reason I've come forward today is because all the research shows that the election machines are making incredible amounts of mistakes. Now whether that's on purpose or whether that's just, you know, these election people being buffoons, I don't know. But I will say the news rings out that in Ohio two election workers have been convicted of felonies and sent to prison. Now unfortunately we use the same machines here in Nebraska that these people who were able to manipulate those machines to the criminal level and were convicted by a court actually were able to do. And I printed out a document, and I can see some of the faces here today are a little tired, maybe a little bored with hearing the same thing over and over again, because we are one voice, because it's glaringly obvious that we do need to come forward and count these votes in the most reliable way possible. And we can see now, you know, from all the research, Princeton University, Harvard, the main universities, and I'm sure you're aware of these studies, that mistakes and miscounts are being made. So we do know that as a fact. And before I came over I printed out a 51-page document which, with your permission, I would like to give each one of your offices a copy of, just so you can look through it. But there is a record, called...and this is a 51-page document, a partial list of documented election machine failures. So it's documented that these machines are not properly putting the people into office who the people have chosen. And unfortunately, the net result is people are losing confidence in the vote, confidence in the lifeblood of democracy. And they've just become apathetic. Has anybody noticed how low our

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percentages of people who show up to vote actually are? It's embarrassingly low, isn't it. People are not participating. And of all the people, I'm a strong proponent of voting. Everybody I've asked why they didn't vote, and I'm embarrassed to say some people I never thought would not vote are nonvoters, they say, because my vote doesn't count. And that's why we're here today, because the mass...I'm sorry, it's the majority of Nebraskans fall into that category--my vote doesn't count. And what we want to do is put the public back into the process. When you're involved, you take a much more active role. And if you think about it, each one of you, which was elected, without proper vote counts, you know, you would have been...your position could have been stolen from you as well. So we don't want anybody's rightful elected position, yourselves included, to be taken away from them. And we want to restore the active involvement of our citizenry in elections. So I'd like to leave this document with your offices and ask you to do the right thing, which is pretty obvious. I know it takes moral courage to do something that might not please some of the powers that be. But in the words of Mark Twain, democracy is irreverent. And I didn't come here to be irreverent, but we must have the moral courage to be unpopular, to do the right thing. So I'm asking you today to do the right thing and forward this bill for the rest of our legislative representatives, not just us here in this room. We're only, you know, a small part of the state. We want everyone to look at this. We want our whole Legislature to adjudicate this issue, which we passionately come forward today because there simply is a voice here that will not be still for what is right. [LB284]

SENATOR AGUILAR Thank you. Questions? See none. Thank you. Further proponents? [LB284]

TROY WENTZ: I'm Troy Wentz, W-e-n-t-z. I can think of some good reasons to have a manual recount by people and one bad reason to have a recount by a machine. I used to be a program analyst, so I have designed computer software. There's a saying, garbage in - garbage out. If you make a mistake in writing the software your results will be wrong. So if you have a machine do the recount, and it was wrong the first time, it will be wrong the second time because the machine only does what it is told, and I know programmers can make mistakes. Having people do a recount is a good backup because software can malfunction. My neighbor called me yesterday, grumbling about her darn computer because her e-mail software said that there was no modem to get her e-mail. The software worked many times before, but yesterday it did not. The software in the electronic counting machines can fail, and a person people voted for may not get elected. So the technical problems are reasons to have people do a recount instead of machines. Then there are the words above the north entrance to the Capitol, "The salvation of the state is watchfulness in the citizens." It does not say, is watchfulness in the machines. How can we the people of Nebraska ensure our salvation if we are not allowed to question an election by machines? If a machine counts it wrong, they will recount it wrong. This leads me to the one bad reason of having machines do the recount, someone has something to hide. If machines do a recount, a small group of

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people could hide a big lie. With computer data large corporations have lied about their earnings, and as there is corruption in business, there is also corruption in politics. I believe most people are good and honest, but money can turn a good person into a bad person, and there is a lot of money involved in politics today. If a programmer is offered a \$1 million to write the software and elect someone the people did not want, the programmer and a small group of people could hide a lie if the machines did a recount instead of people. I hope this would not happen, but it could. And we should have the right to challenge them by having a manual recount by the people. [LB284]

SENATOR AGUILAR: (Exhibits 11 and 12) Questions? Seeing none, thank you. Anymore proponents? Do we have any opponents? Do we have any neutral testimony? Please come forward. I'd also like to read into the record a letter of opposition to LB284 from Jefferson County Clerk; another letter of opposition from the Nebraska County Clerk's Association. Welcome. [LB284]

DAVE PHIPPS: (Exhibit 13) Good afternoon, members of the committee, Senator Aguilar. How are you? My name is Dave Phipps. I'm the Douglas County Election Commissioner. My last name is spelled P-h-i-p-ps. And I am here today in opposition to LB284 for a number of reasons. And I have included written testimony. And I'll just be brief. While I respect the opinions of the people proposing this idea that manual recounts should be done, I'm opposed to it for four simple reasons, and two of the reasons they seem to discount are the money factor and the time it takes to do such a thing. Well, you know, as taxpayers we hear more, and more, and more about the need for property tax relief and tax relief in general. If we're doing things...if we're going to require things that cost more money, I think most citizens have a problem with that idea. But first and foremost, I think my main opposition comes from the fact that manual recounts are less accurate. And just the idea that people don't make mistakes when they're counting these ballots, I think, is absurd. And I can tell you it's not true from long, personal experience. I've seen manual recounts, I've performed manual recounts or not recounts, I've performed manual counts of ballots before, and I can tell you it's always more difficult to get an accurate answer when you have groups of people looking at ballots, because it's a very mundane task. And frankly, it's just hard to concentrate on such a thing for hours and hours at a time. And you're always going to get different results. So you're going to have to do it one time, two times, three times, maybe four times before you get a consistent result. And I don't even know if you're going to get a consistent result then. So which is correct? Is it the first recount, the second recount, or the fifth recount? So just to say that a manual counting of ballots is the most accurate, I think, is completely untrue. But finally, I think what the entire goal of this idea is, is to make sure that the machines that we're using are accurate. And I know that there is a lot of hype about DRE's, Direct Recording Equipment, you know, those touch screen voting machines. Nebraska doesn't use those, we have paper ballots. And I know we've talked about that. Douglas County has scanner central, scanners, the Model 650's that were talked about earlier, and those machines aren't modemed in, they're not

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connected to phone lines, they're not connected to the Internet, they're not being called by news organizations to find out how the voting is going. Those things just simply don't happen. There's equipment out in the field, in some of our smaller rural counties that are getting ballots run through during the day, but those modem lines aren't connected, and I don't even know if modems are installed. So just the idea that somebody can hack in over the phone line is erroneous. But the reason and the worry that we have is, do the machines count correctly? As an election official, in the election officials largest county in the state, I can tell you that we go through great lengths to make sure that they are accurate. And we do that by a mechanism that's already required in Nebraska law. Nebraska law already takes care of this by making us do what are called public test decks. And what you do in this case is you vote a set of ballots, a complete set of ballots, vote for all the candidates, all the issues, under vote it, over vote it, do write-ins, do all the sorts of things that you would normally do as a voter and then hand tally them up, and then run those through the machines, and see if they all compare and are correct. And we do that. And we'll run it through the first time, and invariably there will be a mistake that we find. And so we go back and we make sure that the machines are reading it correctly. But what you'll find 99.999 percent of the time is, frankly, it's the person who first hand-tallied that result that made the mistake. Oh, well I thought you read Bob Smith, he actually read Jack Johnson. You know, so they made the mistake with the hand count. The machines will read them correctly as long as the paper is filled out correctly. You find all these sorts of things out, though, by doing test decks. You do a sampling of what...every ballot of every ballot face that's going to be out in the world, and then you make sure that the machine reads each and every ballot face correctly. Once you've done that, you know that it's going to read it for the entire universe of ballots. So instead of having to manually count 400,000 ballots, which would be the case in Douglas County in a Presidential general election, we count maybe 800 or 1,000 ballots. But it's all 1,000 ballots that will be used, 1 of each, and make sure that the machine reads it correctly. And then you know that the 400,000 are being read correctly as well. And so you do that before the election, and that's required by law. In Douglas County we take that step even further, so we program the machines. And every other county in the country, and in the state they have an election vendor program their machines. In Douglas County we do it ourselves. So we don't have one public test deck, we have five to seven test decks that we run through, voting different ways and using different scenarios to make sure the machines are correct. So we're guaranteed that everything is correct and accurate. We have people of different parties working on that programming and on that software. We make sure that that's all taken care of. And so we make sure that we do that before the election. We also do it then, because we're created the election, we've counted the ballots, we do a test deck after the election just to make sure that beyond a shadow of a doubt, so no one has any questions or doubts that we did not change anything prior to the election, or on election day to make it change from counting candidate A and not counting candidate B. So we do everything in open, in public to make sure that everyone knows that everything is above board. And so Nebraska law really takes care of these issues in a reasonable way. Instead of

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counting 400,000 pieces of paper, we count 1,000, but we know that if it's counting these correctly, it's counting all of them correctly. So that really is my testimony. If anyone has any questions, I'd be happy to take them. [LB284]

SENATOR AGUILAR: Questions? Senator Avery. [LB284]

SENATOR AVERY: Thank you, Mr. Chair. I have to start by saying that the argument that this is additional work doesn't cut it with me. Because voting is really an important undertaking in any democracy. So if it takes a little work to get it right, then let's do it. I do have a question, though. In your proof testing you do use manual tallies, as you admitted. [LB284]

DAVE PHIPPS: Correct. [LB284]

SENATOR AVERY: If it's okay in your proof testing of the machines to do manual tallies, why is it not okay in a recount to do manual tallies? [LB284]

DAVE PHIPPS: And that's exactly what I was talking about. It's counting 1,000 ballots versus counting 400,000. [LB284]

SENATOR AVERY: It's the quantity? [LB284]

DAVE PHIPPS: Exactly. So if you know that... [LB284]

SENATOR AVERY: So you raise the probability of a mistake or multiple mistakes the more hand ballots you have to... [LB284]

(RECORDER MALFUNCTION--SOME OF HEARING NOT RECORDED) [LB284]

DAVE PHIPPS: ...it's whether they were accepted or not. [LB284]

SENATOR PAHLS: Okay. [LB284]

DAVE PHIPPS: So it was the interpretation of whether they should be accepted or not. [LB284]

SENATOR PAHLS: It wasn't the actual counting, it was whether this is valid or not? [LB284]

DAVID PHIPPS: Exactly. [LB284]

SENATOR PAHLS: Okay. Thank you. [LB284]

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SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB284]

DAVE PHIPPS: Thank you, senators. [LB284]

SENATOR AGUILAR: Any more opponents? Welcome. [LB284]

DIANE OLMER: Hello, Senator Aguilar and other members of the Government Committee. My name is Diane Olmer. I am the Platte County Election Commissioner from Columbus, Nebraska. My last name is spelled O-I-m-e-r. I'm here representing the Election Law Committee as a chair for the NACO County Clerk's Registrar of Deeds and Election Commissioners, and also Beth Ferrell, from the NACO organization, asked me to voice her opposition to this bill also. So I'm just mentioning that right now. I also served on the Vote Nebraska Initiative with Senator Avery. I've been the election commissioner for 11 years. And I was here last year testifying kind of in the same manner. A lot of what Mr. Phipps said is exactly what I would like to voice to you. On a personal note or personal experience, I started my job in 1996, and every so often in Columbus they like to have special elections for this and that. And elections are expensive. And in 1994, I think it was, there was a city special election and I thought, well, maybe we could save the city some money, we'll use paper ballots and we'll do a hand count so that we don't have to pay for the programming from ES&S to do the ballots and also to program the scanner. And in my mind I was thinking, just like most of the opponents here or the proponents were thinking here, that that would be a much more exact way to go anyway, or at least it was on the same playing ground as the machine. Thinking I would save some money and it would be just as accurate. We got the election...the ballots back about, you know, eight o'clock as usual. I had about 12 groups of 3-person counting boards ready so that I didn't think it would take too long. And they were all given the same instructions. And I would hand one precincts ballots to one counting board of three, and another precincts ballots to another counting board of three. And they would do their work. And I instructed them, your first job is to count how many ballots are there, you got to agree on that. Well, you have to do it twice, and if it agrees, you're done, if you agree you're done, otherwise you count it again and again and again, until you agree on that. I didn't think that would be a tough task, but it was tougher than I thought. Then we finally got to...we only had two issues on this ballot. And finally got to counting the votes for the issues. We had the same problems. And as the night went on, and it got later, and people got tired, it was almost a circus. And I started out with the same opinion that the people here pushing this bill were of, that this would definitely be just as accurate, save some money, whatever. When I got through with the whole process, my conclusion was we may have saved a little money, but I do not think we gained anything on accuracy. And then I know you say when you're...the proponents here are saying money and time aren't important. Well, I've been the election commissioner too long to know that time isn't important to a candidate, voters and the press. If it takes too long, we're on the hot seat. If it takes too long, they want to know why. This does take a long time to get a consensus on a vote. So I would

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conclude that hand-counting is not accurate, as I thought it was, very time consuming and saves a little money. The other way that I've witnessed machine performance and people performance is when our canvassing board meets. And nobody here has even mentioned canvassing boards. They're talking about how to check how the election goes. A canvassing board's job is to check the election. And one of the things that I instruct my canvassing board to do is you got to compare the books of the poll workers to the results of the scanner per precinct. And where we find irregularities is where maybe the poll worker said they had 210 voters and the scanner said they had 211 pieces of paper. Well, yeah, there's a problem there. So what do we do? Well, the canvassing board pretty much has open game on whatever they want to do to find out the reasons for things. So we've had them open up the ballot box, count them. And as often as we've done that, it has been poll worker error that caused the mistake and not the machine. I am here to say that machines are much more reliable and accurate than a person doing the count. Another thing that's been brought up today is the lack of trust in machines, in general. But this bill only addresses recounts of races that are close together, you know, within 1 percent or 2 percent. Well, if you don't trust the machines, why are we only recounting the close races? If I was a computer programmer at ES&S and wanting to throw an election to my favorite candidate, I would sure program that machine to make it a landslide. I would not, knowing the law, program the machine to make it a close count so that they recount. If you're smart enough to outwit the system with the machine, I think you're also smart enough to outwit the law, which only allows a recount on 1 or 2 percent. I'm saying either you trust the machines for the elections or you don't. This bill only addresses close races. So if you really don't trust the machines, why did HAVA spend millions of dollars, why did the Secretary of State choose a system and spend HAVA money, from federal down to the state, on setting up the whole state with an optical scan system? Last year I closed with the same argument, and it's kind of a...just kind of a comparison. We live in Nebraska, and I grew up on a farm, we all pick corn by combines now. I compare hand-counting ballots to handpicking corn. We don't even see many cattle in the field with much to feast on anymore, because the machine or the combine is so much more perfect than the old method. I compare scanner counting ballots to hand-counting ballots in that manner. That's all I have to say, so... [LB284]

SENATOR AGUILAR: Questions? Seeing none, thank you. Any other opponents? Please come forward? Welcome. [LB284]

GLEND A DeBRIE: Senator Aguilar, committee members, my name is Glenda DeBrie, last name is D-e-B-r-i-e. I'm the Buffalo County Election Commissioner in Kearney, Nebraska. I've been an election commissioner for 13 years. And in that time, I've seen a lot of changes. We've changed to different software products, different hardware products, and I guess I'm rather proud of our position. I don't think a lot of people actually understand everything that an election official does to try to make sure that every vote does count. My office, and I know most of the offices in this or all the offices

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in the state of Nebraska work diligently to make sure that every candidates name is on a ballot, that the names are spelled correctly, and the votes are counted correctly. I believe in our optical scan system. This last election, the general election, we had three write-in votes on a school district. There were three candidates along with three write-in votes. The people that wrote in, of course, did not receive enough votes to win on the election. They challenged our scanner, they challenged our vote, they had under-votes. They would call our office and say, okay, has the under-vote changed? I knew that they were having a problem with this system, so I talked with the canvassing board. I said, we're going to pull all of the ballots for this election and we're going to look at all of the ballots. We went through and they were exactly correct. For two weeks I gave these people the same answer. They were not satisfied, so my canvass board went through those ballots again, pulled all the ballots for that election, and their attorney came out and viewed those ballots. There was nothing for him to do. They were exact, same count. We verify the scanner when we get our ballots, before an election. It's all checked to make sure that that scanner is counting ballots correctly. If it's not counting correctly, we contact the vendor and we work on it until it is counting correctly. I've done hand-counts before. It takes a considerable amount of time. And if people are doing the same thing for a considerable amount of time, they're going to make mistakes. Fortunately, we've not ever had any problems with our scanner. I'm not concerned about it, I feel they are reliable and I think they give people the best total that they can possibly get. As I'm sure some of you are aware, a lot of our poll workers, people that work for elections are elderly people. And I guess maybe I could be considered in that situation (laugh). But you know, you look at something so long and you're going to make mistakes, it's inevitable. The machine runs as a machine. If it's checked and checked again, we check ours three times before an election, if it's all correct we go, and I have complete confidence that it's going to work. Any questions? [LB284]

SENATOR MINES: Thank you, Glenda. Questions? I see none. Thanks for your testimony. [LB284]

GLENDA DeBRIE: Thank you. [LB284]

SENATOR MINES: Any others in opposition? Could I see a show of hands of the remainder in opposition? I see two. And how many might be testifying neutral? Very good. We've got two more testifiers. Good afternoon. [LB284]

DAVID SHIVELY: Good afternoon. Good afternoon, Government Committee. My name is David Shively, the last name is spelled S-h-i-v-e-l-y, and I am the Lancaster County Election Commissioner. And I don't have a lot different to say than what's been up here by the previous election commissioners, but I just wanted to reiterate that I was also opposed to this piece of legislation based on basically the same things that were mentioned before: cost, the slow process of doing a manual recount, and also the reliability of a manual recount. Commissioner Phipps indicated the process that's

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outlined in state law to do testing before these machines are actually counting officials ballots on election day, the testing that we do prior to that. We go through those ballots and hand count them and then we run them through the machines. And every time, if there's been a mistake that was different from what our hand-tally was and it was on the machine, when we went back to find out, it wasn't the machine that made the mistake, it was us that had made the mistake because we had actually tabulated those incorrectly when we went through it by hand. So human error is there when you do a manual recount, human error is there. I really don't have anything else to say, I just wanted to make sure that you are aware that I was also opposed to this piece of legislation. And I appreciate your time. [LB284]

SENATOR MINES: Thank you, David. Questions? Senator Avery. [LB284]

SENATOR AVERY: May I ask you a question, sir? Are we likely to hear from the Secretary of State's Office on this? [LB284]

SENATOR MINES: I believe he's the next testifier. [LB284]

SENATOR AVERY: Okay. I will wait. Thank you, David. [LB284]

SENATOR MINES: Any other questions? Thank you very much. Thank you for your testimony, David. [LB284]

DAVID SHIVELY: Thank you. [LB284]

SENATOR AGUILAR: Are we still on opposition? Neutral? [LB284]

SENATOR MINES: We are still on opposition. [LB284]

SENATOR AGUILAR: Next opponent. [LB284]

SENATOR MINES: Last testifier. [LB284]

SENATOR AGUILAR: Thank you, Senator Mines. Welcome, John. [LB284]

JOHN GALE: (Exhibit 14) Thank you, Mr. Chairman, members of the committee. I'm John Gale, Secretary of State for the state of Nebraska, chief election officer for the state of Nebraska. And I'm here to testify in strong opposition to LB284. There are several things I want to comment on in general that have come up, and one was a question of Senator Mines' with regard to Bush v. Gore, a Supreme Court decision in the year 2001, following that presidential election. And Senator Mines is absolutely correct. The problem that arose in Florida, in the attempts of the Democratic party to secure a recount in each county, was simply there was no standard for determining

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what is a vote. Each county had a different standard, it was a subjective standard, there was not an objective, measurable standard for what is a vote. So we had this circus environment of all of these different kinds of hanging chads, swinging chads, dimpled chads, and some were being counted, and some weren't being counted. And consequently, it became a U.S. Constitution issue of equal protection, that all voters are treated the same. And as a result, that was the decision of the U.S. Supreme Court, no recount and the election stands because we are not going to violate the U.S. Constitution by treating voters differently as to whether or not their vote counts. As a result of that decision, there have been significant changes across America and in Nebraska as well, because for some 18 years we had approximately 30 to 35 counties that had optical scan equipment, older models, slower models, less sensitive models, but they had optical scan equipment. The other some 60 counties, 48 to 60 counties continued to hand count because they didn't have the local funding in their counties to pay for the equipment. And so we had two systems of tabulating votes for that period of time. After Gore v. Bush (sic), it was very clear that we in Nebraska were in violation of the U.S. Constitution, we had to count our ballots the same way. So with the funds provided by the Help America Vote Act, with the sum of \$20 million, one of the things that we've been able to accomplish, besides keeping paper ballots, was to ensure that each county had optical scan tabulation equipment. And there are two kinds of the most current technology, the 650's and the 100's. But now we have overcome that constitutional hurdle and we are counting all ballots the same way. Secondly, a point was raised with regard to a national concern about the accuracy of equipment and how easy it is to manipulate when it's networked and when you have the use of modems, or when information is transmitted across the Internet. Well, I will tell you several things. As background though, I'll tell you first, the Help America Vote Act created a national commission, called the U.S. Election Assistance Commission, which is to provide oversight to federal elections across America. And that commission has created several subcommittees. One is the Technical Guidelines Development Committee, 15 people across the United States that help the National Institute of Science and Technology develop technical standards for equipment. And I'm the only Secretary of State that serves on that committee. Secondly, there is a U.S. Standards Committee, Standards Board of the Election Assistance Commission, consisting of one local election official and one state official from each of the 50 states, 100 people, and I represent Nebraska as the state official on that Standards Board. The testimony and time that we've spent on developing standards for equipment, there has been virtually no concern about optical scan equipment. The whole focus has been on electronic voting, the digital voting, the touch screen voting systems that many states linked into immediately following the presidential election of 2000, Georgia, North Carolina, Maryland, and that's where the focus of the firestorm is right now. That's ground zero on the battle over electronic voting. Nebraska is not even on the map on that issue because we did decide to keep paper ballots. Now when you get down to a recount, we think that the optical scan equipment has been shown scientifically to have less than a 1 percent error rate in the recount...of any kind of counting of ballots. Hand counting has at least a 4 percent

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and higher error rate in the counting of ballots. Secondly, electronic equipment has a uniform, systematic, objective standard because it's all calibrated the same, and every county tests their equipment the same with test decks, one prepared by a Democrat, one prepared by a Republican, one prepared by the vendor. And you've heard the counties testify how closely they ensure that that equipment meets the hand count of those test decks versus the machine count. So that is a very objective standard. Manual...if you go back to manual recount, you're going to go right back to Florida, because you take your paper ballot and you look at the ovals. The equipment is instructed to count those based upon the instructions given to the voter. If the voter does it according to instructions, their ballots will be counted accurately and included in the canvassing vote. If voters don't follow the instructions, for example they use a pen and not a pencil, they put a check mark rather than filling in the oval, they circle the oval, they put a check mark next to the oval, those ballots will not be tabulated. Those will be under votes according to the machine because the voters didn't do their job. But if you have manual recounts and you have thousands of people across the state looking at ballots, you're going to have this same problem of subjectivity of...did this really constitute a vote? The fact that an oval is circles, the fact that there's a check mark next to an oval, you're going to go right back into the issue of equal protection under the Constitution. What protects every voter most fairly, most objectively, most transparently. I will tell you, it's the optical scan equipment that takes it out of that subjectivity and irregularity that you will run into with manual counting. From our point of view, we've spent six years since that election, and it's true, 6 million people across America were...had lost their right to vote, either because of registration problems, or equipment failures, or failure on the part of election workers, for a lot of random, different reasons. And it was absolutely essential that America changed the way that we ran our elections and had some uniformity. Help America Vote Act has brought that to America. I think we've spent our money wisely. And if you have a question about optical scan equipment, we've had that equipment for 18 years, and we have not had one case of claimed fraud about that equipment in 18 years. So rather than listen to the voice of fear, and the voice of apprehension, the voice of distrust of election commissioners, your county clerks, your county election officials, your poll workers, rather than listening to the voice of fear that they're manipulating and doing things wrong, or they're not capable of doing things competently, listen to the voice of the experience of the use of the equipment, and we've had excellent, outstanding experience with our equipment. In addition, keeping our paper ballots, if there is a cause of concern, you can go to court, and you can have a court bring those ballots to the court, and the court can require them to be hand counted. Hand counting is not prohibited in Nebraska, it's just we recount with the same objective system we use when we count them the first time. In my letter you'll see in the year 2002 there was a State Board of Election District 7 race, out in western Nebraska, very close race, came within the recount percentage. There were 35 counties involved in that recount, 6 counties used optical scanning machines, and the rest used manual counting. In comparison with the initial count, the recount consistently produced more discrepancies in the hand count counties than in the optical

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scanning counties. Again, evidence of experience, not just claims of concerns, fears, general expressions, this was our actual Nebraska experience. Knowing that there is always the option of going to court and having all of those ballots produced and hand counted, if a judge so requires, we have a system that does allow fraud review. So I think our system is working. It's a sound system. It's a fair system. And rather than leaping into a change that goes backwards not forwards, creates more expense rather than more efficiency and economy from technology, I think is very poor public policy. And I would urge the committee to turn down the proposed bill. Thank you. [LB284]

SENATOR AGUILAR: Questions for the Secretary? Senator Avery. [LB284]

SENATOR AVERY: Thank you, Mr. Chair. Thank you for your testimony, Mr. Secretary. [LB284]

JOHN GALE: Thank you, Senator Avery. [LB284]

SENATOR AVERY: We've gone over these issues a long, long time, many times. [LB284]

JOHN GALE: We have. [LB284]

SENATOR AVERY: I have one question. However remote the possibility might be, does the possibility exist that Nebraska's optical scanners could be rigged in any way? [LB284]

JOHN GALE: You want my frank opinion? No. [LB284]

SENATOR AVERY: Not even the software? [LB284]

JOHN GALE: As long as the county officials, because we're talking about an election system, if you take equipment away from the system and the system is the entire set of election laws and what the county officials, and the election officials, and the counting board, and the resolution board, and the canvassing board, and what their duties are, you have an entire system. You put that equipment in the system, and you have a system that I think is free of fraud. Now, I will say this to you, I talked to David Dill, who's a computer science professor at Stanford University, at one of our Standards Board meetings. And I asked him about the black box conspiracy and all of the concern about electronic voting, and he said, it's a sham, it's a fraud. Even with DRE equipment, no one has shown that there's been a fraudulent manipulation by vendors or by election officials to produce a different result. He said, that is just smoke and mirrors. But he said, we all constantly have to be alert to ways to make our system better and to ensure voter confidence. And he said that, we have to constantly separate the DRE equipment, the electronic voting where you're talking about the voter verifiable, paper audit trail,

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that's one issue way over here, where there's a lot of questions, a lot of need to be concerned. Over here is optical scanning. And I will tell you, optical scanning, through whether it's the National Institutes of Science and Technology, or these different boards I'm on, that is the standard of the future. DRE equipment will disappear. In fact, the state of Florida has a bill to appropriate \$35 million to replace all of their DRE equipment and install optical scanning because of their confidence in that system. So in my opinion, I don't think it can be created. You cannot use this equipment in Nebraska because it's not networked, it's not interconnected with the Internet in any way, each is stand alone, and each is subject to the scrutiny of the county election officials who are Republican and Democrat teams. I don't think it can produce fraud that will affect the outcome of an election. [LB284]

SENATOR AVERY: But these machines do use software for the county. [LB284]

JOHN GALE: Well, is that a bad thing? [LB284]

SENATOR AVERY: No, no, I'm just trying to think of ways in which it could in fact occur. I mean if you can write a software program that would give you an accurate count say, during the proof testing period, but then a trigger mechanism in the software would then, in the actual count of the votes, add a fraction of a vote to a certain candidate or ballot issue or whatever and would throw things off in the final count, we'd never know that without a manual recount. [LB284]

JOHN GALE: Well, let's go back to David Dill's testimony, who is one of the most admired computer scientists who's looked into... [LB284]

SENATOR AVERY: Yeah, I've read some of his work on this. [LB284]

JOHN GALE: ...into this issue. And he said, there is no evidence that anyone has been able to accomplish that, unless you put the equipment in total isolation, free of the election system, and you may be able to manipulate it in ways and produce results that are different than are going to be produced in the actual use of the equipment. Now you have...you definitely have voter error, you have equipment error, you have mechanical failure, you have election official misguidance, there is no election that's perfect. And so you're not ever going to ensure that every voter gets his ballot cast and every vote gets counted. But you have to look at the use of the equipment in the context of the election system, and I suppose anything taken out in isolation, put under a microscope, as Harry Ruben (phonetic) has done, you can find ways to say, oh, this can, in isolation, be manipulated. But that is with the DRE equipment. So... [LB284]

SENATOR AVERY: Yeah, I know the difference. The DRE's are more problematic than are the optical scanners. But both of these professors you've mentioned do emphasize the need to have confidence in our system. [LB284]

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JOHN GALE: As we all do, that's our goal, every election official in 93 counties, and in our office that's our goal to have fair elections. [LB284]

SENATOR AVERY: Then what would we lose if we went to a manual recount in Nebraska? [LB284]

JOHN GALE: Well, I think we, first of all, lose the accuracy and we lose the uniformity of what we get from our optical scan equipment. Secondly, we incur cost for which there is no justification. Thirdly, we may actually encourage a court intervention because of the higher degree of error from manual recount than from optical scan recount. And consequently, there's more likelihood of a losing candidate, in a manual recount, with a very, very close return, to go to court and challenge, knowing that there is a greater degree of discrepancy in manual recount than in optical scanning. [LB284]

SENATOR AVERY: Thank you. [LB284]

SENATOR AGUILAR: Further questions for the Secretary? [LB284]

JOHN GALE: Thank you. [LB284]

SENATOR AGUILAR: Seeing none, thank you for coming today. [LB284]

JOHN GALE: Thank you, Mr. Chairman. [LB284]

SENATOR AGUILAR: Any other opponents? Neutral testimony? Seeing none, Senator Karpisek, haven't seen you for a while, to close. [LB284]

SENATOR KARPISEK: Well, committee, thank you for your patience in this. If we would have known it was this problematic, I'm sure Senator Mines would have wanted to introduce this bill. (Laughter) [LB284]

SENATOR MINES: I would agree. [LB284]

SENATOR KARPISEK: You know, as you can tell, this is a very emotional subject. I feel that my job as a senator is to bring up these sort of things. Senator Avery had a bill today, you know, we talked about raising or lowering petitions and said, you know, they can bring it to us. And obviously, we had a lot of people here that are concerned about the system. No one ever said that the machines aren't right. I give the Secretary of State a big pat on the back. I think we're moving in the right direction. And I know that they work hard and they want it to be right, so do we. Everyone wants it to be right. My question is just like Senator Avery's, why can't we just have a double check of the system? Of course, manual recounting is less accurate, that's why we went to these

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machines, we know that. But how else can you double check by not running it through the same machine again? If it's wrong the first time, it will be wrong the second time. The cost, it may cost more. Roads cost, buildings cost, wars cost, World War II cost some money, and I think a lot of people died to try to give us what we're fighting for still here. As to why would we only do 1 percent? We can amend it to do 50 percent, or 100 percent, that's not a problem. That just seems smart to me, to do 1 or 2 percent. How can we know that things have not been manipulated if there is not a check of the system? I can tell you I'm the smartest guy in here, and if you don't ever talk to me, you won't...why I'm...why would you believe I'm not? Talk to me for 30 seconds, you know I'm not. (Laughter) The machines, if they're working when they start, we just drive them. Anybody here that their machine that they drove here believes that since it started, it's going to run perfect all the way. I will drive right by you on the side of the road as I wave at you. (Laughter) Machines do not run from start to finish. I understand that they're trying, they do the decks, I understand that. But why can't then, if they're hand counting then, do a small hand counting of the real ballots. And the 1 percent, I couldn't find any stats on how many of these really occur, because there just...I couldn't find any. I called the Secretary of State's Office, and we had Research look it up, too. And we really couldn't find any. And I agree with Jay Stoddard, maybe this is not the best idea, but it is a start. Obviously, there are concerns. And Senator Avery is right, people are concerned. They're not thinking that there is the Secretary of State, or county officials, or anyone is trying to manipulate votes, but we want to make sure. Without verification there is no trust, and I would just like to verify it to gain trust. Thank you for your time, I appreciate it. If there are any other questions... [LB284]

SENATOR AGUILAR: Questions? Seeing none, thank you. [LB284]

SENATOR KARPISEK: Thank you. [LB284]

SENATOR AGUILAR: That closes the hearing on LB284. Senator Louden, to introduce LB289. Welcome, Senator Louden. Sorry to keep you waiting. [LB284]

SENATOR LOUDEN: (Exhibit 1) You bet. Thank you, Senator Aguilar. And, oh I'm wide awake. It would take more than this to put me to sleep, I think. Even a good sausage maker couldn't put me to sleep. (Laughter) Good afternoon, Chairman Aguilar and members of the Government, Military and Veterans Affairs Committee. My name is LeRoy Louden, and that's spelled L-o-u-d-e-n. I represent the 49th Legislative District, and I'm here today to introduce to you LB289. LB289 is intended to protect the secrecy of the ballot at public meetings where registered voters may vote to exceed levies. Our state Constitution requires that the secrecy of ballots be protected. LB289 is meant to insure that constitutional mandate. Before speaking directly to the bill, I'd like to offer a bit of history. The Legislature placed property tax levy limits on political subdivisions in 1998. The Legislature also gave subdivisions the ability to exceed those limits in some cases. The statute set out several ways to do that. One way is to hold a special election,

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another is to hold a public meeting to vote on exceeding the levy. LB289 addresses this method of overriding the levy. It does not deal with any other method of exceeding the levy limit. LB289 deals only with the public meeting. The public meeting is not a widely used method and is not available to many political subdivisions. Villages may use the public meeting method, other political subdivisions that may use a public meeting are those that must ask the county board to allocate a portion of its levy to them. Examples are hospital districts and fire protection districts. As far as I know, both of these types of subdivisions have used the public meeting method to vote on overriding the levy limit. The statute is short on details as to how to conduct the vote. It simply says that at least 10 percent of the registered voters of the subdivision constitute a quorum, that if a majority of the registered voters present vote to exceed a copy of the record of that action is given to the county board and the board shall authorize the levy. There's no detail given as to how the vote shall be conducted. Because details are sketchy, districts have relied in part on an Attorney General's Opinion from 1998. The Opinion states in part that the election should include a listing of the registered voters who are present as established by the signature list of registered voters attending and voting. Last September, the Gordon Memorial Hospital District, in my legislative district, held a public meeting to override the levy allocation. A meeting was called in accordance with all the provisions for giving public notice. Registered voters of the district attended the meeting where their eligibility to vote was verified using records furnished by the County Election Officer. A quorum was present. The method of voting was the signing of a list. The voters who were for the override signed one list at a designated table, and voters who were opposed to the override signed at another designated table. There were sufficient votes to override, and that vote was reported to the county board, as required by the statutes and their levy was raised. A registered voter of the hospital district contacted me afterwards to say that she did not like the fact that everyone present could see who signed each list. In effect there was no privacy afforded those who voted. So I looked into this issue and the Bill Drafter's Office pointed out that Article VI, Section 6 of the state Constitution requires that methods of voting authorized by the Legislature must protect the secrecy of the ballot. I have provided a copy of the article to you, and as you can see it is pretty simple. All votes shall be by ballot or by other means authorized by the Legislature whereby the vote and the secrecy of the electors vote will be preserved. The changes proposed by LB289 are intended to ensure that secrecy of the electors votes is preserved and to give a clear guidance to villages and political subdivisions so that they may do that. I would ask that you advance LB289. And I would be glad to answer any questions. [LB284]

SENATOR AGUILAR: Questions for Senator Louden? Senator Adams. [LB289]

SENATOR ADAMS: I suspect that this is an isolated case. But whether it is or isn't, it truly would seem to me to be a problem. Do you know, are there other cases of this happening? [LB289]

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SENATOR LOUDEN: This was the only time I've ever known they used this particular method for a voter override. Usually, like the fire district I'm from, we did an override levy, because in Sheridan County they're at the limit, so anybody that wants anything done has to have an override levy. In the fire district that I was in, we had our vote at the annual meeting, but we voted to put it on the ballot at the general election. And this way the vote was still taken. The deal with...the reason they went at this angle and they'd waited until after the general election for their vote, and so they thought they could get it done this way. This could have been done different because...such as a Panhandle Rural Electric Co-op that I've served on, they...you vote at that meeting. And when you get there, you register as a member of that co-op and they check that out and they give you your ballot in an envelope, and then you vote however you want to. That could have been done at that meeting there. But this was somewhat...I think it wasn't well thought through. But when you look at the statutes and they ask for an opinion and they got this part that the Attorney General wrote out, which really isn't part of the statute. So all I'm trying to do is just mostly clarify that the secrecy of a ballot has to be protected if you're going to vote in the state of Nebraska. And that's entirely what it is. It's something that I think...beings it was brought to the attention, needs to be probably taken care of at the present time. [LB289]

SENATOR ADAMS: And I think sometimes given the nature of these very small political subdivisions and just trying to do what's practical and make common sense, there may be more incidences of this than what we know. [LB289]

SENATOR LOUDEN: Oh, I'm sure, yeah. If somebody doesn't complain, it never...it... [LB289]

SENATOR ADAMS: There you go. [LB289]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Louden. [LB289]

SENATOR LOUDEN: Thank you. [LB289]

SENATOR AGUILAR: First proponent? [LB289]

JERRY STILMOCK: Good afternoon, senators. My name is Jerry, J-e-r-r-y, Stilmock St-t-i-l-m-o-c-k, lobbyist on behalf of the Nebraska State Volunteer Firefighters Association, here in support of senators bill. And we thank him and his staff for bringing the bill, but for contacting the association prior, too, so we'd have an opportunity. Because Senator Louden obviously recognized that for fire protection districts, which serve a vast majority of Nebraska, often times we're placed in the situation where we have to use the town hall type of meeting in order to raise sufficient funds for fire protection districts. We think it's a good idea. It allows the rural districts, the fire

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protection districts an opportunity to know what it is they are required to do in order to have a vote. Unfortunately, you know oftentimes in smaller communities it hits smaller communities as well as larger, Sarpy County, Papillion, suburban fire protection district. They have a vast amount of people in that fire protection district, Millard fire protection district. But often times it's difficult to get people to serve in these very important functions. They don't have the ability, they don't have the means to hire attorneys, hire staff to go out and find out, okay, now we're between a rock and hard place. How are we going to do this? How are we going to satisfy the law in having the election, having the vote at a town hall meeting. The bad news is when this law was passed in '98, I don't know that anybody...this law being that fire protection districts were placed in the miscellaneous group. They had to ask the county boards for levy authority. I don't know that anybody envisioned that fire protection districts, providing the necessities of life were going to be squeezed out so that at least in three different counties those county commissioners and county board members gave a zero levy authority, levy allocation to fire protection districts. So they were forced, it wasn't a matter of there wasn't enough, there was none, there was no money that was allocated to those fire protection districts in Perkins, Sheridan County, and Franklin County. They had to go out, the volunteers had to go out and go through the task of raising the levy through this town hall process. It was unbelievable that the volunteers had to go out and seek an election, seek a vote when there was zero authorized, allocated. So by having at least these two elements, I think two important elements, the registered voters have to be recorded, and also the secrecy of the ballot, I think they're two important measures to bring about because we want as the...so much of what we've heard today and this morning to this afternoon, so much of what we strive for in Nebraska is to bring in more involvement. We want to encourage that involvement. We want people to show up at these hearings, and not just the lobbyists, but the people that travel in, the gal from Platte County. We want that participation. And I think this would be one way that we can better this particular law to allow that participation to have a clear understanding of what's required of them so that the process will work, it will work smoothly, and it will work cleanly. Thank you. [LB289]

SENATOR AGUILAR: Questions for Mr. Stilmock? Seeing none, thank you. [LB289]

JERRY STILMOCK: Okay, thank you, Senator. [LB289]

SENATOR AGUILAR: Are there further proponents? Seeing none, are there any opponents to this bill? Neutral testimony? Senator Louden, to close. [LB289]

SENATOR LOUDEN: I'll waive closing. [LB289]

SENATOR AGUILAR: Senator Louden waives closing. Senator Mines will take over the chair. [LB289]

SENATOR MINES: I will, Senator Aguilar. Senator, to open on LB310. [LB289 LB310]

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SENATOR AGUILAR: Thank you, Senator Mines. My name is Ray Aguilar, representing District 35. Last name is spelled A-g-u-i-l-a-r. I'm here today to introduce LB310 at the request of the Secretary of State's Office. LB310 clarifies that a person requesting a ballot for early voting will pay all postage cost related to the mailing of the request to the election commissioner or county clerk. There was some confusion last year regarding who pays for the cost of requesting a ballot for early voting. While it is clear in statute that the county pays for mailing the actual ballot, the issue of who pays the cost of requesting the ballot was unclear. Additionally, the bill changes the deadline for issuing or mailing registration materials when a person requests a ballot for early voting. This change will make it consistent with other registration deadlines. I'll be happy to answer any questions. And the Secretary of State's Office will be here also testifying and will be able to answer any of the more technical questions. [LB310]

SENATOR MINES: Thank you, Senator. Questions? I see none. I'm sorry, I do have one. Senator Avery. [LB310]

SENATOR AVERY: Just one, I'm sorry. Thank you, Mr. Vice Chair. Are there some unintended consequences here for...by changing the deadline that I haven't thought about? I'm just trying to... [LB310]

SENATOR AGUILAR: That's probably one of the technical questions I referred to. [LB310]

SENATOR AVERY: (Laugh) I'm trying to think about how it works now, because I find that early voting provision in our law to be very, very useful for increasing voter turnout. And I just wouldn't want us to do anything... [LB310]

SENATOR AGUILAR: I think it's becoming more and more popular. [LB310]

SENATOR AVERY: It is, it is. It was very important in my race. So you don't see any unintended consequences here? [LB310]

SENATOR AGUILAR: No. [LB310]

SENATOR AVERY: Okay. [LB310]

SENATOR MINES: (Exhibits 1 and 2) Other questions for Senator Aguilar? I see none. Thank you. Can I see a show of hands, those that will be testifying in support of the bill? I see the Secretary of State, I see three. How many might be testifying in opposition? I see one. And how many in a neutral capacity? I see none. Proponents, please come forward. Mr. Secretary, while you're coming up, let me just read into the record, we have two e-mails of support. One from Lana Kimble, excuse me, from Sandra Stelling,

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Jefferson County Clerk; and another from Sherry Schweitzer, Seward County Clerk in support of LB310. Mr. Secretary. [LB310]

JOHN GALE: (Exhibit 3) Mr. Chairman, members of the committee, I'm John Gale, Secretary of State, chief election officer for the state of Nebraska, here to testify in support of LB310. I'm distributing a letter in support. And I won't read that or go into the details of it. But simply, I'll attempt to do a succinct summary. Essentially, this issue did come up in this last election, having to do with the prepayment of postage on requests to citizens to apply for what we used to call an absentee ballot or an early ballot. And there is a law, it's a criminal law, currently that prohibits any person from using bribery and attempt to influence any voter. In looking at that criminal law, it appeared to us that there could well be a criminal violation involved there, except that the interpretation of the word "bribery" is not defined in that criminal statute. And to my knowledge, that particular law has never been used in any kind of an election situation. But as a criminal law our office does not have any enforcement powers, that has to come through county attorneys or through the AG's Office. So when that issue came up, we had no authority to address it, other than to refer it to county attorneys or the Attorney General. So we think that there should be a law as is proposed in LB310 that prohibits it as a civil matter, because as a civil election law I do have the power to interpret and the power to enforce, which means I can go to the Attorney General and say, I would like to have an injunction because this candidate or this political party is proposing to do that, or is doing that, and we think that it's a violation of the civil election law. So it gives a little more authority in my office to attempt to prohibit this practice, because there are so many ways that things get distributed. As we all know, in election campaigns people pass out combs, they pass out fingernail emery boards, they pass out a lot of things that say vote for Mines, vote for Gale, so there's a lot of campaign material. But that's never really fallen under the concept of a bribe or attempt to influence a vote. But as you get down to the point of the election, the closer you come and it crystallizes to the point of an election, and you're asking a person to request an early ballot in order to vote, and you're paying the postage for that request, to me and to my office it crosses the line. And if the matter is not going to be enforced as a criminal matter, then let's have some civil election law that allows us to enforce it and ensure that this doesn't get out of hand. Because we do know that the trend toward more and more early voting is national. There are many states that have 50, 60 percent of all their votes cast early vote. And consequently, there's going to be more and more interest in political parties and candidates in promoting this kind of a request for an early ballot. And I would just as soon that we have some way to have some uniformity and allow the citizen to pay for that postage. If that's the way they want to vote, they should pay the postage and not have a candidate or party pay it. Thank you. [LB310]

SENATOR MINES: Thank you, Mr. Secretary. Questions for Secretary Gale? Senator Rogert. [LB310]

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SENATOR ROBERT: Mr. Secretary,... [LB310]

JOHN GALE: Yes, Senator. [LB310]

SENATOR ROBERT: ...in reference to the criminal law you mentioned earlier, does it specify when it says, in their efforts to solicit or encourage people to vote, does it specify in their behalf or just to vote at all? Do you know? [LB310]

JOHN GALE: I don't have that particular law in front of me, Senator. So I won't offer an opinion at this time, in testimony, but I'll be happy to talk with you once I have that in front of me. [LB310]

SENATOR ROBERT: Do you think that these...there were a lot of these 250,000, 300,000 of these that went out this year in the state of Nebraska. Do you think that those ballots that went out had wording on them that encouraged them to vote for certain candidates, or just at all to vote? [LB310]

JOHN GALE: Well, I would say it was a subtle message, because if the political party is named on that request, or the candidate is named on that request, and candidate X is furnishing this request, I would say that subtly yes, there's a message there of I'm trying to help you out; me, the candidate, is trying to help you, the voter, and I'm paying the postage, so get yourself an early ballot and hopefully you remember my name that's on this request. [LB310]

SENATOR ROBERT: Sure. [LB310]

JOHN GALE: So there is a subtle message there. [LB310]

SENATOR ROBERT: Sure, and I agree. I guess, I did vote that way, just for example. However, when I received my ballot, there really wasn't any tie at that point to...I mean it came several weeks later so that I didn't feel there was a tie to it. Once I got the ballot I thought...I just remembered, oh yeah, I sent in a ballot request. I don't remember why or feeling that I was bound to a certain voter. [LB310]

JOHN GALE: I voted that way myself, and the request I received, I received from the political party to which I belong. And felt very comfortable with using that. But I paid the postage. I have no concern with political parties or candidates encouraging voter participation. And if sending out those types of forms help us improve our percentage of turnout, because it's more convenient for people to vote early vote, I'm all for it. It's just when the candidate, the party pays for the postage for that request that I think crosses the line. [LB310]

SENATOR ROBERT: Does this deal with both sending the ballot out and returning the

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ballot? Or do we have to mail...do we have to hand the ballot into the county clerk or... [LB310]

JOHN GALE: No, we're talking about the mailing of the request for an early ballot, which is the form that you, as a voter, mail into your county clerk, and then the county clerk mails you an absentee ballot or an early ballot once the time period arrives for you to receive that, they pay that postage. And then you pay the postage for the ballot going back. So it's not postage on the ballot, it's postage on the request form... [LB310]

SENATOR ROBERT: Request for them only. [LB310]

JOHN GALE: ...that we're talking about. [LB310]

SENATOR ROBERT: So the county would pay for the ballot to go to you. [LB310]

JOHN GALE: Correct. [LB310]

SENATOR ROBERT: Okay. Thanks, Mr. Secretary. [LB310]

JOHN GALE: Thank you, Senator. [LB310]

SENATOR MINES: Other questions for Mr. Secretary? I see none. Thank you for your testimony. [LB310]

JOHN GALE: Okay, thank you. [LB310]

SENATOR MINES: Next testifier in support, please. Hello, again. [LB310]

DIANE OLMER: Hello. My name is Diane Olmer, O-l-m-e-r. I'm the Platte County Election Commissioner. I'm here on behalf of NACO's County Clerks, Election Commissioners, and Registrars of Deeds. And I won't have as much to say about this bill. But just so you know what happened in 2006, at the county level, when the postcards went out and came to our office. In my household one of us...my husband is Democrat, I'm a Republican. And so we got the mailings from both ends. And so I saw the postcards that came out from the Republicans, I saw the postcards that came out from the Democrats. And one set had prepaid postage going back to my office, and the other didn't. I saw that and didn't think much of it. But then when I was working and all the requests were coming in, and you could tell by the coloring and the printing which was which, because the cards themselves didn't say, this is from the Democratic Party, when it came to my office, it was just to the election commissioner and the voter had signed it. There was an enormous overbalance of the ones that had the postage paid. So it did make a big difference. I'm saying when you're talking about the law saying you can't pay somebody for their vote, or your signature on a petition, there's kind of a grey

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area here. Do we want to get close to that or not? I think that's what the Secretary was getting at. Did it make a difference? Oh, yeah. And there were people with households similar to mine that had a Democrat and a Republican, they'd throw away that other one, and send the other ones in. And that isn't saying that they all voted that way. But did it make a difference? Yes, it did. And do you want it to make a difference? I guess it's your decision. And then the other part of this law that says we back up the deadline for sending out voter registrations with ballots, back it up one week to agree with if I was registering to vote through the mail, I have to abide by that third week before. So now we're making them even. Before that you actually had an extra week with voters who decided to vote absentee who weren't registered voters. So I guess we're just, I guess, kind of evening it up. So that's all I have to say, unless you have any questions?
[LB310]

SENATOR MINES: Okay, Diane. Thank you for your testimony. [LB310]

SENATOR ROBERT: I have a question, Senator Mines. [LB310]

SENATOR MINES: Senator Robert, please. [LB310]

SENATOR ROBERT: Thanks again for coming in again, Diane. What's your opinion, as election commissioner, on early ballots versus at the polls? Do you...are you encumbered by having the early ballots, or does it make things easier, or does it really matter? [LB310]

DIANE OLMER: You're not going to like to hear this. It is more time consuming and very much more expensive in the office. Just like Secretary Gale said, it is just the way things are going. And if people will vote, where they wouldn't before, well, then we'll deal with it, we'll hire more people. And actually, the new system that we have in place, the election computer system has helped us in saving time as far as the time it takes to process one ballot as it comes to us as a request and as we send it out. So that has helped us out a lot. We're not complaining. Our job is to run a fair election. And once you get into this job you really want to encourage people to vote, even though it causes you more work. [LB310]

SENATOR ROBERT: Do you feel the voter turnout has increased because of early balloting? [LB310]

DIANE OLMER: My personal opinion is, and people can disagree with me, probably not. I think a lot of the people that were our loyal voters, that always went to the polls, now vote in their home. And this last election I think we maybe even had more early voting or absentee because of the ballot. We had many people, because of the length of the amendment ballot, we had many people that used to walk in the office and vote right there and be done. And they would come in and say, well, we want to vote here today,

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be done, no, I want to take it with me, or I want it sent to my home, or I want it sent because I want to take time with it. So sometimes the material on the ballot will also determine, do they want to vote early or absentee, as we used to call it. I, truthfully, don't think it's changed a whole lot. Whatever the content of the ballot, truthfully, is what gets the voter out. [LB310]

SENATOR ROBERT: I'm glad you commented on that. I actually...maybe you've experienced this in the office, but I remember myself receiving probably 100 phone calls from people with their ballots in front of them at home, trying to get explanations on the initiatives and the amendments. [LB310]

DIANE OLMER: Right. [LB310]

SENATOR ROBERT: Had they not been able to do that, I wonder if their ability to vote on things in the booth? [LB310]

DIANE OLMER: Right, it's a good thing. You can get the ballot home, study things up. I see nothing wrong with it. And it causes...it's more expensive, takes more time. It is a good thing. And it is the way things are going. And I think it does encourage more intelligent voting, you know, instead of, I've got five minutes, I better get it done and be on my way. [LB310]

SENATOR ROBERT: Thank you very much. [LB310]

DIANE OLMER: Okay. [LB310]

SENATOR MINES: Any other questions for Mrs. Olmer? Thank you, Diane, for your testimony. Next proponent, please. Hello. [LB310]

BETH BAZYN FERRELL: Hello. Senator Mines, 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 assistant legal counsel for the Nebraska Association of County Officials. I won't repeat what you've heard. I would just like to have it on the record that the NACO board of directors supported this bill. [LB310]

SENATOR MINES: Thank you, Beth. Any questions? I see none. Thanks for testifying. Any other proponents? I see none. We have one opponent, Mr. (inaudible). Good afternoon. [LB310]

BRIAN MIKKELSEN: Good afternoon. Senator Mines, members of the Government Committee, my name is Brian Mikkelsen, that's M-i-k-k-e-l-s-e-n. It's my pleasure to be here today on behalf of the 26,000 members, teachers, faculty, support staff of the Nebraska State Education Association. A couple weeks ago, our board of directors took

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a position against LB310. And the basic concept, I think, is that we believe it could have a negative impact on voter turnout. One of the most important tasks that we undertake, as an association, is encouraging our members to vote. And what we found is voting by mail is a very good way for our members to participate. One of the things we find with our members, they in many cases have kids, two income household. Senator Adams knows you get to school early in the morning, you leave school late at night, and sometimes they miss that 24-hour or that 10-hour window to vote, and voting by mail really has made a difference. In the past we do do a vote by mail request card form. We usually don't do it postage paid, basically, because it's an issue of cost. We don't necessarily want to send a postage paid card to 26,000 members. However, we have done it in county-specific areas where...and some of the postal people could testify to this. If you do it 93 counties wide, you're going to have 93 different permits. It's very difficult to do. But if you're just doing one county, we've done that before. And what we found is our turn out, voting by mail with that postage paid card was about three times higher because of that postage paid card. The other thing, and I think you referenced this, Senator Rogert, is that we find that people who vote by mail take a lot more time with the ballot. I mean I know in our household we vote by mail very regularly, and you can sit there and you can call the NRD candidate, and you can call somebody about what LB423 does. And so we found that it's a really good way to not only encourage more people to vote, but also have them a better opportunity to become familiar with the ballot itself. Finally, just a couple of points I'd make. In my experience, I believe both political parties have done this. I can't say that for a fact, but I do believe in some certain cases both have done this. And a number of organizations, not just ours, I seem to be the only one speaking to it today, but I know a number of other organizations have done the postage paid, vote by mail card as well. And so in closing, we would just ask that you give close consideration to LB310 and the importance that it has in terms of actually increasing voter participation. [LB310]

SENATOR MINES: All right, Brian. Thank you very much. Senator Rogert. [LB310]

SENATOR ROGERT: Brian, when you did your targeted certain county, postage paid voter request forms, what were your reasoning and what were your intentions on going on those? [LB310]

BRIAN MIKKELSEN: Well, what it was, I think it was a levy override. [LB310]

SENATOR ROGERT: Um-hum. [LB310]

BRIAN MIKKELSEN: And so we were trying to get our members out to vote. [LB310]

SENATOR ROGERT: Encouraging turnout. [LB310]

BRIAN MIKKELSEN: Yeah, and we lost. [LB310]

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SENATOR ROBERT: Okay, thank you. [LB310]

BRIAN MIKKELSEN: And so it wasn't the plan that we thought it would be, but it did really increase voter participation. [LB310]

SENATOR ROBERT: Okay. [LB310]

SENATOR MINES: Great. Any other questions? Senator Avery. [LB310]

SENATOR AVERY: Thank you, Mr. Vice Chair. Very quickly, do you agree that making voting easier is likely to make...raise the turnout? That more people are likely to turn out if you make it easier for them to vote? [LB310]

BRIAN MIKKELSEN: You know, that really is what our experience is, and my personal experience is. And what's interesting is we can't control how that person is going to vote. I mean our membership alone is 55 percent Republican, 40 percent Democrat...and so...or even less than that, I think. And so we've made the decision of regardless of how our member votes, whether they vote, you know, in the case of, you know, against this initiative or for this initiative, it's our job as an association to make it as easy as possible for them to actually get out and vote. So I do believe it helps increase turnout. And you can't control who's, you know, you can't control who's requesting the card and how they're going to vote. You know, in a split D-R household, you know, both are probably going to use the paid card, and they both may vote differently. [LB310]

SENATOR AVERY: Yeah. And it's true, too, that we made it easier for people to register to vote. So the number of voters that are registered went up. And perhaps the number of people who are voting didn't go up in the same proportion. So the percentage turnout went down, is what I think prompted the Legislature, a couple years ago, to form that task force. But would you agree then that postage on these requests to vote by mail is a way of making it easier? [LB310]

BRIAN MIKKELSEN: Yeah, absolutely. I think it is absolutely a way to make it easier. And I really do believe it gives the voter more time to spend with the ballot and to really get into what issues are on the ballot as opposed to coming in ten minutes before you're on your way to drop your kid off at day-care and go to work. You know, you get the opportunity to really make a decision about the process. And the other issue is that you get the ballot, in many cases, before the media blitz, and so you're not necessarily impacted by this TV ad, or that negative ad. You can go online, you can see the positions of candidates, whatever. [LB310]

SENATOR AVERY: It can be very expensive, though to put postage on those. [LB310]

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BRIAN MIKKELSEN: Yeah, that's why we don't do it very much. [LB310]

SENATOR AVERY: Yeah, I couldn't afford it. That's all. [LB310]

SENATOR MINES: Any other questions for Brian? I see none. Thank you. [LB310]

BRIAN MIKKELSEN: Thank you. [LB310]

SENATOR MINES: Anyone else in opposition? Any other testimony? How about neutral testimony? I don't see any. Senator Aguilar, to close. [LB310]

SENATOR AGUILAR: Thank you. Just very briefly, I understand the position of the association and what they are trying to accomplish. But I think the testimony on the other part was probably more provocative, shall we say and something that I feel strongly support. And I ask that you support and advance that to General File. [LB310]

SENATOR MINES: Thank you very much. Questions for the Senator? Seeing none, I'll close the public hearing on LB310 and open the public hearing on LB312. Senator Aguilar. [LB310 LB312]

SENATOR AGUILAR: Thank you, Senator Mines. I'm still Ray Aguilar and representing District 35. And I'm here to introduce today LB312. This bill is in response to the situation in Howard County a few years ago. In that situation a sheriff, who was the object of a recall, resigned shortly before the election. Under current law, the election was required to go forward because there was no provision for cancelling. Additionally, there were questions raised as to whether the sheriff had actually resigned, because he hadn't resigned in writing to the county board. To address these issues, LB312 provides that if the official who is the object of a recall resigns before the election is held, the governing body may cancel the recall election if the governing body notifies the election commissioner, or county clerk of the notification at least 16 days prior to the election. If the body does not receive such notification, the recall election will be held as scheduled. Sixteen days was chosen because the county clerk or election commissioner is required to send out ballots for early voting 15 days before the election, this will prevent the county clerk or commissioner from having to send out these ballots. Finally, the bill requires all resignations to be in writing to provide clarity on when the official actually resigns. Thank you for your consideration of this bill. And I'll be happy to try to answer any questions on it. [LB312]

SENATOR MINES: Thank you, Senator. Questions for the Senator? The Senator from York, Nebraska, Senator Adams. [LB312]

SENATOR ADAMS: Help me out, Ray, or maybe even Christy could answer this

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question, too. In a recall election, does the ballot state to retain or not retain, or is there an opposing candidate also on that ballot? [LB312]

SENATOR AGUILAR: I'm hearing no. [LB312]

SENATOR ADAMS: You understand what I'm asking? [LB312]

SENATOR AGUILAR: This may be a situation where we'll have to research that and talk about that later, because I don't think Christy can really answer. She's sitting over there and I'm sitting over here. [LB312]

SENATOR ADAMS: Yeah, I guess, if it's purely...if it is what I think it is and you're saying the same, then this makes good sense to me. I was just wondering if there was someone who had said, well, I'm going to run against this person, and that's part of the recall ballot? Then maybe it gets complicated. But I'm probably making it more complicated than what it is. [LB312]

SENATOR AGUILAR: But in that situation, Senator Adams, wouldn't you need to go ahead and have the election anyway? [LB312]

SENATOR ADAMS: Right. [LB312]

SENATOR AGUILAR: But this was a situation specific to where there was no other candidate. [LB312]

SENATOR ADAMS: Okay. [LB312]

SENATOR MINES: Any other questions? I don't see any. Thank you, Senator Aguilar. There are very few of us left. But probably two in support, or one? [LB312]

DIANE OLMER: I'm just listening. [LB312]

SENATOR MINES: One in support. Any opposition? Any neutral? We have one testifier. Beth, come on forward. [LB312]

BETH BAZYN FERRELL: Good afternoon, Senator Mines, 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 assistant legal counsel for the Nebraska Association of County Officials. I'd like to just start by addressing Senator Adams question. The way recall statutes are written right now, there is not a person who is taking the place of the person who would be recalled. There have been bills that have been offered that say, if you circulate the petition, your name appears on the ballot. Those have not advanced. But at this point, there would have to be a special election. [LB312]

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SENATOR ADAMS: Okay, thank you. [LB312]

BETH BAZYN FERRELL: First of all, I guess, going back to my prepared testimony, we worked with Senator McDonald on this bill last year. We'd like to thank Senator Aguilar for introducing the bill this year. Recalls can happen in any county. Even though some recall elections could still be held and would still be held potentially under the terms of this bill, counties and other political subdivisions would save the costs, in many cases, of election workers, and rental of polling places and so on. The bill is still optional. If a county or whatever political subdivision had the individual who was being recalled and they felt like it was appropriate to go ahead with the recall election, the community really wanted their pound of flesh by having the election, they could still go ahead and do that. This would simply give counties and other subdivisions an option of not having the recall election if the individual resigned within the appropriate time frame. We also would like to comment on the language about resignations being provided in writing. There was a case, in 2005, in which there was a question about how a resignation was submitted and who it was submitted to. This would clarify that by making it clear that the resignation had to be submitted to the county board or the county clerk. Be happy... [LB312]

SENATOR MINES: (Exhibit 1) Okay. Thanks, Beth. Questions? You got off easy. Thank you. Anyone else wishing to testify? Senator Aguilar, to close. Senator Aguilar waives closing. And I will close the public hearing on LB312, and turn the chair back to Chairman Aguilar. Oh, before I do, let me reopen the hearing, I'm sorry. I need to read into the record, Sandra Stelling, Jefferson County Clerk, sends her letter to LB312, and she is in support. Now I'll close the public hearing again. [LB312]

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Disposition of Bills:

LB268 - Held in committee.
LB284 - Indefinitely postponed.
LB289 - Advanced to General File, as amended.
LB310 - Held in committee.
LB312 - Advanced to General File.

Chairperson

Committee Clerk