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Government, Military and Veterans Affairs Committee
February 24, 2010

[LB777 LB852 LB1003]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 24, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB777, LB852, and LB1003. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Bob Krist; and Kate Sullivan. Senators absent: Rich Pahls. []

SENATOR AVERY: We are waiting for one more person to show up so we have a quorum. And we expect that person to be here momentarily, so we'll wait for a little...he's walking in now; so let me get started. My name is Bill Avery. This is the Government, Military and Veterans Affairs Committee. Welcome to today's hearing. And, thankfully, this is the last one of this session. We will hear three bills today; they are posted outside the door: LB777, LB852, and LB1003. And we'll be hearing them in that order. Before we get started, let me introduce the members of the committee. Starting with my right: Senator Pahls is not with us because of illness. But Senator Janssen is--from Fremont. And next to him is Senator Bob Giese from South Sioux City. And next to him is Senator Scott Price, the Vice Chair of the committee, from Bellevue. To my right is Christy Abraham, legal counsel. And just arriving is Senator Russ Karpisek from Wilber. Next to him is Senator Kate Sullivan from Cedar Rapids. And Senator Bob Krist from Omaha. Our committee clerk is Sherry Shaffer. When you come up to testify, we want you to have filled out before you get up here this form; provide the information requested in clearly written print. And then hand that to Sherry, the clerk, and we'll have a clear record of who is testifying and for and against what bills. If you have any handouts that you would like the committee to look at, we'd need 12 copies. Give those to the clerk; she will then give them to our pages. The pages are Lisa Cook from Omaha and Mark Woodbury from Oswego, Illinois. If you are here and wish to record your support for or opposition to any of these three bills but you do not wish to testify, there is a second form. All you have to do here is list your name and address, the bill number, and indicate whether you are for it or against it. Those are available at each door--I believe we have them at each door--as is this form here. All right. We will follow the order as indicated on the agenda. We'd ask you, when you get up to testify, that you state your name clearly for the record and spell it; even if it's a simple name, we need it spelled, so that we can enter it into the record accurately. Introducers will be given adequate time to make their initial statements, followed by proponents, opponents, and then neutral testimony. Closing remarks are reserved for the introducer. If you have any electronic devices that make noise, please turn them off or silence them in some way. Also a reminder, we do not allow photographic equipment, unless you're with the press, or any demonstrations for or against any of these bills. It's a lightly populated audience today, so I'm not worried about demonstrations. Okay, I think that covers it. I will start with Senator Beau McCoy and LB777. Welcome, Senator. []

SENATOR McCOY: Thank you, Chairman Avery and members of the committee. My

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name is Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District in the Legislature. I'm here to introduce LB777; it calls to reinstate the winner-take-all system for electing presidential and vice presidential candidates. Currently 48 states practice the winner-take-all method of awarding their electoral votes. The exceptions to that, of course, would be our state of Nebraska and also the state of Maine. Let me share with you a little background with you. In 1991, LB115 changed the way Nebraska presidential electors cast their ballots from the winner-take-all system to the congressional or district plan. LB115 passed the Legislature by a 25-23 vote, one senator abstaining. Two bills passed the Nebraska Legislature to return to the winner-take-all system--LB65 in 1995, with a 27-15 vote; and LB103 in 1997, by a 20-15 vote--and both were vetoed. Since that time, similar legislation has been advanced out of committee--in 2000, 2001, 2003, 2006; and in 2007 LB433 was held by the committee. The full body of the Legislature did not have the opportunity to debate the four bills that were advanced to General File. This brings us to where we are today and a few of the unintended consequences some may not consider with the district plan as it currently exists. Congressional districts are usually safe for one candidate or the other, which can actually lower voter turnout. Now I imagine some of you are remembering the record voter turnout in the 2008 presidential election. But I would ask you, that if you think about it analytically: to get an accurate count, we need to look at voter turnout over a period of unique years, not just one particular election cycle, with a very popular candidate, of course. The district plan can discourage candidates from addressing issues that appeal to the state as a whole by rewarding candidates who visit districts with higher population and income levels, to the exclusion of rural congressional districts. State boundaries also have a significant advantage over congressional district boundaries, as they are permanent and can't be changed by an incumbent class of officials during redistricting. When we look at the numbers, what's interesting is the Republican presidential candidate would receive more electoral votes if the nation as a whole operated on the district plan. In 2000, the Republican candidate would have won 292 electoral votes instead of the 271 awarded; in 2004, 321 instead of 286; and in 2008, 252 instead of 173. But until states like California and New York, with very high population numbers and a large number of congressional districts, start splitting their votes based on congressional districts, it's my view that Nebraska is at a disadvantage when we split our five current electoral votes. You know, and as it stands, we're just playing by a different set of rules. And, you know, I'm not the only person to introduce legislation this session seeking to change the way that we award electoral votes. Senator Haar introduced LB1015, I believe it was. And this is why, as we go through this process...we're currently obviously, as Chairman Avery mentioned, in the last day of hearings and past the priority bill deadline. And this bill wasn't prioritized by myself or by the Speaker. And I would ask the committee to respectfully hold this bill in committee, and it's my plan to introduce an interim study on this issue to look further into this. In all the years that we've talked about this issue, and as many bills that have been before the Legislature since this statute has been in place, there's never been an interim study--that we're aware of anyway--on this issue and whether or not this is a good

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system to keep in place. You may hear testifiers behind me as well--I believe in a neutral capacity--to talk about an ancillary issue surrounding this on a broader scale that may be of interest to the committee as well on an interim study basis. And with that, I would conclude and take any questions if there are any. [LB777]

SENATOR AVERY: Thank you, Senator. You and I have had conversations about reforming the Electoral College, and I think you and I agree that we don't much like the current system. Is that correct? I mean... [LB777]

SENATOR McCOY: Well, it's correct. I would actually prefer the district plan in many respects. But I think that until everyone operates under the same system, it just seems unusual that we would operate under the current system we have. [LB777]

SENATOR AVERY: Well, I think what we're missing in the Nebraska/Maine model is we don't have a national campaign to carry this to other states. The national vote initiative, you know, is--or National Popular Vote, the Ken Haar bill--they have a well-paid staff that travels all over the country seeking support. And they've had modest success, even among those people who see the Electoral College as outdated. And we all know why the Founding Fathers wanted the Electoral College: they didn't really trust the voters. Questions from the committee? Senator Janssen. [LB777]

SENATOR JANSSEN: Thank you, Chairman Avery, Senator McCoy. One question, I guess--and maybe actually two questions. One is: Does this restore the language as we had it previously? The green copy--this pretty much just restores it to the way we had it prior to '91, I believe? And would it be your intention to possibly wrap, maybe, the National Popular Vote along with your bill and an interim study and kind of look at all of those things? And the third thing is just a comment. I can tell you from personal experience, it is very difficult to overturn one of Senator Schimek's bills. [LB777]

SENATOR McCOY: I won't answer your question, Senator Janssen. That would be my desire--I guess in answer to your first question. It's my understanding, as we examine this--unless we missed something--that, yes, this would return statutorily the language to the way it was prior to 1991. In answer to your second question, yes, that would be my desire; it's my intention to introduce an interim study to look at this from a broad picture on all the issues around it and just see. Perhaps we would discover that keeping it the way it is, is the way it should be. But I think that's a discussion that we should have. It doesn't make sense that we are one of only two states that has the system that we have. It's my contention...and I don't think that is the case. Whether it's all one or all the other, it just would seem that it would make sense to have the same system as the other 48 states. [LB777]

SENATOR JANSSEN: Thank you, Senator McCoy. Chairman Avery. [LB777]

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SENATOR AVERY: Any more questions? Senator Krist. [LB777]

SENATOR KRIST: Can you...? Thank you, Chairman. Senator McCoy, can you discuss just briefly your views on relevancy when it comes to our electoral votes and particularly on a presidential election? [LB777]

SENATOR McCOY: Sure. I'd be happy to. And, you know, gone are the days, unfortunately, that you have presidential candidates...as we've probably all seen, you know, the black and white pictures of--I believe there's a picture of Lyndon B. Johnson at a parade in Hastings. And I assume that probably would have been during the 1964 presidential election. I wish those days were still here; unfortunately, that doesn't happen anymore. It's my contention we dilute our five electoral votes by not playing to the issues across the state. Now, clearly, that wouldn't necessarily be relevant if it wasn't that close of an election and if our five electoral votes weren't as consequential. But in a very, very tight race--as it seems to be we're trending towards extremely close, or at times extremely close, presidential election cycles and electoral vote totals--it would be my belief that our five electoral votes should matter across the state. I just...it pains me--and it would be my hope that it's not the case that we would have any of our Nebraskans that in some way, shape, or form are disenfranchised with their electoral vote. We want their votes to count and to matter, and they do. But especially on the electoral vote side of things, I would like our five electoral votes--as slim as they are, compared to some larger, more populous states...it would be my hope that they matter--not just one of them matter or whatever the case may be as far as which congressional districts we would be talking about. [LB777]

SENATOR KRIST: Thank you. Thank you, Chairman. [LB777]

SENATOR AVERY: Any other questions from the committee? Seeing none, thank you. You're going to stay around to close? [LB777]

SENATOR McCOY: I actually will waive. We have a bill in Natural Resources I need to get back to if that would be okay. [LB777]

SENATOR AVERY: Okay. Yes. Thank you. [LB777]

SENATOR McCOY: Thank you, Chairman Avery. [LB777]

SENATOR AVERY: Thank you. We have any proponent testimony? Anyone wish to testify in favor of this--in support? All right. Anybody wish to oppose this bill? Welcome, Senator Schimek. [LB777]

DiANNA SCHIMEK: (Exhibits 1, 2, and 3) Thank you, Mr. Chairman. It's nice to be back again. Feels like old home week. [LB777]

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SENATOR AVERY: Oh, yes. You sat here for a long time. [LB777]

DiANNA SCHIMEK: Right. Mr. Chairman and members of the Government, Military and Veterans Affairs Committee, thank you for allowing me the opportunity to be here before you today. My name is DiAnna Schimek, and that's D-i-A-n-n-a S-c-h-i-m-e-k; and I am here to testify in opposition to LB777. As you may know, LB777 repeals the statutes that were enacted in 1991 with the passage of LB115, which was my bill. It was a bipartisan bill, with two Republicans and two Democratic co-sponsors. I introduced it because I believed that a more proportional representation of the presidential vote would be fairer. I had no agenda and was not asked by my political party to introduce the bill. As a past student of government and a teacher of civics and history, I believe strongly in the one-person, one-vote concept. At the time, there was a lot of talk about dispensing with the Electoral College and changing to a popular vote, which would be more in keeping with the one-person, one-vote concept. Because of the strong opposition to such a sweeping change, I thought the system designed by LB115 would be a nice compromise between doing away with the Electoral College and continuing with the winner-take-all system that existed in every state except Maine, which enacted its district system in 1968. LB115 was essentially the Maine system. I was also a little nervous about a popular vote, because I thought it might lead to court fights over close contests in each state. Remember, this was before the debacle of 2000 in Florida. I also believed that a change in the electoral system might prevent the unfortunate result of someone winning the popular vote but losing the election in the Electoral College--which has happened in our history--or of a close election in the popular vote but a landslide in the Electoral College, which often gives an incoming president a false sense of support. At the same time, there was a movement to encourage more states to introduce bills like LB115. And, Senator Avery, there was an attempt back in the late '80s, early '90s to do such a thing. Some came close, but the votes were never successful in both houses in those other states. I'm not going to go into the history of the Electoral College, but as you know, Article II of the U.S. Constitution does say: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the Congress." These electors were chosen in a number of ways over the years, including by district in early years. There were other reasons for introduction of the bill. Nebraska had lost its advantage in presidential campaigns. We were no longer one of the few states holding primaries, and we were late in the process. So candidates were more or less bypassing Nebraska. With the possibility of contests in one or two districts, the hope was that more candidates would come to Nebraska and more candidates would fund campaign organizations in our state, which did happen in 2008. Also, as then-Senator Withem stressed during his floor remarks on LB115, there was language in the bill that indicated electors would not have free will. They would have to vote the way the majority of the people in their congressional districts voted. That was an important change. But the most important reason for enacting the bill, and the reason

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we should not undo the previous legislative decision in this area, is that it encourages grass-roots activity. And it encourages more people to vote. And that is very, very important in this era of depersonalization of politics and the advertising wars that occur in every election. It is critical that citizens know their votes count. No matter what you think of the results of the last election, you can't argue with the fact that people were excited about the presidential election and they were volunteering in droves. This is a state with a small but very diverse population, and it is important that citizens feel they have a chance to make their voices heard. One side effect of all that activity, of course, was a modest economic impact. Another was that on election night commentators were watching to see what might happen in Nebraska. Maine, which has had the district system since 1968, had never had a divided vote and wasn't expected to have one on election night 2008. It is worth mentioning here that since 1940 there would have been only three elections before passage of LB115 that would have required a split vote. The first was in 1940, when Wendell Willkie won statewide in four of the then five congressional districts but Roosevelt won the 2nd District. The second split vote would have been in 1944, when Tom Dewey won statewide in Districts 1, 3, and 4 but Roosevelt won the 2nd District. And, finally, in 1964, Johnson won statewide but Goldwater won the 3rd District. It wasn't until 44 years later that there was to be a split; and that was five presidential elections after the passage of LB115, when Barack Obama won one electoral vote in the 2nd District. Since the passage of the bill in 1991, some have said that we don't need this bill because Nebraska is never going to split its vote. And I kept saying the bill is working, because no one other than the statewide winner was able to carry any of the districts. And the bill also worked in 2008 because one district did vote differently than the other two districts in the state. Since Nebraska passed this legislation, there have been seven bills--as the senator mentioned--and attempts to undo it in every biennium. I think it is time to put the issue to rest and assure the people of Nebraska that their vote does count more than it ever did under the old electoral system. And until such time as the popular vote decides the presidential elections or until a better idea comes along, Nebraska will continue its populist tradition of district elections. [LB777]

SENATOR AVERY: Thank you. Do you...? You mentioned that there was a modest economic impact in the last presidential... [LB777]

DiANNA SCHIMEK: Well, very modest, yes--I mean the presidential candidates coming into the state, for instance. Both Barack Obama and Sarah Palin, if you remember, came into the state. And they brought news media with them, and they brought supporters with them, and so there would have been a slight economic impact. In addition to that, the actual campaigns themselves would have brought some economic activity as well as the advertising that some of the media was privy to run because of a contest in Nebraska. We generally don't get that, and most people would say: Well, thank goodness that we don't. But nevertheless there was some economic activity. [LB777]

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SENATOR AVERY: You haven't seen any real numbers on that? [LB777]

DiANNA SCHIMEK: No, I haven't. [LB777]

SENATOR AVERY: Yeah, I don't... [LB777]

DiANNA SCHIMEK: I mean, I'm not sure that I have; I don't remember seeing them. [LB777]

SENATOR AVERY: They may not exist. [LB777]

DiANNA SCHIMEK: If I did... [LB777]

SENATOR AVERY: Yeah. [LB777]

DiANNA SCHIMEK: ...I didn't keep a record of them. [LB777]

SENATOR AVERY: My own guess is that the impact of the media buys were probably--or was probably more significant... [LB777]

DiANNA SCHIMEK: Right. [LB777]

SENATOR AVERY: ...than any economic impact from having additional people here... [LB777]

DiANNA SCHIMEK: Exactly. [LB777]

SENATOR AVERY: ...with campaigns. [LB777]

DiANNA SCHIMEK: Exactly. [LB777]

SENATOR AVERY: Questions from the committee? Senator Krist. [LB777]

SENATOR KRIST: Thank you, Chair. Senator Schimek, could you speak to your opinion on relevancy, based upon all or none? [LB777]

DiANNA SCHIMEK: I'm not sure that I understand your question. What do you mean, "relevancy"? [LB777]

SENATOR KRIST: There are some that would say that the state is irrelevant because a candidate can come into the Omaha area, pick up one or two and not worry about the rest of the state. Others say that if you're worried about five and it's winner-take-all,

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you'll spend more time in the state, more money in the state; you'll visit different places in the state. [LB777]

DiANNA SCHIMEK: I understand. [LB777]

SENATOR KRIST: So "relevancy" meaning we're irrelevant when it comes to taking a bunch, or five, as it were, as opposed to just picking up one or two and moving on. [LB777]

DiANNA SCHIMEK: I think that history would illustrate that we have been irrelevant and that candidates haven't been coming in, in large numbers. And I don't know that that's ever going to change drastically, because candidates aren't going to spend a lot of time in the state, no matter what, because we only have five electoral votes. And so I think that the difference this time, perhaps, was that there was a concerted effort to make some inroads in the 2nd District, and to some degree in the 1st District, by the Democratic candidate, which...you know, traditionally, the Democrats don't carry Nebraska. So there was a lot more activity because of that and, I think, probably some more visits because of that. [LB777]

SENATOR KRIST: Thank you. Thank you, Chair. [LB777]

SENATOR AVERY: Any more questions? Got off light. [LB777]

DiANNA SCHIMEK: Thank you. Thank you very much. [LB777]

SENATOR AVERY: Any other proponent testimony? [LB777]

SENATOR PRICE: Opponent. [LB777]

SENATOR AVERY: Oh, opponents. Yeah, I'm sorry. Thank you. I'm not used to having bills that don't have a lot of testifiers. Welcome. [LB777]

ANN GRADWOHL: (Exhibit 4) Hello. My name is Ann, A-n-n, Gradwohl, G-r-a-d-w-o-h-l. I live in Lincoln, and I work as a teaching artist in schools and communities throughout Nebraska. I'm here to testify against LB777. I have voted in the nine presidential elections that have occurred since my 18th birthday, with the belief that my individual vote matters in our aggregate political discussion and democracy. In 2008, I had the remarkable experience of seeing the presidential election through the eyes of a 13-year-old boy I had mentored for five years. The special attention that was focused on Nebraska's electoral votes in 2008 stimulated the student's interest in subjects that were new to him--government, politics, and democracy. For months, we spent at least part of our weekly time together talking about the candidates, issues, and growing national interest in Nebraska's method of allocating its electoral votes. As you know, teenagers'

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questions often go directly to the heart of issues and impel us as adults to practice what we teach. The exercise of answering a future voter's questions about why one should vote and whether an individual's vote has impact confirmed my belief that the state's electoral ballot method encourages more active and knowledgeable participation by Nebraska voters and more active campaigning in Nebraska by presidential candidates. I urge you to keep Nebraska's method of allocating its electoral votes and oppose LB777. Thank you for this opportunity to exercise my right as a community member to address your committee and my obligation as a mentor to stand by my words to a teenager who looks forward to voting. Thank you very much. [LB777]

SENATOR AVERY: Thank you. Would you stay here for questions? [LB777]

ANN GRADWOHL: Certainly. [LB777]

SENATOR AVERY: We might have some. Any questions from the committee? I see none. Thank you. [LB777]

ANN GRADWOHL: Thank you. [LB777]

SENATOR AVERY: Any other opponent testimony? Opponent testimony? Neutral testimony? Welcome. [LB777]

LARRY RUTH: (Exhibit 5) Senator Avery, members of the committee, my name is Larry Ruth, L-a-r-r-y, last name R-u-t-h. Fine. I only have 11 of those; I hope I'm not... [LB777]

SENATOR AVERY: That'll be all right. [LB777]

LARRY RUTH: ...out of luck for getting them out--instead of 12. [LB777]

SENATOR AVERY: That'll just give you an A-minus. [LB777]

LARRY RUTH: Okay, thank you. I appear today not as a registered lobbyist; I'm a member of the Uniform Law Commission--one of Nebraska's six members of that commission. Other members are Dean--or rather Mr. Perlman, Chancellor Perlman; 8th Circuit Court of Appeals Arlen Beam; Dean Willborn, former dean of the law school at University of Nebraska-Lincoln; Joanne Pepperl, your own Joanne Pepperl; and Amy Longo, an attorney from Omaha. Our commission works on what are called uniform laws, and we have a number of those introduced this year. These are laws which we want to bring back to the states for consideration and possible passage, laws which may have some advantage to having broad adoption by the states so that there's a coordinated effort in a particular area. The reason I come to you today is not because of LB777 and what it represents in a narrow nature but what--to bring you up to date on what we are doing in drafting in a related area, that is, presidential electors and the

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problem of the so-called "faithless elector." And I've talked with Senator Avery and Senator McCoy, and they thought it would be a good idea if I just took a couple of minutes in a neutral capacity just to let you know what we're doing in that area, because it does have implications for your study here. What do I mean by a "faithless elector"? Anybody have an idea on that? Well, a "faithless elector" is the opposite of a "faithful elector." The way the Constitution was first drafted to establish the electoral commission--or Electoral College, rather: the Electoral College was to be peopled by people who were selected and then would get together in their home states or as a group and decide who they thought should be president. That's a far cry from where we are today. Over the years, the states have decided that their electors should vote following a popular election in their state. Now Nebraska happens to be this district approach; other states have winner-take-all. But forget about that for a second. It's just the problem of a Constitution on one side that says electors in the Electoral College can vote for whomever they want to, after a consultation, and our assumption, on the other hand, that our electors are going to be following the wishes of the public when they vote. What we have, then, is the possibility of electors to be not faithful to the will of the people in this regard. And have we had examples of that in the past, where they've been unfaithful? Yes, we've had several examples, not many. But there have been times when an elector has not voted for who was in effect voted for in their state. And that would cause great harm to the democracy of our country if that were to happen in a very close election, where it really made a difference. And there have been instances when it appears that one party or the other--in fact, both parties--have done some thinking about how they were going to sway some faithless electors to their side. And we just don't want that to happen; that would be very destructive of our democracy. So what we're doing is drafting a uniform law we'd like to bring back to you next year--actually, we're just in the finalizing of it--to set up a procedure in our state and other states where the elector has to vote in accordance with the general will expressed by the public. Right now we have that in statute, but there is no penalty. Senator Schimek and I were just talking about that before the hearing. And also, in other states they have various approaches to this. We feel that if the states had some similar approach to it, that we could then, hopefully, find it constitutional--because there is a U.S. constitutional issue involved--and then have that be adopted in the states and of some value. I'd be interested in any questions. I don't want to take your time; I just wanted to brush it...I just... [LB777]

SENATOR AVERY: Oh, no, we like this. [LB777]

LARRY RUTH: This is good political science, Senator. I teach a course, incidentally, in political science out at Wesleyan--several courses. And I always talk about this with my class. [LB777]

SENATOR AVERY: All right. Let me ask you then: How would you define "general will of the public"? [LB777]

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LARRY RUTH: Well, it's interesting, Senator. Right now there is nothing that a elector has to follow. The states all have popular selection--or popular election be the way it's done. Somehow, we have to work with the existing Constitution, and we have--I think we've discovered a way to do that. There's a case from the U.S. Supreme Court that says that if parties have selected a particular elector, that you could have a swearing of an oath; and if you don't follow the party's nominee--if that party has won in the state--then you could be subject to resignation. So right now what we are working on is a method by which the electors would swear that they are going to follow the selection by the people of the party that nominates the president. And that would then, hopefully, help us to get over the U.S. constitutional hurdle and require, then, a person to--as an elector--to vote for that candidate elected by the people. Does that make sense? [LB777]

SENATOR AVERY: Could...? Yes. But could this have the effect of nullifying our current law here in Nebraska? [LB777]

LARRY RUTH: Well, I don't see that it would be incompatible with what we're trying to accomplish by way of having the elector directed by the vote of the people. In terms of how it would affect our congressional approach, I don't think it would have any effect on that. I've looked at that pretty carefully. [LB777]

SENATOR AVERY: Yeah. Well, a lot depends on how you define "general will." [LB777]

LARRY RUTH: Yes. Yeah. [LB777]

SENATOR AVERY: Yeah. [LB777]

LARRY RUTH: And the way we're doing it, we think that it would not. And we take no position, incidentally, on LB777. That's really a local issue that we don't want to be involved with. But on the question of having faithful electors, we do feel that's important. [LB777]

SENATOR AVERY: Well, let me ask you: What do you think about the Electoral College itself? Do you think the Electoral College ought to be dumped? Reformed? Left as it is? What? [LB777]

LARRY RUTH: Well, if you're asking about it as a practical question, I don't think there's any way we're going to be able to get out of keeping it. The big states like to have the Electoral College because they like that 55-60 votes all at once that they can get with the winner-take-all, if they do that. The smaller states like it because they feel that they have an entree that they wouldn't have otherwise, without the Electoral College. And consequently, I'm not sure as how relevant it is to talk about the Electoral College; we

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were talking about what kind of reforms should we have, given what we have in the Constitution. [LB777]

SENATOR AVERY: But you hear a lot of talk about the Electoral College being a remnant of a different America, when the Founding Fathers... [LB777]

LARRY RUTH: No question about that. [LB777]

SENATOR AVERY: Yeah. [LB777]

LARRY RUTH: There's no question about that. [LB777]

SENATOR AVERY: As a political scientist, you understand the arguments. [LB777]

LARRY RUTH: Yeah. I also generally don't work for reform of something I don't think is going to happen; I'd rather work on reform of something I think has a chance of happening. And that's where I think we are here. [LB777]

SENATOR AVERY: Yeah. Any questions from the committee? Senator Krist. [LB777]

SENATOR KRIST: Thank you, Chair. Thank you for your testimony. Three for three. Same question: How do we make Nebraska more relevant in terms of getting the candidates into Hastings, into Kearney, into the places they need to be? Or is that important to this process? [LB777]

LARRY RUTH: Well, it's important that we have participation; there's no question about that. I don't have a good idea as to how to make our participation higher. I think there's more that could be done other than just reform of state law, though. I think the educational process that we have can do much more, as teacher Gradwohl spoke before. She worked with students to help them become more involved, and that's very, very important. That would be perhaps one direction--and encourage more education there about how important it is to participate. And I think that will then bring more people into the state. If you have an informed electorate, that's where candidates usually like to go. [LB777]

SENATOR KRIST: Your efforts, in terms of going in the direction that you're going--what's the purpose? What is the lawful purpose of going in that direction as opposed to where we are? [LB777]

LARRY RUTH: Well, to stay where we are runs the risk, in some presidential election in the distant--or in the future--and they are far apart--where you're going to have--I think the magic vote is 270--when you're going to have 271 for one presidential candidate and 269 for another presidential candidate and having the losing party go and pick off a

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couple from the winning party. And then you would have, I think, all hell break loose by the public if you did that. And the possibility is there. I was an elector twice, and both times that I was an elector I got telephone calls stressing to me the importance of voting the way that the public voted, because there was some fear that I wouldn't--not because of Larry Ruth but the fear of all electors, that they might not. So the possible damage is definitely there. [LB777]

SENATOR KRIST: Thank you so much. [LB777]

LARRY RUTH: Yeah. And we would, of course, be willing to participate in any kind of a study that you have. [LB777]

SENATOR AVERY: Well, thank you. Thank you for the offer. Any more questions? Seeing none, thank you. [LB777]

LARRY RUTH: Your legal counsel has been a guest at my class on numerous occasions too. Did a fine job, I might say. Thank you very much. [LB777]

SENATOR AVERY: And she gets better evaluations than you do, Mr. Ruth. (Laughter) Any other neutral testimony? All right, seeing none, we will end the hearing on LB777. And now we will move to LB852, and the Vice Chair will take over. [LB777]

SENATOR PRICE: Thank you, Senator Avery. The floor is yours. [LB852]

SENATOR AVERY: Thank you, Senator Price. My name is Bill Avery, B-i-l-l A-v-e-r-y; I represent District 28 here in Lincoln. I am here to offer to you for your consideration LB852. The purpose of this is to allow additional offices to have write-in space on the primary and general ballots. LB852 allows for write-in space on the primary ballot for directors of NRDs and directors of public power districts. At the general election ballot, the bill also allows write-in space for directors of reclamation districts, members of the board of educational service units, directors of natural resources districts, directors of public power districts, and members of county weed district boards. You might ask: Why the difference? Some of these offices on the general election ballot do not appear on the primary ballot; that's one major reason for the difference. Beyond that, I can't tell you what the reason would be why some of these appear on just the general election ballot and why we would need to have write-in space for both. But the fact is that the ones that I just listed on the general election ballot do not have write-in space on the ballot, and the ones I mentioned in the primary ballots--they do not currently have space for write-ins. I believe that allowing write-in space for these offices will possibly expand participation in these races. If someone wants to run for an NRD--perhaps did not make up their mind prior to the filing deadline--they can still do it by mounting a write-in campaign. Having this space on the ballot certainly makes it easier to do that. These offices that I mentioned are some of the smallest political subdivisions in the state, and

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they don't get a lot of press attention--a lot of public attention. Sometimes the attention brought to these offices comes late, and it's past the deadline for filing. So this would allow for more candidates possibly. And it's possible that with such a small political subdivision that some of these represent, a write-in candidate might actually be able to get enough votes to win. The bill also eliminates the situation of no one filing for an office--that does happen in these low-profile races from time to time. A vacancy, then, is created, and under this bill if no candidate files for office, a person would still be able to win election by mounting a write-in campaign. The way it works now if nobody files, then the board--an NRD or public power district--simply appoints a person to fill a position. This will allow at least the possibility that the voters get to decide rather than having a board. It's not a huge issue, but it's one that I think will improve the electoral process a bit here in the state, and I urge that you advance it to General File. Thank you. [LB852]

SENATOR PRICE: Thank you very much there, Senator Avery. Are there any questions from anybody here on the committee? I have a couple questions for you. First and foremost, do you have an idea of how many lines this would increase? And this could be a follow-on question--that's one I can answer. But how many lines could you be looking at? And do the ballots contain enough space if...I mean, you listed off four, five different potential offices. Four, five more lines? [LB852]

SENATOR AVERY: I think it would vary by political subdivision. It could be that you'd add several lines, or you may only add one or two. I'm sure that somebody is here from the Secretary of State's office, and they can probably answer that a little bit more definitively than I can. [LB852]

SENATOR PRICE: Great. And then earlier we've heard a lot of bills about registering--like same-day registration--and the reason or one of the reasons we were given for that was someone missed a cutoff. So you--now are you--now do we want to have bills to let people who didn't register to vote by a cutoff date? Now we want candidates who can maybe--well, I didn't get my...I didn't decide, and now I want to have a do-over? I mean, I could understand if you're in a situation where perhaps, say, an untimely death, sickness comes up, and you're left without a candidate; then you want to have someone come in. Okay, I can understand. But say that a candidate--oh, I didn't decide and want to--is that really where we want to go? [LB852]

SENATOR AVERY: Well, we already do that. We...this...there are a number of opportunities for write-ins in various offices. All this bill does is say: All right, if we're going to allow it in statute for other offices, then let's do it for all the rest of them as well. [LB852]

SENATOR PRICE: So you're trying to harmonize it with everything else we do. [LB852]

SENATOR AVERY: Yeah. And there will be an argument made that this will be an

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undue burden on the election commissioners, because the ballot will have to be longer. And your first question is a very pertinent one: How much longer will it be? I don't know. And I think it would vary depending on the political subdivision. [LB852]

SENATOR PRICE: Thank you very much, sir. Are there any other questions? Seeing none, thank you very much. And we'll move to proponents with the first proponent. You could flip a coin if you'd like. [LB852]

CYNTHIA TIMMERMIER: Good afternoon, Senators, members of the committee. I'm Cynthia Timmermier; I live in rural Washington County, Nebraska. As the senator... [LB852]

SENATOR PRICE: Could you spell your name for us? [LB852]

CYNTHIA TIMMERMIER: It is T-i-m-m-e-r-m-i-e-r. [LB852]

SENATOR PRICE: Thank you. [LB852]

CYNTHIA TIMMERMIER: This bill simply removes a carve-out. I spent about three and a half hours going back earlier this week to try to find out when that carve-out occurred. I went back to 1993 and 1994--LB76, the complete re-codification of the election laws--and I still haven't found the carve-out, so I think it must have occurred before that time. Regardless of the basis for that, this bill removes the prohibition for write-in candidates. And there are three particular reasons why that's important. I live within the parameters of the Papio-Missouri valley NRD. As you know, pursuant to LB160 last year, that NRD received the ability, for the first time ever, to issue bonds--general purpose bonds. As you also know, those are for an extremely broad and almost unlimited number of purposes within its statutory authority. This...the bonds will be issued without any vote of the constituents, unlike a school board election or anything else where there's a big bond; once the NRD makes its decision as to which projects it will do, it goes ahead. And now that it has the bonding authority, it simply begins to issue bonds. The Papio NRD is served by a board of 11; 10 of those members are from the metro Omaha area; 1 serves from the northern area of Douglas County all the way up to South Sioux City and Dakota City, a huge area which is drastically affected by Papio NRD operations. With this scenario of limited representation for those who may be drastically affected by the NRD's projects, including exercise of eminent domain, the voters' ability to elect those who serve on that board is crucial. Every vote counts on the board. And it was very refreshing: That board tried, for the very first time, in January of this year to issue bonds under its new authority. The resolution didn't pass; the vote was about 5-5 or 5-6. And it didn't pass because some board members and the public brought pressure that it must designate the reasons and the projects for which it was going to issue bonds. In February they came back; they bowed to public pressure and internal pressure; they passed \$13.3 million of bonding authority, but it was designated

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for specific projects. So the public knew how the bonds were going to be spent. The second basis for seeking this legislation is that there are chances in which a write-in candidate would be very desirable for the public's input. And situations have occurred where that would have been valuable. The very first time that the Papio Valley Preservation Association, which I represent and of which I am a board member, learned of the 29 dam projects planned by the Papio NRD was about July 24, 2004, and that was only through a Freedom of Information Act filing. The Washington County Board of Commissioners had not been aware of these plans, which included dams within Washington County and other northern reaches of the NRD. That was an election year. After that knowledge became known to people in my group and other people in the area, there was very considerable interest on what steps might be taken. The candidates had already been chosen; there was really no choice. As Senator Avery explained, there are situations where people who had planned to run may be taken ill or have changes in circumstances. And it's important, especially in our NRD, for people to be able to exercise the vote to the fullest extent possible. People are affected not only in our area by the tax consequences but the use of eminent domain and certainly the desire that the board be as responsive as possible. I anticipate that should you hear opposition to this bill, since I don't get to close, I'll say that I hope you consider carefully the basis and the possible motivation for that opposition. My experience is that the only people who really take an interest in the NRD are those who are vendors--who have engineering services or other services which the NRD may acquire--and citizens who may be adversely affected or people who are curious. And, unfortunately, the last category of people, who are simply curious about what that public body is doing, are few and far between. It's hard for me to answer the question of why we wouldn't want to allow the public to exercise its ability to elect and to select candidates to the greatest possible extent. If you have any questions, please proceed, and I would especially like to thank Senator Avery for bringing this bill before you today. [LB852]

SENATOR PRICE: Thank you very much, Ms. Timmermier. Do we have any questions? Senator Krist. [LB852]

SENATOR KRIST: How much knowledge do you have of NRDs in general, across the state? [LB852]

CYNTHIA TIMMERMIER: I grew up in Custer County, out by Broken Bow, where NRDs do very valuable things in terms of controlling soil erosion and helping farmers on a day-to-day basis. And my knowledge from that is from growing up with NRDs that had a large membership on the board and active participation in a collaborative way. [LB852]

SENATOR KRIST: Is it your opinion that the NRDs should be localized and we should have as many as we do? [LB852]

CYNTHIA TIMMERMIER: It's my opinion that consolidation of NRDs and consolidation

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of power cuts out the input that's so desirable. [LB852]

SENATOR KRIST: Okay. Thank you. [LB852]

SENATOR PRICE: Thank you, Senator Krist. Are there any further questions? Seeing none, thank you very much for your testimony, ma'am. [LB852]

CYNTHIA TIMMERMIER: Thank you. [LB852]

SENATOR PRICE: Are there any further proponents? [LB852]

BETH BAZYN FERRELL: Good afternoon, Senator Price, 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 an assistant legal counsel with the Nebraska Association of County Officials. When our board looked at this bill, our position of support really came from the sort of overall public policy issue that Senator Avery pointed out. Why aren't these entities able to have a write-in in a local election? We did discuss somewhat the number of lines that might be necessary and that sort of thing, but it was really the overall public policy question that was our position of support. Be happy to try to answer questions. [LB852]

SENATOR PRICE: Well, thank you very much, Ms. Ferrell. Are there any questions from the committee? Seeing none, thank you for your testimony. Can we have our...are there any further proponents? No further proponents? Can I have our first opponent? Any opponents? Seeing no opponents, would anybody like to testify in the neutral? [LB852]

NEAL ERICKSON: Senator Price, members of the committee, for the record my name is Neal Erickson; it's N-e-a-l E-r-i-c-k-s-o-n. I'm Deputy Secretary of State for Elections, here on behalf of Secretary of State John Gale, who's out doing birthday parties this week across the state--so he couldn't be here--testifying in a neutral capacity on this, more to answer questions and maybe provide some insight as to, well, some changes that have occurred over time. I think that the big question that Cynthia had asked is: When did this start? And I'll tell you, nobody's institutional memory goes back far enough to actually answer that question, and the best we have are theories as to why these races that were generally down-ticket did not have write-in lines to begin with. I think the theory would probably be that with not the attention that you see with some of the top-of-the-tickets, there was the possibility of having people who weren't necessarily interested in the job kind of play with the election system. And we've seen this happen, particularly in Omaha back in the, oh, '80s and '90s. We've taken some corrective measures on that, such as requiring a 10-day period you have to file as a write-in to be able to have your votes counted. So that probably has eliminated that issue. Things that have exacerbated the problem are things like automatic advancement that we adopted in the '90s, where races that did not have more than two candidates for the office were

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automatically advanced from the primary. We have had situations in the past where somebody has missed a filing deadline. In fact, I've got two on my desk right now, both NRDs. No, Senator Karpisek, it was not your filing. And the difficulty becomes that once they miss that filing, an incumbent in particular, there's no way to get them on the ballot; there's really no mechanism at all. And I do recall one about 15 years ago where they resorted to actually having a non-incumbent file--kind of a straw man--and it actually happened to be the incumbent's son, who was elected and immediately resigned. And then the board appointed the previous incumbent back to the position again. Having the write-in lines will enable an alternative, I guess, another method of accessing that ballot for candidates that might have had something unfortunate happen. There have been questions about how much is this going to add to the ballot. With any ballot, it's going to be difficult to give you a precise answer on that. We're adding a number of lines. There's the possibility it may shove it onto another page, which will result in substantial cost. But we have other things--like the number of constitutional amendments that the Legislature decides to put on--will also shove us to another page. If there would be a problem--the NRDs are probably the most problematic, because we still have some NRDs that elect at large. They may have 15 subdivisions, but everybody in the NRD is entitled to vote for all 15 members. That's quite a bit of ballot space. Adding 15 lines to that ballot, yeah, probably has a higher chance of passing onto another page. NRDs like Lower Platte South and Pappio-Missouri do their elections by district, so there's only one district on that ballot. Adding that additional line, theoretically, yes, could cause it to go to a separate page, but it's probably less likely. And with that, I'd answer any questions you might have. [LB852]

SENATOR PRICE: Thank you, Mr. Erickson. Are there any questions? Senator Janssen. [LB852]

SENATOR JANSSEN: Thank you, Deputy Secretary Erickson. I got a couple questions. Actually, the first thing--I always kind of laugh--is when I hear it'll make the ballot longer; it's going to cost more money. And then I go to my office, and I see the reams of paper that are delivered and never read, on a daily basis. So it's really not much of a premise to oppose things, but I hear that a lot. Can you tell me right now--or even with this bill--what happened in Fremont, where you actually had a write-in candidate for mayor; then we had a guy filed as a write-in. Did he pay--or would a person have to pay to actually list as a write-in? It's not just, you know, show up and I'm going to vote for Charlie Janssen for NRD; and I really don't want to be on the NRD... [LB852]

NEAL ERICKSON: Right. [LB852]

SENATOR JANSSEN: ...and the next thing I know... [LB852]

NEAL ERICKSON: Right. Now, under the current law, in terms to be...and there's a couple exceptions: villages and Class II school districts. But every other office, you need

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to file an affidavit at least 10 days prior to the election that you are going to be a candidate. You pay a filing fee, if applicable, at that time. You fill out the same filing form that any other candidate fills out. So, yeah, there is a filing fee involved; and there is an affidavit involved; and it's 10 days prior to the election. Like I said, back in the '80s, early '90s, you'd have situations where people would come in the day before an election; you'd have a couple guys come in and say--and they were having a contest to see who could get more votes on some lower-ticket race. But some of the law changes have kind of cut that off. [LB852]

SENATOR JANSSEN: Okay. Thank you. [LB852]

SENATOR PRICE: Thank you. Are there any other questions from the committee? Yes, Senator Karpisek. [LB852]

SENATOR KARPISEK: Thank you, Senator Price. There won't be as many constitutional amendments on the ballot as I'd like to see, Mr. Erickson. So that will cut that down a ways. [LB852]

SENATOR KRIST: Zing. [LB852]

SENATOR KARPISEK: I guess that's all I wanted to say. (Laughter) I had some sort of a question. Oh, how about...okay, so nobody files for a position, would it not be easier just to put in a statute, maybe, to--and I should ask Senator Avery--just to fix that, rather than putting all these lines on that I don't see a lot of people will use anyway, except to put their neighbor on to try to horse him around--or Mickey Mouse? [LB852]

NEAL ERICKSON: And I guess I don't know exactly, you know, what you mean by "fix that." We have...and I can't say it's really cyclical; it's just every once in a while you see something, you know, a certain year. We have school board--nobody seems to be filing. I remember--and I think it was in '02--for some reason we were having problems with city council members and mayors, and we were seeing, you know, communities that didn't have anybody filing at all. It just happens sometimes. The write-in helps to a degree, in terms of getting somebody on there. I think the bigger thing that occurred was we changed the statutes so that failure to elect somebody at an election creates a vacancy. And then we used the vacancy statutes to fill that position. [LB852]

SENATOR KARPISEK: So that--there is a ready...I mean we have statutes on how to fill it. That's when you talked about the one guy running as a straw man, and then his dad gets...I mean, wasn't--couldn't it have worked without anybody running and they could have--the board could have still put... [LB852]

NEAL ERICKSON: Theoretically, if he--if nobody had run, he could have petitioned onto the ballot. At that point in time, though, we did not have caps on the number of

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signatures for NRDs, and the signature numbers to petition onto the ballot were a little high. I think in that particular case he was looking at 8,000 or 9,000, which was--is pretty substantial. Since then we've put caps on those races, so that petition situation would be a little more manageable. [LB852]

SENATOR KARPISEK: But if no one would have run and it would have been vacant, then does the board appoint someone? [LB852]

NEAL ERICKSON: It depends on the particular subdivision. Every...generally--the general rule, it's generally the board that fills vacancies, but there are other situations. For example, on a county board, it is the clerk, treasurer, and county attorney that fill that vacancy. On some of the power districts, the Governor will fill those. So it varies a little bit by office. I think the general rule is probably, you know, the way you...the board itself fills that vacancy. [LB852]

SENATOR KARPISEK: I'm still just trying to follow this guy even running--and if there just would have been nobody filed, the board would have reappointed the dad anyway. [LB852]

NEAL ERICKSON: Theoretically. And I think the reason he had his son file was to kind of block off the opportunity for anybody else to file as well. [LB852]

SENATOR KARPISEK: All right. Thank you, Mr. Erickson. Thank you, Senator Price. [LB852]

SENATOR PRICE: Thank you, Senator Karpisek, for the question. Are there any other questions? Seeing none, thank you for your testimony, Mr. Erickson. [LB852]

NEAL ERICKSON: Thank you. [LB852]

SENATOR PRICE: Is there anybody else who would like to testify in the neutral? [LB852]

BOB HILSKE: (Exhibit 1) Senators, members of the committee, my name is Bob Hilske, B-o-b H-i-l-s-k-e. I'm the general manager of the Nemaha Natural Resources District, and I'm also here today to represent the Nebraska Association of Resources Districts. We're here to testify in a neutral capacity on this bill. After reviewing the bill, we had some discussions with the Secretary of State's office on some questions we had, and we feel like those issues have been resolved, but we do want to make sure that there are some issues that are adequately addressed. And to give you some background, back in the mid-1990s NRDs along with a lot of other local governmental entities worked closely with the state Legislature to dramatically reduce election costs by eliminating the need for a primary election when you have less than three candidates file for a position,

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so that they don't have to go through the primary for a, for example, an NRD board seat. Over the past 15 years, this change has probably saved thousands of dollars for NRDs and taxpayers. Typically, this has probably impacted 75 percent or more of NRD races, because we typically do not see more than two people file for a board seat in most NRDs. In the Nemaha NRD, an election typically costs around \$3,000. So in a primary we would save those \$3,000 if no one--if we didn't get more than two filings. If you look at a NRD that encompasses a first-class or a metropolitan size community or city, those election costs can run over \$30,000 per election. The Lower Platte South NRD, which represents Lincoln, has not had a subdistrict meet the primary election requirements since 2002. So they have not had one subdistrict that's had to have a primary election since 2002. And that's probably saved them \$100,000 over the last three election cycles. One question we had when we looked at this bill was: Would the slot for the write-in candidates be included on ballots for both primary and general elections? The impact of the primary election waiver is not addressed in the bill, so we were uncertain of how this might impact the waiver. Because of the increased cost, we certainly are not excited or would not support the idea of the write-in candidacy for the primary election, just to get that slot on the ballot for the primary election. Write-in candidacies were once allowed for NRDs, back a number of years ago, probably before 1990. Past experience has indicated we got very few write-in candidates during that time frame. When I contacted managers--I've been around for 28 years managing NRDs--I've contacted some old-time--people that have been around a long time; none of them could even remember a write-in candidacy that met all the requirements to even get to the general election ballot. The election process is complicated and challenging. There's a lot of opportunities for people to file to be on a board. If there's vacancies, there's procedures for getting those vacancies appointed. So we would hope that that is all considered when this bill is taken into account. And with that, I would like to thank the committee for providing the opportunity for discussion on this bill and would ask if you have any questions I would try to answer those. [LB852]

SENATOR PRICE: Thank you, sir. First and foremost, you came in in neutral, but I have two--I have a "may not" and an "opposed." So I don't know, is that a neutral-to-opposed position? But, no, again, thank you very much. Are there any questions from the members of the committee? Seeing none, thank you. Are there any other people wishing to testify in the neutral? Seeing none, Senator Avery, would you like to close? Senator Avery waives closing, and that will conclude the hearing on LB852. And we'll move forward to LB1003 with Senator Giese, and I will turn the helm to the good Chairman Avery. [LB852]

SENATOR AVERY: Thank you, Senator Price.

SENATOR PRICE: Senator Giese will be here shortly. We will wait till he arrives.

SENATOR AVERY: Welcome, Senator Giese. We will now open the hearing on

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LB10...what is it? [LB1003]

SENATOR PRICE: LB1003. [LB1003]

SENATOR GIESE: LB1003. [LB1003]

SENATOR AVERY: LB1003. All right. Proceed. [LB1003]

SENATOR GIESE: (Exhibit 1) Thank you, Senator Avery and members of the committee. My name is Robert Giese, G-i-e-s-e, and I represent the 17th Legislative District, which includes Dakota, Dixon, and Wayne Counties in northeast Nebraska. LB1003 would expand Nebraska's existing provisional ballot process and would allow what is known by election officials as county-to-county portability of provisional ballots. Under current state law, voters who move within the county where they had previously been registered are entitled to vote using a provisional ballot on election day if for any reason their name is not on the list when they arrive at their polling place. LB1003 would allow a voter who had been previously registered in any Nebraska county to vote using a provisional ballot and have their ballot counted, provided that they have not voted elsewhere in the state. Eight states and the District of Columbia have already adopted some form of county-to-county portability for their provisional ballot process. Currently, when a voter arrives at the polling place and their name is not on the list of registered voters, they are entitled to cast a provisional ballot regardless of the reason. Whether their registration was lost in the mail, they forgot to re-register, or they never registered in the first place, they are still entitled to fill out a provisional ballot. The real question with regards to provisional ballots is whether that ballot will ultimately be counted. The reason that county-to-county portability is a realistic possibility in Nebraska is because our county clerks and election officials are currently using the statewide electronic voter database to verify provisional ballots. In at least one Nebraska county during a 2008 election, more than 50 percent of the provisional ballots were not thrown out...were thrown out, excuse me, and not counted--would have been counted if LB1003 had been in place. Keep in mind that each of these voters had previously been registered to vote, and simply because they move from one county to another--rather than within the same county--their ballot is currently not being counted under Nebraska law. There are several scenarios which make county-to-county portability of provisional ballots a sensible idea. First, the line between Douglas and Sarpy Counties in the Omaha metropolitan area is becoming increasingly blurred. In multiple locations along Harrison Street, which is the Douglas-Sarpy County line, there are apartment complexes across the street from each other where the choice to live in one complex over another results in the voter living in Sarpy County and commuting into Douglas County or vice versa. More interestingly, however, there are seven communities in rural Nebraska that straddle county lines, including two in my district. From a practical standpoint, it doesn't make sense that a voter could move from one part of Wayne to another and still have their provisional ballot counted but ten miles down the road in Wakefield their

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provisional ballot would not be counted if they move from Wayne County...if from the Wayne County side of town to the Dixon County side of town. Four of these seven communities are in multiple legislative districts as well as multiple counties, including Emerson, three-fourths of which is in my district and the remainder of which is in Senator Rogert's district. The committee should have received a copy of AM2000, which is designed to address two concerns that were brought to my office by county clerks. First, the amendment would ensure that a voter could not vote at his old polling location and later use a provisional ballot at his new polling location, by requiring counties to process nonprovisional ballots and update voter history within five days after the election. After the voter history is updated, the counties would then verify and count eligible provisional ballots, as already required by federal law within seven days of the election. Second, the amendment addresses a concern that one clerk had with how county-to-county portability would work alongside with voter list updates that are currently done using the national change of address program through the U.S. Postal Service. Currently, if an election commissioner receives a notice that a registered voter had changed addresses, they send that voter a forwardable confirmation notice. If the voter has moved, they are supposed to check the appropriate box and then return the notice, at which point the election commissioner immediately removes them from the registration list--the only place in our election statutes where such immediate action is taken. The concern was that if these voters were removed immediately, they would be unable to take advantage of county-to-county provisional ballots. AM2000 would require county clerks and election commissioners to send voter registration applications along with the confirmation notices, ensuring that these individuals re-register prior to their removal from the list. Opponents to LB1003 are quick to claim that county-to-county portability is a back door to election day registration, which I would dispute. But even if this were true, county-to-county portability solves the primary concern that election day registration opponents have raised in the past. Under LB1003, only individuals who had previously taken steps to register to vote in Nebraska would be entitled to have their provisional ballot counted. Individuals moving in from out of state or who had never bothered to register before would not be able to just show up and vote on election day. Furthermore, individuals taking advantage of county-to-county portability would be casting provisional ballots, not regular ballots. The use of provisional ballots provides strong protections against voter fraud while simultaneously ensuring that the votes of all registered voters are counted on election day. Thank you for your time, and I would be happy to answer any questions. [LB1003]

SENATOR AVERY: Thank you, Senator. Questions from the committee? Senator Price. [LB1003]

SENATOR PRICE: Chairman Avery, thank you. Senator Giese, thank you for bringing this legislation and working to, you know, quell some of...quiet some qualms we had there. Thank you. But in your testimony just now you piqued my curiosity when you said that individuals had taken steps to register versus being registered. There's a world of

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difference, so were you actually trying to say that a person must be fully registered in another county before they could be...vote in the next county? [LB1003]

SENATOR GIESE: I believe that is correct, Senator Price, but maybe somebody can clarify that after me if I am wrong and proven wrong, but I believe that's right. Everybody that we're talking about is already a registered voter,... [LB1003]

SENATOR PRICE: Okay. [LB1003]

SENATOR GIESE: ...not just taking the steps. [LB1003]

SENATOR PRICE: Okay. Thank you. That's great. Thank you very much. Thank you, Chairman Avery. [LB1003]

SENATOR AVERY: Thank you. Any other questions? Seeing none, thank you. [LB1003]

SENATOR GIESE: I'm going to waive closing. [LB1003]

SENATOR AVERY: You will? You going back to Revenue? [LB1003]

SENATOR GIESE: I have to walk out. [LB1003]

SENATOR AVERY: All right. You going to leave Trevor behind or not? [LB1003]

SENATOR GIESE: Yes, I will. [LB1003]

SENATOR AVERY: Okay. (Laugh) All right. Proponent testimony, please. [LB1003]

ADAM MORFELD: I have some documents here to pass around. There should be 12 copies. [LB1003]

SENATOR AVERY: Welcome, Mr. Morfeld. [LB1003]

ADAM MORFELD: (Exhibit 2) Chairman Avery, members of the committee, thank you very much for having me here today. My name is Adam Morfeld, that is A-d-a-m M-o-r-f-e-l-d, and I am the executive director of Nebraskans for Civic Reform. As Giese has already stated, county-to-county portability will allow Nebraskans already registered to vote in a different part of the state to vote provisionally and have their ballot counted if for some reason they have not re-registered in their new location within the state. Currently, eight other states that do not have election day registration currently have county-to-county portability. Some of those states are highlighted in that brief--issue brief that I just gave you. The idea for county-to-county portability actually came from a

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Nebraska county clerk who attended one of our election official meetings. Her suggestion was that this would be an easy way to handle on their end...or this would be something that would be easy to handle on their end and would target individuals who already took the effort to register to vote. We researched the issue further and found that in one medium-sized Nebraska county that Senator Giese already actually noted, nearly 50 percent of ballots cast provisionally that were thrown out could have been counted during the 2008 General Election. If you then factor in the provisional ballots of the other 93 (sic) counties, the effect of county-to-county portability on a statewide level becomes much more significant. The legislation then safeguards registered Nebraskans who have already moved and those affected by administrative errors within the registration process. The current registration system sends a verification card to registered voters to fill out--excuse me--it sends a verification card for registered voters to fill out on their change of address form. This card, however, does not update their registration; it simply allows the election official to remove their current registration from the system. And Senator Giese also noted that the amendment would cure that by sending a registration card with it so they could be registered, which seems to make sense even under our current system. Just to note, there's been several concerns that have been raised in regard to county-to-county portability. Instead of going on about what I think are the obvious benefits of county-to-county portability, I'll address some of the current concerns directly. First, Senator Giese has drafted an amendment to ensure the security of county-to-county portability that would require election officials to enter the provisional voter's voter history into the statewide electronic database within five days after the election. This would indicate in the statewide electronic voter database the individual did, in fact, cast a provisional ballot; and if they attempted to cast more than one provisional ballot, it would prevent them from being counted, and the proper legal action could be then taken if necessary. Currently, Douglas, Lancaster, and Sarpy Counties already enter this information before counting or casting out the provisional ballots. It is also our understanding that this is practiced in many other counties across the state. This would simply codify it to make it uniform. And in my opinion, this is something that should already be done in the statute to ensure the security of our current provisional process. Another concern is that county-to-county portability will significantly increase the number of voters casting provisional ballots. We were able to talk with five of the eight states which are highlighted in that issue brief about county-to-county portability, and the ones that said that they could remember when it was implemented said that it did not substantially increase the amount of provisional ballots cast. Simply, it served more as a fallback for individuals who forgot to re-register, didn't think they had to re-register, or were not re-registered because of an administrative error on the election officials' part. So rather than significantly increasing the amount of provisional ballots cast, this legislation for the most part will simply allow election officials to count the ballots that otherwise would have been thrown out on a technicality. Some election officials have asked me how they would identify each ballot to give to the provisional voter. The process for identifying a ballot for provisional voter under county-to-county portability is the same as identifying a ballot for the current

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provisional voter process under our current system. It should also be noted that election officials currently have the ability to print off lists with all their physical addresses in each precinct with a corresponding ballot style using their current street file system. The burden of implementing county-to-county portability would be minimal on the election officials. The majority of the provisional ballots that they are likely to receive are ones that they would have received anyway. The only difference is that instead of throwing the ballot out, it would instead be counted if that individual is already registered to vote in the state of Nebraska. I'd like to also note that under our current statute--and it's on page 12 of the actual legislation--under our current statute, election officials are already required to check and make sure that they haven't voted within that county. This would change it so they'd have to check statewide, which is using the same system. So in reality, they already have to check this, and it's not adding, really, an extra step. In conclusion, I would urge you to support LB1003 and advance it to General File. County-to-county portability provides registered Nebraska voters the opportunity to have their vote counted and their voice heard, and it does so in a cost-effective and minimally burdensome manner for election officials. I'd be happy to answer any questions that you may have about the process in other states or about the proposed process here in Nebraska. Thank you. [LB1003]

SENATOR AVERY: Thank you for your testimony. Any questions from the committee? Seeing none, thank you. [LB1003]

ADAM MORFELD: Thank you. [LB1003]

SENATOR AVERY: Any other proponent testimony? Okay, we'll now move to opponent testimony. Welcome back. [LB1003]

DIANE OLMER: (Exhibit 3) Hello, committee--Government, Military and Veterans Affairs Committee. Thank you for allowing us...for me to testify. My name is Diane Olmer. I am the election commissioner from Platte County, Nebraska. I'm also a co-chairman for the Election Law Committee for Nebraska Association of...I didn't spell my name, I'll do that right away, I'm sorry...for Nebraska Association of Election Commissioners, County Clerks, and Register of Deeds. And my name is spelled D-i-a-n-e O-l-m-e-r. One thing I want to just mention before I forget, listening to Mr. Morfeld's testimony--he mentioned that we have the ability right now to produce a list of addresses and linking it up to ballot styles. We do not. I can print a street file list for each precinct for my co-workers, but it lists a precinct part, which is not a ballot style. Right now I have several precincts that have maybe 15 precinct splits or...I want to say this right, precinct splits--and in the primary or general election I won't use all those precinct splits. Some of those splits are for rural fire districts or school boards or NRDs, and as the primary election comes and things get combined I won't use them all. So the ballot style number is not the same as a precinct part split. A street file list will go to precinct part split, but it won't go to ballot style numbers. And those numbers change with each election; my precinct part

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numbers don't. So in an election, that precinct that had 15 splits for possible ways people could get ballots or have different races on it may only come down to 2, so...or it may come down to 4. So our present...and I've tried printing out that list. It does not go to ballot style numbers. It only goes to precinct part splits. So there's another...the only way I could explain it to my workers would be to manufacture on my own another list saying--okay, here's your precinct, these precinct parts all get this one style, and so on and so forth. And the thing we don't like to do is have our poll workers making a lot of decisions on their own instead of those decisions being made in the office. I just truthfully think that's wrong; his statement was wrong. And if he called ES and asked and they prove me wrong, I'd live to have that list. But we've checked that out before, and it does not work that way. My original presentation was going to start out with voter registration. The purpose of voter registration is to produce a good poll book for the poll worker. A person comes in to register to vote--through the mail or DMV or in the office--and from that registration we determine where they live. Your address tells us everything--tells us your school district, your NRD, any...it tells us everything we need to know to prepare that list for the poll worker, so that when the poll worker...you come in to vote and the poll worker looks at the list, it's in black and white what ballot you get. And as far as--well, is that a big deal? Couldn't we just send some maps out? There are some voters that come in the office and they're on a line or an address hasn't been entered correctly. We end up using a set of maps. We may go to the assessor's office. There is some deliberation in a lot of voter registrations that come into the office. Now to push that decision on to a poll worker is not fair for them. A poll worker only does that job twice every other year, twice in the same year. And we have the tools that we need to determine what ballot they get. It's just not fair to increase the number of provisionals; and, too, every provisional that comes in requires that job, unless you are lucky enough to have a lot of precincts where there's only one ballot choice there. I think sometimes...I guess I shouldn't say this. Some of the bigger counties, maybe they do have that option where they can just break up their county so that there aren't very many choices. In Platte County, especially in the rural, we have a lot of ballot choices every election, and the reason for it is school districts and pretty much NRDs. Platte County has four NRDs, and I think one of my precincts has three of them in it. And sometimes Platte County precincts for school districts--they can have at least five in one precinct. So all those different ways that ballots can be combined--make all those choices...and the same argument that we give for not wanting election day registration is there's always the chance a voter will get a wrong ballot. We do encourage our poll workers to contact us so that we can determine what ballot the voter is supposed to get at the polls, but there are times when the phone lines are busy or they're in an area where a cell phone doesn't work. Contact is not always available. And how important is it that? Well, so one or two voters got a wrong ballot. You're elected officials, and I don't think you want anybody voting in your race that's not supposed to or somebody showing up that's supposed to that didn't get to; and that's what could be happening. We take our job very seriously, and we want to make sure that everybody gets the correct ballot. Increasing the number of provisionals just isn't a good thing, and I pretty much...I'm predicting there

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will be more than Mr. Morfeld said. I predict if this goes through, it will be advertised about the great thing that we have in Nebraska now and you can go from county to county and if you don't get in...and so people will think, why do I even try, I'm just going to do that; and so we will have more provisionals. I just don't see that we won't. The time involved--I know this amendment that has been brought up about requiring us to have our voter history in in five days...I'm not saying that we can't do it. It will be an extra burden; I will have to hire extra help in the office. I don't know that everybody thinks that the day after election that just means our job is over and we're just sitting there twiddling our thumbs or what we...I have extra people hired the way it is to prepare for the canvass board, to start dealing with the provisional verification reports, the media, everything else. If I would have to just Platte County--and I just pretty much have about 20,000 registered voters--get my voter history in in five days, I would have to hire somebody or probably a couple people. The other thing about getting it done in five days is there are some counties that are smaller that I think they only have maybe one computer that they have their election stuff on. There are problems with this five-day thing--not saying we couldn't do it. We could, but then a lot of counties that are smaller, they're done canvassing maybe in one or two days. Well, now they're not going to be. We're all going to be dependent on everybody else. I always get voters coming from Omaha and usually...or Lincoln and vice versa, so we are all going to be dependent on what goes on around the whole state. The way that it could work is we've all been kind of introduced to electronic poll books with some of our vendors. If we had an electronic poll book where a person signs in and your voter history is recorded right away on that--it's a computer, a laptop...and then one way to get your voter history after that as the election is done--and some kind of chip comes out of there or you download it from that computer to the election computer; that would be, you know, it would solve the voter history problem. That electronic poll book would also solve the street file problem, too, because that information on ballot types and connecting to addresses and all that probably would be easier to handle. One of those electronic poll books can cost--I just called ES and asked for this information--about \$1,200. That's just flat-out for the electronic poll book without the extra costs of programming, startup, and continually every election you'd have to pay to have it reprogrammed for that election. And I don't know, I know the state isn't attempting to spend much money this year, and so I doubt that they would give us the money to buy those things, and the counties are strapped also. So I would hope that that wouldn't be something that it sounds like a great idea and, yeah, we'd love to have it, but it's not something that any of us can afford right now, even though it would be a way to accomplish this. I think sometimes election commissioners and county clerks get a bad rap. We come here and we only testify against everything that you want to make better for the voter. I myself, I can only speak for myself, but when it comes to voters, we bend over backwards to try to find ways to allow them to vote and to count their ballots. Neal Erickson and his office has stressed to all of us that our job, when it comes to provisionals, is try to prove them right, so we do. It bothers me a lot to have to reject even one ballot and...but we still have to take the statutes into account, and we do. Now we're going to increase the number of provisional

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ballots. Well, guess what, we're going to have more rejections. I just don't think provisional ballots is a handy-dandy tool to solve any problems. More provisional ballots is not a good thing. It's making the system worse. There's more chance for error, wrong ballots, everything. I feel a little guilty when somebody walks into a polling place and they're not on the list, and they say, well, you can vote provisional. Well, we're not required to explain the whole process to them, although I explain it to my poll workers and I hope they explain it to the voter. But sometimes I feel like I'm a bad parent--how I would treat a child if I said, you know, if you would just do this, this will solve this problem--all along knowing in my mind I am never going to count that ballot, because they aren't on the list, they didn't show any proof that, you know, they even were registered in another county. It makes them happy right now--but we got them out the door. It's like...I don't know what you want to call it, it's like being a bad parent to a kid. I feel guilty about doing things like that. It's misleading voters, I think. So in conclusion, unless I left anything out, I think provisional voting is an imperfect process. We should limit it instead of expand it. And that's how I feel, and that's just my feelings. (Laugh) So thank you for listening. [LB1003]

SENATOR AVERY: All right. Thank you. Questions from the committee? Senator Karpisek has a question. [LB1003]

SENATOR KARPISEK: Thank you, Senator Avery. Ms. Olmer, I'm glad to see you opposing a bill other than mine. (Laughter) It's been awhile. I definitely do see what you're saying, and I just want to say I appreciate you saying how you think that this could work if we go to the notebooks at some time. So you just think maybe this is an idea before its time? [LB1003]

DIANE OLMER: I actually do. I'm not opposed to the idea, because when we first got the statewide system, there was some mention of that, and...but when you...and usually when I come here to testify, it's mostly to tell you...this, in this case, the idea is good; but when you think about how it's really going to work--okay, what are we going to do with it in the office? How are the poll workers going to handle this? What's it going to mean to the voter? I don't think that it will work now. [LB1003]

SENATOR KARPISEK: I do like the idea, because it does seem crazy that you could move all the way across a county 40 miles and still have a provisional, but you could move half a mile or a few blocks and not have it count. But I do appreciate you... [LB1003]

DIANE OLMER: I understand that. [LB1003]

SENATOR KARPISEK: ...understanding or telling...making us understand a little better and thinking that there are ways that maybe we're moving that way. So thank you. [LB1003]

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DIANE OLMER: Okay. [LB1003]

SENATOR KARPISEK: Thank you, Senator Avery. [LB1003]

SENATOR AVERY: Thank you, Senator Karpisek. Anybody else? See no questions. Thank you. [LB1003]

DIANE OLMER: Thank you. [LB1003]

SENATOR AVERY: Any other opponent testimony? [LB1003]

BETH BAZYN FERRELL: Good afternoon, Senator Avery, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm an assistant legal counsel with the Nebraska Association of County Officials. I don't think that I can say anything more on this bill than the exchange that Senator Karpisek and Ms. Olmer just had. We think this is an idea that's good in concept, but it really is before its time. It's just at this point we can't implement the way it is, but down the road it's certainly a possibility. Be happy to try to answer questions. [LB1003]

SENATOR AVERY: Questions? Senator Krist. [LB1003]

SENATOR KRIST: I'm not going to pass up the opportunity to say this. An idea before its time supported by an IT upgrade that will make all these ideas possible. Thank you for your testimony. [LB1003]

SENATOR AVERY: Any other questions? No other questions. Okay, thank you very much. Any more opponent testimony? All right, we'll move to neutral testimony. Anyone wish to testify in the neutral position? All right. Well, Senator Giese has left, so I presume there will be no closing. That ends the hearing...oh, wait, I'm sorry, I've got some opponent letters. (Exhibits 4, 5, 6, and 7) I have here a letter of opposition from Secretary Gale; an e-mail letter of opposition from Joann Fischer, Knox County Clerk; another letter of opposition from Sandra Stelling of Jefferson County Clerk; and a final one here from David Shively of Lancaster County in opposition. Now that ends the hearing on LB1003 and the hearings for today. Thank you very much for coming. [LB1003]