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COMMITTEE ON GOVERNMENT, MILITARY AND VETERANS AFFAIRS
January 20, 2005
LB 36, 53, 35, 98

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 20, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 36, LB 53, LB 35, and LB 98. Senators present: DiAnna Schimek, Chairperson; Pam Brown, Vice Chairperson; Carroll Burling; Deb Fischer; Mick Mines; Rich Pahls; and Roger Wehrbein. Senators absent: Chris Langemeier.

SENATOR SCHIMEK: (Recorder malfunction)...Affairs Committee. We have a full agenda today and I would like to get started as soon as we can. For the record my name is DiAnna Schimek; I represent the 27th Legislative District here in Lincoln. And I would like to introduce the rest of the Government Committee members. I'll start over to the left this time, and I'll start with Deb Fischer, who is from Valentine, Nebraska; next to her is Senator Mick Mines of Blair, Nebraska, who both of them are new members of the committee; as is Roger Wehrbein from Plattsmouth, Nebraska, who is next to Sherry Shaffer, who is the committee clerk; next to me is Christy Abraham, who is the legal counsel for the committee; and next to her is Senator Pam Brown of Omaha, who is the Vice Chair of the committee this year; next to her is Senator Carroll Burling of Kenesaw, and both Pam and Senator Burling are existing members of the committee, back with us again; and finally Senator Rich Pahls of Millard, Omaha, and he is also a new member of the committee. So I think we will be sure to take time to answer any questions that might arise today. The exact order in which the hearing will be held will begin with LB 36, then LB 53, LB 35, and LB 98; the same order in which they were posted at the door. There is a sign-up sheet over near the door, and those look like this. And if you wish to testify, please complete these forms before you come up to the table to testify. And then be sure that you state your name clearly for the record and spell your last name for us. If your first name is kind of different, spell that for us, too; it's just for the transcribers, mainly. There will be a separate sign-up sheet today, because there may not, depending on how we go, there may not be time for everybody to testify. I've got quite a list of names to testify on LB 53. I'm going to ask that people who testify keep their remarks concise; you know, two to three minutes; if you

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could all hold it to two or three minutes, then we'll get to get everybody who wants to testify. If we don't, we may have to cut some short. But we'll hope for cooperation on that. We ask the introducer, and in case of today that will be me, every bill. I'll be making a statement to introduce the bill, and then after that we will take proponents of the bill, and then opponents, and then those who wish to testify in a neutral capacity, and sometimes I may even do a closing statement, depending. We would ask that if you have written testimony, that if you have copies we'll pass them out to the committee. If you don't, we'll make copies and we can do that and see that each committee member gets them; that's at your discretion. And finally I guess I should introduce the page. And I haven't met her yet. I've met Victoria Centorino from Ft. Lauderdale, Florida, who is a...isn't that right? Oh, Krystl, Krystl Knabe. Is that right, Krystl?

KRYSTL KNABE: K-nob-bee (phonetic).

SENATOR SCHIMEK: Knabe, from Nehawka, Nebraska. And a UNL student?

KRYSTL KNABE: Yes.

SENATOR SCHIMEK: Okay, thank you for being with us today. And please, if you've got cell phones on, please turn them off at this time so that we don't interrupt the testimony. With that, Senator Brown, I'm going to turn it over to you and wish you luck.

LB 36

SENATOR SCHIMEK: Good afternoon, Madam Chairman and members of the Government, Military and Veterans Affairs Committee. For the record, my name is DiAnna Schimek, and I am here to introduce LB 36, which is a bill that would provide that a person who has not registered to vote, could vote on election day at the office of the election commissioner or the county clerk in his or her county of residence. Persons who register to vote on election day will vote by provisional ballot and will certify that this is the first time they have registered to vote since taking up residency

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in the county and that they will only vote in the election with this ballot. And I should mention that this bill is a recommendation from the Vote Nebraska Initiative Task Force which was actually formed by this committee and which met and issued its report in December. Evidence was presented to the Initiative showing that states having same-day voter registration had high voter turnout, or higher voter turnout, at least, particularly among younger voters. Six states currently have same-day voter registration. And this recommendation, of all of them that you are going to hear today, and there are four other recommendations, this one probably caused the most discussion and maybe the most division. The vote was 9 to 6 in favor of, with I believe it would be fair to characterize the people who were opposed were mostly election commissioners, county clerks--election officials. One of the concerns raised was the problem of poll workers not knowing which ballot to give to a citizen who shows up at the poll to register and vote. And, as you know, Nebraska has a lot of different political subdivisions, and a polling place will have multiple ballots. Which ballot a person receives depends on his or her address. LB 36 addressed this concern by requiring persons to register to vote at the office of the election commissioner or county clerk, not the polling site. So that would avoid some of the confusion for your election workers. There were also concerns raised about voter fraud and allowing people who are not qualified to vote. These concerns were addressed by requiring persons to vote provisionally. The person voting provisionally certifies that he or she is eligible to vote under penalty of election falsification, which carries penalties. And I would like to say as I close that it was a real pleasure serving on this task force with the Secretary of State and some of the election commissioners and county clerks and various other individuals from across the state. It was really a good experience, and we talked a lot, just ask Chairman Gale. With that, Madam Chair, I'd be happy to try to answer any questions.

SENATOR BROWN: Any questions for Senator Schimek? Seeing none, thank you. Those in support of LB 36?

PEGGY ADAIR: (Exhibit 1) My name is Peggy Adair, A-d-a-i-r, and I represent the League of Women Voters of

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Nebraska, and I will be brief. The League of Women Voters of Nebraska supports LB 36 as a method to provide inclusive enfranchisement for the citizens of Nebraska. The process of permitting citizens to register and vote provisionally on election day will encourage new voters and underrepresented voters to participate in shaping the futures of their communities. Some members of the League of Women Voters are trained to register voters, and League members would welcome the opportunity to offer their services on election day if this would help to ease the burden on staff in the offices of the election commissioners, particularly in Douglas and Lancaster counties. The League of Women Voters believes in the full and informed participation of citizens in their government, and we urge this committee to send LB 36 to the full Legislature for discussion. Thank you, and I will welcome any questions.

SENATOR BROWN: Thank you. Do you have questions for Ms. Adair? Thank you.

PEGGY ADAIR: Okay.

SENATOR BROWN: Any others in...any other proponents of LB 36? Any in opposition? Opponents? Any neutral?

_____ : There was an opposition back here.

JOHN GALE: Madam Chairman, I would be testifying in opposition and I don't recall if you called...did you ask for opponents?

SENATOR BROWN: I asked for opposition. Is there someone that wanted to testify in opposition? Please come up.

_____ : You asked for a show of hands.

JOHN GALE: Madam Chairman and members of the committee, I'm John Gale, Secretary of State for the state of Nebraska, and chief election officer. Having served on the Nebraska Initiative Task Force with Senator Schimek and a number of other very dedicated citizens, it was a very educational process and this was one of those things that did generate a lot of controversy and a lot of discussion and I think was very educational. Basically, I am opposing the bill simply

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because I don't think it is going in the direction that I would like to see us go in elections. When you realize the congestion that this can cause on election day in the county courthouses, and particularly the county clerk or county election commissioner's office, when you have absolutely no expectation of how many people might show up who are unregistered and who at the last minute decide that they do want to register and vote, and they know ahead of time that they can show up on that day at the election commissioner's office or the county clerk's office, we all know what it's like to stand in line to get a new driver's license or new licenses for our car and how long a line of 30 or 40 people might take to complete the processing, and most the time they're standing, grumbling in the halls, blocking doorways and getting in the way of other traffic. But we may be talking, in this instance we may be talking as many as 500 or a 1,000 people in Douglas County or in Sarpy County or in Lancaster County, showing up on election day. And this is one of the busiest days of the whole year for the county clerks and election commissioners. They have a well-trained staff, but they are focused on counting the absentee ballots for their county and making sure that their precinct books and ballots are distributed to all the precincts and that their poll workers are showing up. And meanwhile they're going to be confronted with this horrendous task of having a 1,500 or 250 people showing up wanting not just to vote, but wanting to register and have to go through the registration process and somebody having to key in all of that information into the voter registration system, and then they have to have a ballot. And if it's a county that doesn't have electronic voting equipment, it means they have to find the proper ballots for that individual voter; in Douglas County there would be 3,000 ballot faces and they have to find the right ballot faces for each one of those 1,000 people that are standing in the hall. Then they have to get the votes cast, and then they get put into a provisional status, and then they have to be processed all over again several days later as provisional ballots. So not only are you creating congestion in the hallways, you're creating significantly increased processing of those ballots when the provisionals are counted. Since we have a registration system that's probably one of the more liberal in the nation where people can register right up until ten days before an election, and we have close to 85 percent

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registration in the state of Nebraska anyway, why do we need this extraordinary legislation when we already have very significant success in promoting voter registration--a number of nonprofit organizations, political parties, government entities, all solid behind voter registration? Why don't we stick with what we have that works, which is a solid, sound voter registration system with a date that's a very liberal date, ten days before an election, and then allow our election commissioners to run their elections smoothly, efficiently, without congestion, without burden, without undue surprises on the election day, which could cause far more controversy than the congestions that we encountered in some of the precincts in Douglas County and Lancaster County in this last election when we were only dealing with a couple hundred people showing up unexpected in those precincts? So I think this would be legislation that, as chief election officer, I would oppose. Thank you. Thank you.

SENATOR BROWN: Secretary Gale, could we...?

JOHN GALE: Possible questions? Certainly. I just about got away. (Laughter)

SENATOR BROWN: Senator Burling.

JOHN GALE: Senator?

SENATOR BURLING: Mr. Gale, do you happen to know how many other states have similar legislation as being as proposed here?

JOHN GALE: I think that six; six or seven.

SENATOR BURLING: You looked at...the committee looked at that?

JOHN GALE: I have...we did look at that in our committee; it's in our report. I think there are six states that have election day registration, and one state that has no registration. North Dakota, a state of some 500,000 has no registration requirements. And that's a good point. In that sense it's not a strong national trend in the direction of election day registration.

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SENATOR BROWN: Any other questions? Senator Mines.

SENATOR MINES: I do. Thank you, Senator Brown.
Mr. Secretary, hi; nice to have your here.

JOHN GALE: Senator, thank you.

SENATOR MINES: As Nebraska transitions to more of an electronic process, do you think that it would be easier and be a better process so we could have same-day registration, if all the county clerks or election commissioners had an electronic database, as an example? I mean, is it a period of time we can get to this point, or is it simply undoable, in your opinion?

JOHN GALE: Well, the day may come. I think the direction that elections are going is more toward mail-in ballots. The complexity of elections anymore, where you have as many as 26 initiatives that the people in California ran into one year, Oregon had some 16; that's a lot of information to try to digest standing at a voting booth in a precinct. Oregon has about 85 percent turnout because they're an all mail-in state. Washington had about 60 percent of mail-in ballots in their election this last year; Florida had about 33 percent. I think the direction is to give voters more time and more opportunity to work on their ballot at home, at a place of their convenience and their timing, rather than trying to shove everybody into the same format of having to go vote on the same day at a precise location which may not be convenient at all for them, and for them to try to process something that is incredibly more complicated than it was 50 years ago or 75 years ago. So I don't know that we would ever end up with this system as an answer to anything in particular.

SENATOR MINES: Thank you.

SENATOR BROWN: Mr. Gale, you said that ten days was an extremely generous amount of time. Is that a standard in a number of other states? What is the amount of time, ahead of time, that most states require for registration?

JOHN GALE: I don't know the numbers; Mr. Erickson might

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know. Twenty days is not uncommon; 20, 30 days is not unusual. I think the states that have larger counties, larger metropolitan areas, need more time and they're more likely to have a longer cutoff time. For Nebraska, the ten days works for most all counties. Douglas County really scrambles with that because they have quite a few precincts and they have to have the poll book prepared, and the balance prepared and distributed out to their precincts, and they can't prepare the poll books until they've cut off the registration. So they have ten days to get all of the poll books prepared and ready to be distributed. So I'm sure they would love to see 20 days in Nebraska just simply because of the complexity of that size of county. So that's why probably in the smaller states it's more likely to be ten. Larger states it's more likely to be 20 or 30. I think that would be my best guess.

SENATOR BROWN: Any further questions? Thank you.

JOHN GALE: Okay, thank you, Senator.

SENATOR BROWN: Others testifying in opposition?

SHERRY SCHWEITZER: (Exhibit 2) Good afternoon. My name is Sherry Schweitzer, and that's spelled S-c-h-w-e-i-t-z-e-r. I'm the Seward County clerk and also cochairman of the legislative committee for county clerks, election commissioners, and registers of deeds. First of all, I commend the Vote Initiative Committee. I know a lot of time was spent on that, a lot of meetings and a lot of collective thoughts gathered with that information. I'm here on behalf of the association to oppose LB 36, not to hinder those who went to vote, but by keeping a system such as Nebraska's at the highest level. Currently, there are multiple ways to register to vote. You can come in our offices and vote; you can register when you get your driver's license; you can register if you get aid from government offices like HHS; you can register by mail, using a postcard; you can register at several locations that county clerks assist in setting up prior to elections that would be helping League of Women Voters, things like that; or parties have extra places where you can register. You can even open your phone book up and get a voter registration there and send it in. County clerks and election commissioners also put notices in the

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paper, where to go to vote, how to vote, when the deadline is to vote. Unless you move into a new jurisdiction after the deadline, there are multiple ways to register. And even if you do come in to a new jurisdiction after the deadline closes, if it is on a presidential election you can still come up to our offices and vote for President. By allowing people to vote and register and vote on election day, you are asking county clerks and election commissioners to incur more cost for ballots and staffing, as well as more chaos on probably the busiest day of the year. More ballots will need to be kept in our offices for those indeterminable amount of people who failed to register. During the last election, by noon I told five of my precincts to quit calling me because they could handle provisional voters because they had only one ballot to choose from. I was so inundated with people who had moved within the county and were eligible to vote with the provisional ballot, and that process is working, by the way, for those who move within the county. If I would have 50 to 100 people coming in to register to vote in addition to all the work involved in my office on that busy day, I probably would need to hire an extra staff person. Where would I let these people vote? I don't have extra room to accommodate my office being declared, really, a polling place. Having statutes that require registration helps us to plan for 50 or 500 or 1,000 people, for all those who are in a certain precinct. How would I ever be able to plan for those coming into my office and wanting to register and vote on that last day? I'm in Seward County with 11,000 registered voters. Now imagine, Lancaster, Douglas, Sarpy, where they may have hundreds of people coming in, how could they plan? I can surmise what some people will say when they learn they can do this. Don't worry about registering to vote, you don't have to. All you have to do is go up to the courthouse on the election day; you can register and vote there. And believe me, after time, this is what would happen. I don't think that's the real intent of this legislation but I can assure you that in time that would be something that would probably become a problem. Over the past years Nebraska has already expanded the registration process as wide open as it possibly can. If this bill is passed, you will make the voters' responsibility to register to vote a taxpayers' obligation. Thank you. Any questions?

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SENATOR BROWN: Any questions?

SENATOR PAHLS: I have a question on paragraph 6 you talked to about the provisional voter. Just clarify to me, that's a person who moves within the county?

SHERRY SCHWEITZER: Basically, yes, or if someone feels that they registered to vote at some time, possibly through their driver's license, for some reason they are not on the register, when they go to the polls they are able to vote a provisional ballot. That gives us time to research it after the polls close. The canvassing board can process it. Maybe they were put in the wrong precinct book by typographical error in the computer; you know, there's a wide variety of reasons. But it allows someone to at least cast their ballot and let us investigate the reason that their name wasn't on the register.

SENATOR PAHLS: And how many did you have this last election?

SHERRY SCHWEITZER: I had around 125 provisionals.

SENATOR PAHLS: Okay, because I noticed in Douglas County they had 8,000 to 10,000.

SHERRY SCHWEITZER: Oh, sure.

SENATOR PAHLS: I was just...

SHERRY SCHWEITZER: I have a population of 16,500. You know, you deal with size there.

SENATOR PAHLS: Right. Okay, I was just...

SHERRY SCHWEITZER: But even so, if I were to estimate that I would have 50 people coming in on that day, I can assure you that as busy as my staff is, and in most county clerks' offices we don't hire extra staff...we do a lot of things, we're running to a polling place if they have problems with their supplies or whatever...imagine coming and having people come in and register and vote. I would also, usually you keep a number of ballots in your office so that if someone comes up and wants to be an agent for someone who is

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in the hospital, for whatever reason, so that they can vote on that day. I usually keep maybe five or six ballots, I have 56 different kinds of ballots for Seward County. And if I were to have to keep enough, probably 20, 25, for each split, because of course you could never plan, you would never know where these people are coming from, that would register, that would take an increase in cost, you know, because of your ballot printing and just trying to plan for something that you would have no idea on how many to plan for.

SENATOR BROWN: Any other questions? Thank you. Other testifiers in opposition?

DAVE SHIVELY: Good afternoon, Senators. My name is Dave Shively, that's S-h-i-v-e-l-y. I'm the Lancaster County Election Commissioner and I'm here today in opposition to LB 36. Sherry mentioned many of my concerns so I won't reiterate them. But I...probably one of the biggest concerns that I have that she did mention I will talk about is having the room and the staffing on election day. We take great pride in our county and I think all county clerks and election commissioners do too, to be able to answer the phone, to respond to voters on election day if they have concerns or problems, or problems locating their polling place, or anything else. Adding another set of circumstances where we will continue to be even busier by having people come in, will cause us some concerns. The other concern I have is these now all of a sudden become provisional ballots. And in our last election we had somewhere, here in Lancaster County, near 4,000 provisional ballots cast. And we have seven days after the election to get those provisional ballots tabulated, and this would just add to that number. We struggled to make that 5 o'clock deadline on the Tuesday following the election to have everything into the Secretary of State's Office. We actually struggled to do it. It was actually the first time in an election here in Lancaster County that we actually had our staff come in and work all day Saturday and most of Sunday so we were able to get that done. Usually we'll like to have that weekend, because we're usually so tired from the week's events, to try to have that weekend to recuperate. But we weren't able to do that. We actually worked that whole weekend, which in addition cost us

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additional overtime costs for our county. I think one thing we do real well here in Lancaster County, I think as all election commissioners and county clerks do is really we do a lot of efforts to make sure people are registered to meet that ten-day deadline. Here in Lancaster County, in the month of September and October, we had over 11,000, just a little over 11,000 new registrations that we processed in that time, and a little over 14,000 changes. So people are aware of the deadlines and they do take the chance to get in to get their registration. The last two days of voter registration, the Thursday and Friday before registration closed on a Friday, the Thursday and Friday, we were nonstop in our office with people coming in and registering to vote. We make a lot of efforts. We held over here in Lancaster County, we had over a 100 outside voter registration sites in those two months where we work with the League of Women Voters and other groups to provide a...we deputize as voter registrars, and they go out and they actually register people. So we make a lot of attempts to do that. We have over 200 display sites here in Lancaster County where we have voter registration cards out so people can do that and get registered. The question was asked earlier about the deadlines in other states. And it's usually an average between 20 and 30 days. Federal law evidently says that you can't cut off registration any less than 30 days prior to an election. So I encourage this bill not to go forward; I hope you do not send it out of committee. Thank you.

SENATOR BROWN: Are there questions? Senator Fischer.

SENATOR FISCHER: I have a question here, Dave. When you talk about provisional ballots, and they have to be investigated and then you determine if they're valid or not? Do you hold those ballots back? How do you know whose ballot is whose, and how do you throw them out if they aren't valid?

DAVE SHIVELY: When a person casts a provisional ballot, they fill out some paperwork and there's an oath for them to sign that's on the front of their provisional ballot envelope. And then we ask them to fill out a voter registration card, and now they have to complete a pin number so they can check on their ballot afterwards. It goes in a pocket that we make on the front of the envelope,

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and then their ballot is actually sealed inside of the envelope. When we get those back to the office, then we will first verify to see whether they were registered in Lancaster County at another address and have moved to a new one, and then that would qualify for that ballot to be counted. If we can't find that they've done that, then we do some additional investigating to see maybe if they registered to vote through the Department of Motor Vehicles when they got their driver's license, or at another government agency. We'll make every attempt to try to make sure if we have any record that that person had attempted to register to vote. And if they had, then that ballot would be counted. So the ballot is actually sealed in an envelope, and the only ones that are actually opened are those ballots that have been approved. And then canvassing board, each has the final authority to approve all of those.

SENATOR FISCHER: How do you keep it a private ballot? Just like absentee ballots, how do you keep those private ballots then?

DAVE SHIVELY: Well, as I said, they are sealed in an envelope.

SENATOR FISCHER: Right. But you open it to count it.

DAVE SHIVELY: When the canvassing board goes to open them, there are instructions that we have, and here in Lancaster County is that they're to place them face down so that they can't read the front of the ballot. They open them, they pull the ballots out, and then they always double check to make sure they have 20 ballots and 20 envelopes, so they always double check the count. But the ballot, we ask them to turn that over and so they cannot look at the name on the front of the ballot.

SENATOR BROWN: Senator Mines.

SENATOR MINES: Thank you, Senator Brown. Mr. Shively, if in fact the purpose of LB 36 is to increase voter registration, and quite frankly, the average person, it doesn't resonate with them or me that your office might be busier because of this; I mean, that is your job and it...you can plan for things. So whether or not an office

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is busy doesn't hold a lot of water. I hope you're just overwhelmed with people wanting to register to vote. What does make sense to me that I didn't understand till you sat down is you do have a deadline to compile all the information. And unless you're able to plan for that and unless the process is in place, I can understand how there would be serious complications. Secretary Gale would send the election police out after you. Also what resonated is the different number of ballots that you have to maintain. And I assume that because you have to print...in it you have to print them in advance advance, obviously, but a very short time. You rely on the total number of registrations in order to order ballots, is that correct?

DAVE SHIVELY: That's correct. We usually try to make an estimation on what we anticipate turnout will be...

SENATOR MINES: Okay.

DAVE SHIVELY: ...and to get ballots printed. The one other was mentioned earlier regarding the number of ballot faces. In a general election it's not as many as we actually have in a partisan primary election where we have to have the same number of ballots for each party in each election, too. We had in May of 2004, close to 2,300 ballot styles here in Lancaster County.

SENATOR MINES: See now, that's important. Thank you very much.

DAVE SHIVELY: You bet.

SENATOR BROWN: Any other questions? Thank you.

DAVE SHIVELY: Thank you.

SENATOR BROWN: Other testifiers in opposition?

SANDRA STELLING: Good afternoon, committee. I'm Sandra Stelling, Jefferson County Clerk, Register of Deeds, and Election Commissioner, and cochair of the legislative committee for the clerks, register of deeds, and election commissioners. I am here in opposition of this bill. I really think we need to look at a lot of things that this

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bill has to say for us. As for my day, we have other things going on in the office since I hold three offices. I also have a board meeting that day, which maybe some of you have been commissioners or supervisors, so you know what that day is like also. This is adding one more thing to my office that day. We try not to hire extra people because this is an entry voter registration; they have to know where they are in the precincts in the county. It probably, my county wouldn't be as much of a hardship as Lancaster, Douglas, and all the other bigger counties, but it's still one more burden that it puts upon us. One question I would have for you, where is the voter's responsibility? This would be one more new thing for my county, as this will be my first electronic election, as I understand for over 40 other counties. So we're going to have a lot of new things out there that we're going to have to contend with, let alone if you put this on us too. And I'm sure the Secretary of State's Office will have lots of questions from all of us counties who don't understand or we have questions about how we should have done it or maybe we shouldn't have done this. A few other concerns: how are we going to plan for how many ballots we need? Where are we going to store them? A lot of these courthouses are old; we don't have the storage space. This is one concern. How many much more for staff? Are we going to have to hire somebody? How are we going to get everybody trained? And what supplies are we going to need? I'm not going to go into everything else that everybody else has gone into. So if you have any questions, I'd be willing to answer them.

SENATOR BROWN: Any questions? Thank you. Any further testifiers in opposition to LB 36?

DIANE OLMER: (Exhibit 3) Good afternoon, Senators. My name is Diane Olmer, I'm the election commissioner in Platte County. Platte County had the option of letting the clerk do this job or having the election commissioner as a whole separate office. Years ago, I think it's about, it must be 25, 30, they decided to have my office just handle the elections. I get comments from other counties: well, you must have an easy job because you don't have to be the clerk and the election commissioner. Well, it's just like any county, when you get to a certain size you need a staff just for that purpose. We're talking about how busy we would be

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on election day. I do have to hire; I plan on always hiring extra staff on election day. For about three months I had this year, usually I hire two extra a couple months before and a couple weeks after. This year we were very busy with the turnout, and I had to hire four to six extra people. And on election day our main goal is to be able to help the voter and my workers. My other goal is to be able to answer every phone call that comes through, whether it's the voter or the workers, and for anybody to get any breaks that is a real commitment. We do have other people coming into the office. We have people coming in that maybe moved and they want to get their paperwork with us. We let them fill out the provisional papers and then we send them all to the polls. We try to help the poll worker out. We are busy getting the absentee voting counting done or started. We do that during the day. So that's another area of staff we have to take care of. We have to take care of the media; they're always there. There are many things that happen on election day, and we don't have a short day like our poll workers know, if they're at work at 7, we have to be there too to answer their questions and phones. When do we get home? If we get home at midnight, we're lucky. And if I would have to have this extra duty, I would hire extra help. There again, that just seems like no big problem--hire extra help. My election this year just for Platte County cost \$47,000. What did I get to bill out for it? Twenty percent. That's all the county gets back. One of my other election officials...I had sent an e-mail out asking other election officials how they felt about this bill. I only got it out last Friday, so we only had three days for them to respond. I got 14 to respond and one of them mentioned, is this another unfunded mandate? This will cost the counties more money. And then when I hire staff, that just seems, well, no big deal, hire somebody else. Well, the only people in my office that really know which ballot, emphatically, to give that voter, are the ones that have worked there all year round. That would be myself and my one full-time staff member. So all the major decisions on which ballot they get, fall to myself and the other full-time staff member. There are some precincts, of course, there's no splits, no big deal. And it just, you tell us, train our people better. I would have to have somebody in there for two months straight to train them. It's not easy to train on splits because if you've ever seen

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a map of the school districts in Nebraska, that is our biggest problem. There are no straight lines. One township or one section can have four different school districts in it. That's what causes our splits, the school districts. And in Platte County we have four NRDs. I have one little precinct that only has 75 to 100 voters, and it had nine ballot types for the general. That meant for the primary it had that many in the Democratic Party, that many in the Republican. There's where the problem is. The poll worker has a problem deciding this. Even in our office, since there's only a couple of us that really know the maps, have a problem deciding this. So it's all going to fall to us. So that's why...I know you don't like to hear we're busy, but some decisions can only be made from experience, and so I can't hire somebody from the League of Women Voters and expect them to know.

SENATOR BROWN: We're getting short on time.

DIANE OLMER: Okay. So...

SENATOR BROWN: Are there any questions?

DIANE OLMER: The other thing is, why are we worried about the six states that do offer this? Why not think about the 44 that don't?

SENATOR BROWN: Any other questions? Thank you. Any other testifiers in opposition? Any testifiers neutral?

MIKE SCARPELLO: In opposition.

SENATOR BROWN: In opposition? Okay. Excuse me, are you neutral?

RICHARD HEDRICK: Yes.

SENATOR BROWN: There's one more opposition.

MIKE SCARPELLO: Good afternoon. Excuse me, my throat is very raw today. My name is Mike Scarpello; I'm the elections manager for Douglas County. I'm here representing the Douglas County Election Commission and Carlos Castillo. Carlos couldn't be here because he's out of the country

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right now on an exchange program with other government officials. As election officials, we basically have two goals, and the two goals are: an obligation to the voters to make voting easy and accessible, and the second voter obligation is an obligation to taxpayers and to provide that service to the voters in an efficient manner. The reason that we stand opposed to LB 36 is that we believe that it would be very difficult to implement LB 36 in an efficient manner because, just to give you some idea of what it's like at Douglas County. We have a facility that's around 9,000 square feet. In that 9,000 square feet, on election day, we are at absolute capacity as it is now. We have 60 phone workers that answer phone calls; we have 200 people who come in to our facility to get placed out to fill in for workers; we have 2,000 workers on election day. A lot of them don't show up so we have these 200 replacement workers that come into our facility to be placed. We have 50 people who count votes; we have 70 people who pick up ballots when the ballots get delivered--we have a bunch of Boy Scouts, adults, people unloading cars. We have probably 100 voters that come in on election day for various reasons. And then we have our normal staff of 50 to 60 people. So we have well over 500 people in our facility on election day. And our facility has, it's a 9,000 square foot facility, half of which is warehouse, and we have 42 parking spaces. It is a nightmare, right now. And we also have...every one of our computer terminals, all of our phone lines, all of our counter space, all of our...everything about the facility is beyond capacity as it is now. Now, if LB 36 is passed, we'd see we estimate anywhere from 500 to 1,500 voters that would be coming in on election day. And the plain and simple truth of the matter is, there's no way our facility can handle it. And I know that one of the goals of the Legislature is not to pass down costs to the counties when it's not necessary. And the fact of the matter is, there would be additional costs. I mean, we would plain and simply have to abandon our facility and come up with a new facility on election day. And I just feel as though, we feel as though that's an unnecessary cost that we'd have to spend, notwithstanding the goal. And I understand the goal of this legislation is to get people to vote, but with our registration system the way it is, I think in Douglas County we have 88 percent of the people that are registered to vote. And we've never had a real big problem with people

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not having access to vote. It's kind of a solution chasing a problem. And that's all I have for right now. Any questions?

SENATOR BROWN: Thank you, Mr. Scarpello. Are there questions? Thank you. Any further in opposition? Any neutral?

RICHARD HEDRICK: Neutral.

SENATOR BROWN: Are you opposition or neutral?

RICHARD HEDRICK: And I am Richard Hedrick. I'm testifying neutral to the bill, LB 36.

SENATOR BROWN: Could you spell your name, Mr. Hedrick, please? Spell your name.

RICHARD HEDRICK: H-e-d-r-i-c-k.

SENATOR BROWN: Thank you.

RICHARD HEDRICK: And as I was listening to the arguments I found that there were some valid reasons against LB 36. The Republicans' arguments I felt were...could impede some people from voting. I was wondering, could this bill be changed for the valid reasons presented? Thank you.

SENATOR BROWN: Any questions?

J. ROCK JOHNSON: My name is J. Rock Johnson; initial J, Rock, R-o-c-k J-o-h-n-s-o-n. Thank you, Senator Brown and members of the committee, for the opportunity to testify. I had not planned to do so, but having heard the testimony that went before I wanted to bring forward that I'm not unmindful of the administrative costs that might be involved or the need to develop other mechanisms so that people might be registered earlier in some other forums. But also what comes to mind is that when this country was founded, white males who owned property could vote. And women's suffrage--the suffrage term comes from women being prosecuted and persecuted until the 18th Amendment and the right to vote. And then we had the Civil Rights Act of 1964, and while I cannot say with specificity any specific

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country, but I'm sure that President Carter could talk about the countries that he has gone to, to have democratic elections, where people stood in line for days for the ability to exercise their right to vote. So I think that we should make every effort that we can to make this right, not just simple or easy, but being given the...that it be elevated, that people understand the significance and that we make every effort as early as possible and that we have some training in schools that people understand the importance and that the exercise to vote is exercised by everyone and everyone should have an opportunity to do so.

SENATOR BROWN: Any questions? Thank you. Any further neutral on LB 36? Senator Schimek to close.

SENATOR SCHIMEK: (Exhibit 4) Yes, thank you, Madam Chair and members of the committee. I will just take a moment or two to give you a few last minute thoughts. First of all, I do have a memorandum that was prepared by Bill Avery, who wanted to testify as a proponent, but he was not either here in time or we got past the proponents too soon, so if I could get the page, please, to make copies of this and give it to members of the committee. First of all, I want to say that I think county clerks and election commissioners, Secretary of State's Office, are very professional. I admire the work that they do and have always found them to be hard workers and to be people who take their jobs very seriously. And I do understand their concerns. I do, however, think that the question here is not whether it takes somebody additionally to see that people have the opportunity to vote, but whether people are going to have the opportunity to vote or not. I do not know where the figure 500 and 1,000 comes from for Lancaster and Douglas counties if we were to have such a system in place. And I wouldn't argue with it; it's probably somewhere in the ballpark. But in just those two counties alone, you're talking about 1,500 people who wanted to vote who didn't get to vote if you don't allow this. These are provisional ballots; we're already doing them. And I know, I understand the problem of all the local subdivisions, and that's a problem that sooner or later this state is going to have to address. We've got far too many local subdivisions. That makes it very complicated in a lot of arenas. One of the things that we might consider doing and that I would at

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least consider, is just the passage of such a policy with an implementation date several years down the road, so that you didn't have the coming on of the statewide voter registration process in 2006, when it's supposed to be in place, and some of the other things, and this too, you know. But maybe if it is a good policy, we should at least consider that this happen sometime soon. I think the testimony was very good and it really did give you the arguments that we heard in the task force, and we spent a lot of time on this. So thank you very much for your attention.

SENATOR BROWN: Are there any questions for Senator Schimek? That will conclude the hearing on LB 36. And we will move on to LB 53. Senator Schimek.

LB 53

SENATOR SCHIMEK: (Exhibits 1-5) I've got too many papers up here, so you'll just have to give me just a moment. Okay. Thank you. Madam Chair and members of the Government, Military and Veterans Affairs Committee, for the record, my name is DiAnna Schimek and I am here to introduce LB 53, which once again is a bill that came from the Vote Nebraska Initiative Task Force. LB 53 restores voting rights to felons upon completion of their sentence, including parole. The bill also applies the same rule to any person convicted of a felony under the laws of any other state and who moved into Nebraska. That is new in the bill this year. Because as the task force discovered when visiting with some of the election commissioners and county clerks, this is a problem. We don't know that it's even being administered. If somebody comes from West Virginia, how do we know they're an ex-felon? And do we have any right to interfere with the way they have set up their system? This is actually the third time I've introduced this piece of legislation. The first time, it was quite controversial; we talked about it a lot. And there was actually another bill introduced at that time. But then in 2002, I introduced a constitutional amendment. In 2003, I introduced a constitutional amendment and a bill, and the bill was advanced to General File. And I guess what I would like to do is to talk about this from the legal aspect

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because there are plenty of people behind me who are going to talk about the pros and cons of this kind of a bill. Current law provides that felons' voting rights can only be restored through the Board of Pardons. As you will likely hear today from people testifying, the process to apply for a pardon can be a long and difficult one. In fact, Nebraska is one of the few states who does not allow felons to vote after completing probation or parole. And incidentally, there are two states in the United States that will actually allow felons in jail, in prison, to vote, and those are Maine and Vermont. There are only seven states in the United States that are as restrictive as Nebraska. In my office, I have received a lot of e-mails and letters regarding this issue. And I would like to have the page pass out these letters for the record. And the first one...do we have a page? Oh, okay. Well, Sherry, do you want to do that then? Thank you. The first letter, I'd just like to read a little bit from it. It's from The Sentencing Project and it does say that our policy do put us in line as one of the most restrictive states in the nation, and that upon completion of a sentence it is important to return to society in a law abiding manner, these ex-offenders, and to have them get involved in the community again. And the thing I want to particularly point out about this letter is that in 2001, there was a bipartisan national commission on the federal election reform; this was right after the 2000 election. And it was chaired by former Presidents Ford and Carter, and this was one of the recommendations of their commission. There is also a letter from the American Correctional Association which strongly recommends restoration of voting rights upon completion of a felony...of a sentence for a felony, I'm sorry. I'm sorry, never mind. There are letters from a gentleman who served on a task force, Gary Hill, and he has had lots of expertise in corrections. And he says that the important issue is whether we in Nebraska believe that voting is an important right of citizenship or merely a privilege given to those who deserve it. And he also goes on to say that this issue helps to define who we are as Nebraskans. I think I'll stop there. I have a whole lot of e-mails from individuals who either have been in the system or have a friend or a child or a spouse who's been in the system, who make pretty cogent arguments. But let me go to what I said I was going to talk about, and that is the constitution versus statute approach

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to this. And we, for awhile I would say, floundered on this discussion a bit. And the Article IV, Section 2 of the constitution, prohibits felons from voting, but recent Nebraska Supreme Court cases have indicated the process of restoring voting rights to felons can be accomplished through statute. To give you an example, and I hope that I imagine the election commissioner from Lancaster County may still be here, but this was a case that came because of a gentleman here in Lancaster County that wanted to register to vote, even though he was an ex-felon. And the case, Ways v. Shively, went to the Supreme Court, and the court said that restoration of the right to vote, and I'm quoting now, "is implemented through statute." This statement implies the Legislature has the authority, through the passage of legislation, to determine how felons' voting rights can be restored. Another argument made against restoring felons' voting rights through statutory changes is if the Board of Pardons is the entity authorized to grant respites, reprieves, pardons, or commutations. Article IV, Section 13, of the constitution talks about this. And the argument goes that to allow the Legislature to restore voting rights through statute, that would be a violation of the separation of powers clause. In other words, if the Board of Pardons, which is an executive branch entity, is the only entity which can restore civil rights, grant pardons and commutations, then the judicial and legislative branch could not perform such functions because of the separation of power clause. For example, in the State v. Philipps, the Nebraska Supreme Court held that a statute which allowed a court to reduce a sentence was an act of commutation, and therefore an unconstitutional statute since only the Board of Pardons, not the judiciary, has the power of commutation. Now please pay attention because this is hard, this is real hard. In response to that argument, the argument would be set forth in the Supreme Court v. Spady. And in that case, Mr. Spady filed a motion to set aside his conviction as allowed by state law. The lower courts held the statute allowing a court to set aside a conviction was a violation of separation of powers because the set-aside amounted to a pardon or partial pardon. The Nebraska Supreme Court stated a commutation was, "a substitution of a lesser or partial punishment." And the statute allowing a court to set aside a conviction was not a commutation because it did not substitute a milder sentence. I had to

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read this a million times to understand it. But the court went on to hold that the statute did not act like a pardon because the person is not exempted from the punishment; the statute did not act like a pardon because the person is not exempted from the punishment imposed for the crime. The statute applied only in limited circumstances and did not nullify all legal consequences of the crime. The same reasoning applies to LB 53. The bill is limited because it restores only voting rights, not the right to hold office or be a member of a jury. Also, it does not substitute a milder sentence. The bill allows ex-felons to vote only after they complete their sentence, including parole. They can't be on probation; they can't be on parole; they have to have been released from a sentence; they have to have served their time. The people who are here today will go into greater detail about why we should do this as a matter of public policy, and I would like the right to close on this particular one.

SENATOR BROWN: Are there any questions for Senator Schimek?

SENATOR SCHIMEK: Oh, and I should mention there is also a...I forgot to hand it out because I didn't have it on my original list...there is also a letter here from the ACLU that I will forward...it came in late today, so...for the record.

SENATOR BROWN: I would ask that the testifiers who are in support of this bill to raise their hands, if you would, please. Okay, we have a number of people who wish to testify. How about people in opposition? We have a number of people who wish to testify, so we're going to be very strict about spelling your name and sticking to the time allowed. So if you would please cooperate.

SENATOR SCHIMEK: And Senator Brown, I think, did I give you the list of testifiers that we had?

SENATOR BROWN: No.

SENATOR SCHIMEK: Okay, thank you. And those are ones that did let us know for sure that they were going to testify, so.

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SENATOR BROWN: Okay. So if we, I'm sorry.

SENATOR WEHRBEIN: Senator Schimek, just real briefly. Do you have any...have you read any history of why felons were originally prevented in the first place over the...any history of that back a 150 years ago?

SENATOR SCHIMEK: No, I have not. And I think it's always been that way as far as I can remember from what we have read. And I would have to defer to the legal counsel on that, if she's read anything in addition to that.

SENATOR WEHRBEIN: I mean it seems obvious, and I wonder if there's something that's not obvious.

SENATOR SCHIMEK: Yeah, I don't know.

SENATOR WEHRBEIN: There was a bias, probably, but there might be another rationale.

SENATOR SCHIMEK: I don't know.

SENATOR WEHRBEIN: I know it may not be...

SENATOR SCHIMEK: The only thing I do know is that states have been undoing those kinds of really strict prohibitions; they've been undoing them; that's the direction everybody's heading.

SENATOR WEHRBEIN: Thank you.

SENATOR BROWN: Senator Mines.

SENATOR MINES: Thank you, Senator Brown. Senator Schimek, a very quick question. Does the law recognize voting as a right or a privilege? I know you're not a lawyer. In discussions, was there discussion about is voting a right or a privilege?

SENATOR SCHIMEK: Voting is a right, I believe, but you're asking me a question that I'm not really very prepared to answer.

SENATOR MINES: Yeah, I understand. I don't want to put you

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in a spot. Maybe another testifier that comes up will be able to answer that.

SENATOR SCHIMEK: It's a right; the legal counsel says it's a right.

SENATOR MINES: It's a right? Well then if Christy says so, she's right. (Laughter)

SENATOR SCHIMEK: I mean that's what I've always taken it to be, but I...

SENATOR MINES: Yeah, I would, too. I would take it as a right as well, but I don't know. Thank you.

SENATOR BROWN: Any other questions? Thank you, Senator Schimek. Now if people would kind of be prepared to come up and speak, and we're going to try to move this along, so try not to repeat what other people have testified to. Thank you.

PEGGY ADAIR: (Exhibit 6) My name is Peggy Adair, A-d-a-i-r, and I represent the League of Women Voters of Nebraska. One of the guiding principles of the League of Women Voters is the belief that every citizen should be protected in the right to vote. Women are particularly cognizant of the harm caused by disenfranchisement, since we were ourselves not permitted to vote in our nation's elections for 144 years. Nebraska is only one of six states that for all intents and purposes permanently disenfranchises persons convicted of any felony. The other states, with the exception of Iowa, are southern states of Florida, Kentucky, Mississippi, and Virginia. It is important to understand that laws preventing people who commit certain crimes from voting, became common only after the Civil War, and began in southern states, as one way to stop black citizens from gaining political prominence. Disenfranchisement efforts worked, as evidenced by the numbers. In 1872, 324 state and federal lawmakers in America were black. By 1900, that number had dwindled to five. The racial impact of ex-felon disenfranchisement is clearly evident. In Nebraska, almost 19 percent of African-American citizens are not allowed to vote due to their status as an ex-felon. Felon disenfranchisement laws

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also affect military veterans. An estimated 585,000 veterans nationwide are not permitted to vote due to felony convictions. While the exact number of veterans who are disenfranchised in Nebraska is not clear, statistics from the national Right to Vote Campaign estimate that number to be as high as 6,600 veterans not allowed to vote. Felon enfranchisement laws, in the United States range from full voting rights while incarcerated, to permanent disenfranchisement, to everything in between. While one estimate places the number of disenfranchised citizens in Nebraska at over 53,000, the number of ex-felons who are not allowed to vote in Maine, Vermont, and Massachusetts, zero. One major concern of the present law in Nebraska has to be the constitutional question of equal protection. Citizens convicted of a felony and who have completed their entire sentence and who happen to reside in Nebraska cannot vote in federal elections. This same group of people, citizens convicted of a felony and who have completed their entire sentence, can vote in federal elections if they happen to reside in any of 36 other states. The disenfranchisement of ex-felons in Nebraska affects more than those who have served their sentence. Poor, minority communities that need political representation most of all are permanently crippled when so many of their citizens are permanently barred from voting. The lack of the ability to participate in the political process affects the very fiber of the community. We hope citizens who have accepted responsibility for their unlawful actions and who have completed their sentences will become productive members of our community. One way to strengthen that hope is to embrace the spirit of the 15th Amendment to the Constitution of the United States which reads, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." And I welcome any questions?

SENATOR BROWN: Are there any questions? Thank you.

DUANE SANDERS: My name is Duane Sanders, D-u-a-n-e S-a-n-d-e-r-s. I appreciate the opportunity to speak. I speak on behalf of friends and families of inmates and those inmates who are currently incarcerated and who unfortunately begin to understand the political process from that side of

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the fence. Up until August of last year, I was also one of those persons, and just recently completed that part of my sentence of 23 years. One of the things that I'm beginning to become more understanding of is the voting process and the political process involved. And over the last several years that importance seems to become more evident. And the other thing that seems to become more evident, and painfully so, is that we're now very intent on deciding who can vote and if they can vote and when they get to vote. And inmates, in particular, are being counted out. And looking at this bill, the thing that seems to count them out, and for some reason them alone, is any person, and I'll just quote the part that is pertinent, "any person is incompetent to be a juror or hold any office of honor, trust, or profit within this state, unless they receive a pardon." And we all understand in the political arena and the legal arena that definitions make a great difference, and who makes those definitions up has the power. And inmates certainly don't sit in that position. But if you are just incompetent simply because you've been convicted of a felony or a misdemeanor and that makes you unable or unworthy of holding a position of trust or a position of honor, then a lot of people who have yet to be convicted or caught, stand on that threshold also. The other point that seems to be evident and impossible is that somehow all inmates whose political views are as varied and as wide across the spectrum as anybody else's, would all collectively get together and vote for a person or some persons asking for a position of office. That's not going to happen. And then the only other two things that might happen is they either all get together and vote for the crooked person, who they know from some contact person or otherwise, or they all vote for an honest person because that person hopefully would do the right thing. We don't imagine that that's going to happen either.

SENATOR BROWN: We're running short on time.

DUANE SANDERS: I think the interest that's invested in our being able to vote is that there are a million-plus incarcerated persons and uncounted felons and misdemeanor holders that do have a political sense of what's going on, however they might come to that sense and understanding. And to have as many people able to participate in this

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process that we say is so valuable and so important, seems more important than trying to classify and disenfranchise and eliminate people from participating in the process.

SENATOR BROWN: Time's up.

DUANE SANDERS: Any questions, I'd be happy to answer.

SENATOR BROWN: Okay. Any questions? Thank you.

DUANE SANDERS: Thank you.

DICK HERMAN: Members of the Government Committee and Senator Brown as Chairperson, my name is Dick Herman, H-e-r-m-a-n, from Lincoln. I essentially represent myself, although I'm a member of the Coalition for Voting Rights. I'd like to make essentially four points. First, all is referred to this effort as ex-felons. We see frequently in the public press, "felon voting." It's not "felon voting." Nobody is asking for felons to vote. So we need to make that very clear. A second point is obviously as Senator Schimek has explained, there may be legal challenges to this bill. It would be grossly unfair to ask the Attorney General for an opinion. The Attorney General is one of the three members of the Board of Pardons. It's really outside of his area to render this kind of judgment. And I'd like to throw out a suggestion, that you could look to retired Nebraska Supreme Court judges, if you wish, which has never been done but it's a possibility, to examine the constitutionality of this particular measure, LB 53, which is argumentative and I find myself on the side of the statutes, in this case. Secretary Gale spoke at the League of Women Voters luncheon here about three weeks ago, and he was very gracious and forthcoming and he answered a lot of questions, one of which was, how many ex-felons do you think there are in Nebraska? His estimate, he said he really didn't know but just a horseback estimate was 9,000 to 12,000. You just heard a testimony, that in terms of veterans, there may be 8,000, 6,000 to 8,000. Nobody really knows how many there are. The Secretary also made it rather clear that the Board of Pardons can be quite arbitrary, if it wishes. Currently, there's a policy that they have instituted of waiting ten years before you can even apply for a full pardon. And I asked, could it be 20 years if you

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wanted to make it that? He said, yes. Could you make it five? Could you make it three? And he said, yes. I think he's here, but I thought that was really very interesting. He also threw in the question of political involvement. There are three members of the board: the Governor, the Attorney General, and the Secretary of State. At the next election, you're going to have the Governor, Mr. Heineman, and perhaps the Attorney General, Mr. Bruning; competing for the Republican nomination for Governor. And he said the question then would be, how they go outside in their campaigning and the...

SENATOR BROWN: Your time is up.

DICK HERMAN: Okay. All right.

SENATOR BROWN: Okay. Any questions? Okay, for the people...from now on I'm going to raise my hand when you have 30 seconds left so that you can know that your time is getting close.

LAUREN EKDAHL: I'm Reverend Lauren Ekdaahl from Trinity United Methodist Church. I'm representing a coalition of...

SENATOR BROWN: Would you please spell your name, please?

LAUREN EKDAHL: Yes. E-k-d-a-h-l. I'll be mercifully brief. There are basically four terms within the religious community that I think relate to this: reconciliation, redemption, rehabilitation, restoration. It seems to me that when a person becomes an ex-felon and their civil rights is given back to them, and I think the church would hold this view generally, is that they should be returned to society with the expectation of being full participants in the citizen responsibilities of the society. And it seems to me that if you have restorative justice, if we have a correction system that is really focused upon rehabilitating persons for their return to full citizenship, then voting rights is a critical part of what should be returned to them as well for that full participation and full stature within the community. And so on behalf of these religious groups, and thinking particularly of my own denomination, the United Methodists... I know Quakers and others have official positions regarding this...I would ask that you pass this

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out of committee and consider restoring the full voting privileges for ex-felons. Any questions?

SENATOR BROWN: Thank you. Any questions? Thank you very much.

CYNTHIA GOOCH: (Exhibit 7) Good afternoon, Senators. My name is Cynthia Gooch, G-o-o-c-h, and I'm here on behalf of Delta Sigma Theta Sorority Incorporated, Omaha Alumnae Chapter. As you heard before, Nebraska is one of the states that permanently disenfranchises ex-felons and Nebraska citizens who have served their prison terms, completed probation and parole, paid any fines, have been reincorporated into their communities, are barred from voting for life. State corrections authorities and election offices do not consistently advise convicted citizens of their voting rights. In Nebraska, we have 53,428 ex-felons unable to vote, which is 4.3 percent of Nebraskans disenfranchised, which consists disproportionately of people of color, African-American, Latino, and Native American peoples. Voting rights restrictions fly in the face of our criminal justice system's goal of rehabilitating those who have served their sentence. Ex-felons who have paid their debt to society and returned to their communities deserve the full rights of American citizenship. Restoring voting rights to ex-felons would aid ex-convicts in being reintegrated into the society and would be a fair provision on the basic proposition that these people have fully paid their debts to society. And if we want former felons to become good citizens, we must give them all rights, as well as responsibilities, and there is no greater responsibility than voting. Any questions?

SENATOR PAHLS: What is your source for the 53,000?

CYNTHIA GOOCH: The Sentencing Project.

SENATOR BROWN: Any other questions? Thank you.

CYNTHIA GOOCH: Um-hum.

GLENDa DeBRiE: Good afternoon. Thank you, committee members. I'm Glenda DeBrie, G-l-e-n-d-a, last name D-e-B-r-i-e. I'm the Buffalo County Election Commissioner

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and I'm also representing the election law committee with the clerks, registers of deeds, and the election commissioners. I'll make a very brief statement also. We had some discussion and we've all basically come to the same conclusion, that we had no problem with felons having the right to vote back. In fact, we encourage it. If that is not possible, then we would recommend that upon completion of their parole, sentencing and parole, that they would be advised that their rights would have to be restored through the Board of Pardons. However, I did have a young couple come to my office to vote; the gentleman was a felon. We keep track of that in our office because we get notices from the courts when somebody has committed a felony, therefore we tag that person so that if that person does come in, we can call up their name and know whether they're eligible to vote and whether they're not. I informed the young couple that he was not able to vote; they came in to vote in absentee. Both of them cried and wanted to know what they had to do. This put me in a very difficult situation. Our job is to encourage people to vote. And I had to tell this young couple with a new baby that he wasn't allowed to vote because he was a felon. Whatever is done, I would hope that that would take that responsibility off of the election officials. And as I said, to my knowledge the majority of the people that have to deal with elections are very much in favor of having their rights restored.

SENATOR BROWN: Thank you.

GLEND A DeBRIE: Thank you.

SENATOR BROWN: Any questions? Thank you.

GLEND A DeBRIE: Thank you.

MARCEL KILLS ENEMY: Good afternoon, ladies and gentlemen of the committee. My name is Marcel, M-a-r-c-e-l, Kills Enemy, K-i-l-l-s E-n-e-m-y. I'm just here as a proponent myself. I'm a local citizen of Lincoln, Lancaster County; I am a convicted felon. Currently, I just want to talk a little bit about the disenfranchisement that a causes within our communities as being a minority. Currently, it's estimated by the Federal Bureau of Prisons for the state of Nebraska that 1 in 15 Latin Hispanic males is a convicted felon, near

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a little over 1 in 10 African-Americans is a convicted felon, and nearly 1 in 20 Native Americans is a convicted felon. And the thing about it is, it's hard for us as people, to encourage each other and our own people, to get out and vote, try to make changes within the system that it seems it's like legal oppression because anywhere in the states you have the same problems, you know, significantly amount of minorities are convicted felons. And the thing about it is, we don't have the ability to make change; we cannot vote people into office that are going to make the change; we don't have the rights as citizens to do a lot of things. I'm not saying that we should be given our rights back after completion of our sentence; I'm not asking that. I'm asking for an opportunity to eventually be able to participate as a citizen, vote, make decisions that will affect me, affect people, affect my community, affect my culture. The thing about it is, if you look at it from a minority perspective, collectively we make up the majority, over 50 percent of the prison population in the state of Nebraska. Collectively we represent close to 30 percent of the overall population of Nebraska. It's estimated that 1 in 1,000 Caucasian people is a convicted felon, so the disparities between the numbers are greatly, you know, divided so. My wish is to eventually be able to vote, be able to make a change, be able to encourage people of my culture, of my ethnicity, to be able to get out there and represent, to be able to make a change. Thank you.

SENATOR BROWN: Any questions? Thank you.

TOMMIE WILSON: (Exhibit 8) Good afternoon. I'm Tommie Wilson, and I'm the newly elect president of the NAACP in Omaha. And I'm excited to be here, and this is my first. With a teacher background, you may have to do this to me because I want to make sure that I don't talk too much.

SENATOR BROWN: Today, we will.

TOMMIE WILSON: Okay. I want to thank you...

SENATOR BROWN: Could you spell your name, please?

TOMMIE WILSON: ...for giving us the...yes...

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SENATOR BROWN: Miss Wilson, could you spell your name, please?

TOMMIE WILSON: Tommie, T-o-m-m-i-e, M. Wilson, W-i-l-s-o-n. I want to thank some of the senators and most of you for your efforts that you've put forth in putting forth the voting rights upon completion of a felony sentence. My name again is Tommie Wilson, president of the Omaha branch of the NAACP, and I'm the newly elected, and I'm here today to share with you are association's strong support for LB 53. This legislation would restore voting rights to ex-felon offenders. LB 53 is crucial to the NAACP for a number of reasons. Voting is a fundamental American right, and the fact that almost 4 million Americans or 1 in 50 American adults, are not allowed to vote, is an insult to our constitution and the Bill of Rights. Many of these Americans have paid their debts to society and they want to be reintegrated fully into their communities. And yet, in too many states, the law bars them from participating in what may well be the most basic American responsibility of citizenship. This legislation affects every ethnic group, and it affects Black America at a vastly desperate rate. In fact, 13 percent of all African-American males today and 1.4 million American men, are prohibited from voting. African-Americans and other Americans of color are being kept out of the electoral process at an equal rate even after they've paid their debt to society. It's almost, and it's also troubling to our society, the fact that state laws vary dramatically when it comes to defining a felony, and the states have very different processes through which an ex-felon must go through to regain his or her civic rights. It is often difficult for ex-offenders to know what, if anything, they can do to regain their rights to vote. America expects felons to come out of our penal system prepared to act as productive members of society, and we believe that ex-felons should support their families and communities. This is not an unreasonable expectation, but we need, in turn, to support their effort by helping them to claim ownership to their community and their self-worth. Voting is an integral part of being a productive member of American society, and we should be encouraging ex-felons and not prohibiting them. I recall how important it was...I'm going to digress a little bit on my grandma. The one thing that Mama wanted to do was to make sure she paid her poll

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tax in Texas. Poll tax paying, that \$2, was just as important as putting the bread on the table. So even though her vote, in many cases, did not count for whatever reason, she had to make sure she had that \$2 to pay the poll tax. Because voting is such an integral part of being a productive member of American society, the NAACP has and will continue to support and work tirelessly. I have attached an official document from the National NAACP Headquarters supporting this important issue. And you have the enclosures. No questions, please. I'm new. Fifteen days on this job and so I want to get better. (Laughter)

SENATOR BROWN: I have to ask, are there any questions?
Thank you.

TOMMIE WILSON: Thank you.

LYNNE ANDERSON: (Exhibits 9 and 10) That's a tough act to follow. To the members of the Government, Military, and Veterans Affairs Committee, my name is Lynne Anderson, spelled L-y-n-n-e, last name Anderson, A-n-d-e-r-s-o-n. I'm just here in support of this bill, LB 53. I wish to thank the senators...I do not represent anyone other than myself. I do wish to thank the senators who have introduced this bill: Senators Schimek, Chambers, Kruse, and Pedersen; those are the ones that I know of. Persons who have had the unenviable experience of undergoing the process of arrest, conviction, and punishment by our court system have little power to gain the support of our legislative system. Thus this bill is in support of conscience, not personal gain for any of the supporters. I am a nurse. I believe in rehabilitation, not ongoing punishment. And one group that has not been mentioned here today is, the latest figures I've saw, 20 percent of the people who go through our court system have some mental illness. And I do have with me a letter from a very dear friend of mine who did go through the court system when she was in a manic phase; she wrote a lot of bad checks. She is working today so she is not here to testify for herself, and on proper medication. She's doing wonderfully and I'm just so pleased about that. The right to vote is an important recognition of worth in our society. Groups of individuals have worked and suffered in the effort to win the right to vote. Women and people of color are the most immediate examples of the success of the

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effort to obtain this most basic right of those living in a democracy. To restore the voting rights to those individuals who have completed the punishment imposed by the courts is to allow them to be allowed into the world of a citizen in our democracy. It is only right. The current method for individuals to restore their voting rights is financially prohibitive for most people in this situation. We've heard about the time; we've heard about the legalities of commutation, and such. But it's also incredibly expensive for any of those of you who have ever had the opportunity to work with a lawyer. The majority of people who are affected by this bill are currently permanently excluded from the basic right of our citizenship. This is ongoing punishment. Is that the purpose? We need to bring people back into our society as productive citizens once they've paid their legal penalties. This is a small but important step. It will cost us little but it is the right thing to do to ensure a just society. Thank you all again for your attention.

SENATOR BROWN: Thank you. Are there any questions? I would point out for Senator Schimek's benefit that Lynne is a constituent of mine. Generally, this committee has constituents of Senator Schimek's that come and testify. Thank you.

LYNNE ANDERSON: Oh. And I do have some copies that I can leave.

SENATOR BROWN: Okay, the page will take those.

JAMES JONES: (Exhibit 11) This is a first for me, too, so I'm kind of a... I'm representing myself and OASIS; it's a public safety organization benefiting crime victims and offenders. James Jones, J-a-m-e-s J-o-n-e-s. Oh, I'm terribly sorry, I should have told you that. I guess I'm coming from another perspective, in a way, because I am an ex-offender. I served three years for robberies in the system here. And I was released in '89; I mean 2002, I'm sorry. I mean...whew, 1992, excuse me, and also have gone through the pardon process. So hopefully I can share some light on that. But it was critical, when I was released from prison the community welcomed me back, and I belonged. You do not destroy what you take ownership in. If that's

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the only reason...well, that is critical to a safer and better and stronger community when you belong. And restoring these basic rights is critical to that reintegration--successfully reintegration. Again, you don't destroy what you take ownership in. Going back to taxes, a lot of us, we pay taxes. But again, we don't have the right to vote. What is that called, taxation without representation? It's critical, it's critical. But I want to just go really quick to the pardons process. I waited...for the last ten years I've been serving victims of crime in Lincoln and through my new organization OASIS. When I went up for my pardon, Governor Johanns, Don Stenberg and Gale, at the time, reiterated at the time, it was guys going up before that Pardons Board, and if they had any drug conviction it was a known policy they just told the guys, we do not grant pardons for drug dealers, period. And they said it over and over again. There were lawyers there representing ex-felons trying to get their voting rights back. And I was thinking, jeez, I filed this long application for getting a pardon, and I don't have a lawyer here, and they're turning people down, left and right, because they had drugs involved in their conviction, and I was thinking, well, hum, I'm gone. But they saw what I've done over the last ten years, and they kind of gave me a real pat on the back for giving back to the community and making this community mine. So they granted my pardon. But the fact of the matter is, there's a lot of us that wouldn't be eligible even if they do go through the pardon process because of the policies. They frankly tell you they will not grant pardons for drug dealers. So with that, I just wanted to say that I've gone through that process, after ten years of waiting, and it was hard. And most guys, if they don't know how to fill out that application, get those three letters of recommendations and the other paperwork that you need, there were so many guys there with lawyers helping them. It's a hard process, so that will still be a hindrance if this law doesn't pass. So this is crucial--crucial to the reintegration of offenders back into the community and their ownership of their community. Any questions about the pardons process or anything else I can add?

SENATOR BROWN: Any questions? Thank you.

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JAMES JONES: Thank you.

JULIE FLYNN: Good afternoon. My name is Julie Flynn and I'm testifying on behalf of LB 53. I would have to...

SENATOR BROWN: Can you spell your name?

JULIE FLYNN: Oh, Flynn, F-l-y-n-n. I would have to mimic many of Mr. Jones' remarks. I am also an ex-felon and I also went through the pardoning process. I was denied, what I was informed, because of a time period. However, I had 15 letters of recommendation and several other people representing me, and I was given approximately maybe a minute or two after it had taken me a number of hours to collect all the information that is required through the pardon process. I also represent people in recovery in a program in Omaha, Nebraska, and I also do street outreach. After my felony, I attended school, got my master's degree, and went on to do several other things. However, I was active prior to my felony, active in voting and campaigns prior to that. In the 20 years of my ability to vote, the one act that the officers gave me a felony, basically, to get me off the streets, and they informed me of that. But that instance and me completing my obligation and requirements through probation and et cetera, was one to two years, compared to the 18 years I had already put in, in the human service field, was a fairly successful career. And I think it's imperative; I know a number of people that are making attempts to change their lives, taking steps to go forth, and I guess on behalf of myself and them, I really strongly would like the opportunity and the ability to vote again. It was very difficult this past election not to be able to vote. But thank you for your time.

SENATOR BROWN: Any questions? Thank you.

JULIE FLYNN: Um-hum.

LEOLA BULLOCK: (Exhibit 12) Good afternoon. My name is Leola Bullock, I am here to represent the...

SENATOR BROWN: Can you spell that, please?

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LEOLA BULLOCK: L-e-o-l-a B-u-l-l-o-c-k. I'm here to represent the Lincoln branch NAACP, who fully supports LB 53, which would restore voting rights to ex-felons automatically after their sentence is completed. Many ex-felons have paid their debt to society and want to be fully reintegrated into their communities. Yet in Nebraska, the law requires a person to wait for ten years, in what may well be our most basic American responsibility of citizenship, and only then can they apply to vote. The NAACP national leadership recently said, "America expects felons to come out of a penal system prepared to act as productive members of society. But far too often the fundamental American right to vote is denied ex-felons. Voting is an integral part of being a productive member of society. We should be encouraging ex-felons to vote, not prohibiting them." That statement also rings true for ex-felons in Nebraska. It is virtually important to us that this bill be passed swiftly and without trepidation. We feel that page 10, lines 25-28, and page 11, lines 1-4, captures the essence of LB 53. They read as follows, "Upon completion of the lawful requirements of the sentence, the department shall provide the parolee or committed offender with a written notice regarding his or her civil rights. The notice shall inform the parolee or committed offender that voting rights are restored upon completion of the sentence. The notice shall also include information on restoring other civil rights through the pardon process, including application to the hearing by the Board of Pardons." Thank you in advance for positive action on passing this bill. Leroy Stokes, President, Lincoln Branch NAACP, and I also would like to add my personal proponent for the bill, LB 53. Any questions?

SENATOR BROWN: Thank you. Are there any questions? Thank you.

LEOLA BULLOCK: Thank you.

RICHARD HEDRICK: I'm Richard Hedrick; I think you've got my name. I am in favor of LB 53. Most of my arguments have been taken. I will just add three. Voting by felons has become a political football; Florida's stolen election proved this. To allow felons to vote takes forgiveness. To forgive is a Christian requirement. Thank you.

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SENATOR BROWN: Thank you. Are there any questions? Thank you.

FRED CONLEY: Good afternoon. My name is Fred Conley, C-o-n-l-e-y. I'm here on behalf of myself and I've always had a great deal of interest in this issue and I'm very happy to see the Legislature taking it up again. I'd like to thank the sponsors of LB 53 and those of you who are here to hear it this afternoon. It was irony; I was planning on coming down here to speak, and this morning I happened to attend a meeting where the Department of Corrections was presenting a program, or at least they had received \$2 million from the Department of Justice to implement a program to reintegrate ex-felons back into society here in Nebraska. And one of the things they talked about was the idea of outside organizations helping ex-felons get jobs and housing and things like that. And one of the issues they mentioned was the right to vote. And I thought it was kind of an irony since I was coming down here today that that would be mentioned by the Department of Corrections. And I guess they're supposed to have all this done by 2006, with the idea that that grant would probably not be renewed. But again, as those who have spoken before me indicated that this is a fundamental right, that people if our goal is to really rehabilitate ex-felons rather than punish them, that it would seem fair and justice that they would be given the right to vote once they had completed their sentence and parole. And so I would like to encourage the committee to report this bill out and have full discussion on the floor, and hopefully it will pass. Thank you.

SENATOR BROWN: Thank you. Any questions?

CATHERINE MAHERN: Good day. My name is Catherine Mahern. It's Catherine with a C, and Mahern is M-a-h-e-r-n. And I'm here today as a private citizen, but I am from Omaha and I'm a professor of law at Creighton University Law School. And I'm the director of clinical programs as well as the director of the Melton-Abrams Legal Clinic, where we represent low-income persons in a variety of civil legal matters. Prior to my work at Creighton, I was the director of a clinical program at Texas Southern University in Houston, Texas, for nine years. Prior to that, I was an

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attorney with the legal services program for four years. For my work as a lawyer representing the poor, I have come to have a deep understanding about how poverty and race relates to one's contact with the judicial system. In Nebraska, I have served on the Nebraska Supreme Court's Minority and Justice Task Force, and currently serve on the court's Minority and Justice Implementation Committee. I also serve on the Supreme Court's Implementation Committee on pro se litigation. Regardless of whether a right is exercised, the right to vote holds great meaning. The governed population is entitled to challenge those who govern them and regulate their day-to-day lives. And a loss of voting right shifts a citizen to a second-class status. I wanted to add, I think it was Senator Mines who asked about the history of this. Oh, I'm sorry, Wehrbein? Felon disenfranchisement laws in the U.S. have their origin in what was called the civil death penalties that were applied for infamous offenses in medieval Europe, and later to a variety of civil disabilities imposed upon offenders in England. This was just brought over to the U.S., and where felons and ex-felons, as well as the majority of the population was denied the right to vote. The history of franchisement in this country is not a proud one. Our founding fathers saw fit to limit the right to vote to white males. States were allowed to add further limits, and some sought and did limit the vote to property owners or taxpayers, and even religious-based restrictions. Only after the Civil War and the 14th and 15th Amendments, was the vote extended to all males over the age of 21, and included minorities. Women did not secure their right until the passage of the 19th Amendment in 1920. But even after the vote was extended to African-Americans, many states continued to limit the vote by establishing poll taxes, literacy requirements that were clearly fashioned to exclude minority voters. For much of the twentieth century, African-American voters have been intimidated, and it's been more often the rule than the exception. The Civil Rights Act and the Voting Rights Act, which assured the right to vote, faced opposition in the U.S. Congress less than 50 years ago. It was during Truman's 1948 nomination, when he wished to put civil rights on the platform, that the southern Democrats stormed out, started their own party, and nominated segregationist Strom Thurmond. Historically, disenfranchisement of felons was thought to serve as a form

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of retribution and as a deterrent to crime. But over time our country has come to embrace the notion that the right of suffrage is a fundamental matter in a free and democratic society. This is especially true since the right to exercise the franchise in a free and unimpaired manner is a preservative of our basic civil rights, and any infringement upon this right must be strictly scrutinized. The question I ask as a citizen of Nebraska is not, why should felons be permitted to vote, but why should we disenfranchise felons? What compelling interest does Nebraska have in exacting this price from all felons? In all likelihood, we all know someone who's been convicted of a felony. We may not even know it. The shame of conviction prevents many from coming forward. And it's with great pride that I see people coming here today who are willing to come out and talk about this. But it's not something we tell people if we want them to respect us. Many activities that were a felony at one time are now misdemeanors; once a misdemeanor here is a felony there. And of course, all felonies are not equal. But because they're not equal, we have different punishment. But all felons are treated the same when it comes to disenfranchisement. There's been a growing emphasis in this country to cause there to be other civil penalties for criminal activity, such as loss of public housing benefits or a right to contract with the government. But why is criminal conduct that results in a felony conviction, the only restriction on suffrage deemed worthy of disenfranchisement? Surely criminal conviction of a felony is not the only issue of our interest. If Nebraska can't trust a convicted ex-felon to vote in the public's interest, perhaps there are others. The state maintains a record of all child support and knows when people have failed to pay their child support, and revoked their driver's license. Surely a parent who's failed to pay child support should be viewed, are they more worthy than a priest who crossed the line in protest of American military policy who has convicted of a felony?

SENATOR BROWN: Ms. Mahern, your time is up.

CATHERINE MAHERN: Yes. What about people who don't pay their bills? Every day we place our lives into the hands of people who are licensed by a scheme established by the state. Doctors, lawyers, dentists, architects; they can be

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felons and practice medicine and law. In disenfranchising a felon, we are punishing them for their criminal conduct or for their conviction of a crime. Other people engage in conduct that's felonious and are not arrested. No matter how much I think that I understand about poverty and race, I know that I cannot truly understand, for I have the privilege that comes from being white. I, myself, in my lifetime have engaged in conduct that would or could have been charged as a felony, had I been caught, which was less likely because of my status as a white female and middle class. But, although I engaged in that conduct, I am free to vote. Therefore I would ask that you move this bill forward and expand the right to vote for felons who have completed their sentence.

SENATOR BROWN: Thank you. Are there questions?

CATHERINE MAHERN: Senator Wehrbein, there was a question, or maybe it was Senator Mines asked about whether it was a right or not a right?

SENATOR MINES: We ask the questions, Ms. Mahern.

CATHERINE MAHERN: I'm sorry.

SENATOR MINES: Thank you.

CATHERINE MAHERN: All right.

SENATOR BROWN: Thank you.

MARLYS SANDERS: (Exhibits 13 and 14) Another tough act to follow. My name is Marlys Sanders, M-a-r-l-y-s S-a-n-d-e-r-s. I am representing the group Nebraska Voting Rights Coalition. I have handed out brochures from our group and a short statement that I will read. The Nebraska Voting Rights Coalition is in the early stages of organization. Our intent is to encourage organizations and individuals across the state to support passage of LB 53. We want to be a voice for the many thousands of fair-minded Nebraska citizens who think that punishment of criminals should end when their sentences have been served. We intend to continue this effort as long as is needed. We urge the committee to send LB 53 to the floor of the Legislature

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during this session. And I do just want to mention, on our brochure we have not listed the individual groups that have joined us. There are many. They are not all able to come here today, so we are speaking on behalf of them as a group.

SENATOR BROWN: Thank you. Any questions? Senator Fischer.

SENATOR FISCHER: Madam Chair, did you just say you have different groups that were members of this coalition? Could you name some of them, please, or are they listed in here?

MARLYS SANDERS: They are not listed. We had put out the brochure before we had contacted all of them. I hope I'm speaking correctly: League of Women Voters, I believe has shown support; NAACP, who was here today; the Urban League, out of Omaha, we have met with them; Family and Friends of Inmates. That's all that comes to mind right at the moment.

SENATOR FISCHER: Okay, thank you.

MARLYS SANDERS: You're welcome.

SENATOR BROWN: Thank you. Are there any further testifiers in support of LB 53?

J. ROCK JOHNSON: (Exhibit 15) My name is J. Rock; J. Rock Johnson; initial J, Rock, R-o-c-k J-o-h-n-s-o-n. And I have come to support LB 53 but am afraid I also may be confounding it in a certain sense. When one reads the voter's oath, it includes the statement, "I have not been convicted of a felony, or if convicted, my civil rights have been restored," and that of course is the action we're here to promote today, so many of us. And I have not been officially found to be non compos mentis, (mentally incompetent). Any registrant who signs this form knowing that any of the information on the form is false shall be guilty of a Class IV felony under Section 32-1502 of the Nebraska State Statutes. The penalty for such is up to five years imprisonment, a fine of up to \$10,000, or both." There have been efforts to register people who have mental illnesses, and this language has had a very chilling effect on that registration because persons are not certain of what their status is. When an individual is committed, they do not lose any of their civil rights. But people may not be

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familiar with that; that's what we found. Also they're, based on the legal research that was done, non compos mentis does not have a definition in the state statutes, and again, this chilling effect on individuals, who might register where there is such complication here. It's my understanding that the registrar of voters, the way they check on this and the individuals who are kicked out of the system, if you will, are persons who have been found not responsible by reason of insanity. I also would note that individuals have a guardianship. The word there would be "incapacitated," that the guardian would have the responsibility to care for the individual's rights and that it would exclude voting only if a judge had specifically done so. So I am here to simply call your attention to the fact that this language which threatens individuals with a potential felony, because the language is not clear and it's not something that's understood, and it keeps individuals who desperately want to be card-carrying members, to be citizens, to have an election card, means such a great deal for people who have been found to be among the last, the least, and the lost. So again, my point here is simply to call your attention to this rather jumble of facts, but perhaps there could be some attention paid to it. Thank you.

SENATOR BROWN: Thank you. Are there any questions? Thank you. Any further testifiers in support of LB 53? Any in opposition to LB 53? And I would tell you that we have a letter from...

SECRETARY GALE: I have neutral testimony. You haven't asked for that.

SENATOR BROWN: No. I was just going to read the letter in and then I'll call...from Richard Boucher on behalf of the Nebraska Sheriff's Association in opposition to LB 53. (Exhibit 16) Neutral testimony.

JOHN GALE: Madam Chairman, members of the committee, John Gale, Secretary of State for the state of Nebraska, Chief Election Officer. I decided...I was originally going to testify in opposition, but I really am testifying neutral. It's really quite a philosophical question that's being discussed today, and I guess frankly I'm not wanting to

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engage in that discussion as to the degree of inclusiveness or exclusiveness of our society with regard to felons or ex-felons. But as a practical matter, I would say that this ship, this bill, LB 53, has crashed on the rocks twice before when it's been attempted in Nebraska to allow the restoration of civil rights to felons who have been discharged from their sentence and they've been told on one instance by district courts that they were allowed to have restoration of their civil rights, and that was deemed to be unconstitutional. It also was an attempt by the Department of Corrections to grant certificates of discharge and to restore civil rights to felons, and that crashed on the same shoals of unconstitutionality. And I'm afraid that this bill may be getting hopes unreasonably high that this can be accomplished by legislation, when I think from having talked with members of the Attorney General's Office and having talked with two Attorneys General on this issue, I think that it's an enormous constitutional barrier you face to attempt to do this legislatively. At the same time I think there's been a lot of confusion between the right of a pardon...or not the right of a pardon, but the privilege of a pardon, and the restoration of voting rights. If you draw a big circle, a big pie shape, restoration of voting rights is a very small slice of that pie, and the total pie is a pardon. And, yes, there are a lot of standards that have been imposed by the Board of Pardons over the years. Some change with time, some disappear with time, some new ones appear. But the whole point is, it's executive clemency. We're not subject to the review of judiciary at all. It's not a judicial process. It's entirely a clemency process because the judges have acted; they impose sentences; the people are required to serve those sentences and pay their fines. And they truly do function as second-class citizens until they're able to get a pardon simply because they suffer the consequences of their act and the consequences of the judicial sentencing. So obtaining a pardon, whether it's ten years or five years or 15 years, is entirely at the discretion of the Board of Pardons. But the right to vote, interestingly enough, in our office we firmly believe that there is an opportunity under the existing constitution to grant warrants of discharge. And, in fact, we have been working with staff at the Board of Parole to devise an administrative system to restore the right to vote three years after discharge rather than having to wait

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ten years for a full pardon. And part of that waiting period is simply to see if the individual has reengaged themselves in society, found a residence in a location, secured a job, maybe bought a car, start paying taxes, becoming a productive member of a community, but not having to wait ten years as they do today, because that small slice called right to vote is part of a pardon. It can be separated out under our existing constitution. And I have had, from discussions in the Board of Pardons, I've had from Governor Johanns and Attorney General Bruning some sincere and genuine and positive interest in proceeding with that. It hasn't been voted on by the Board of Pardons, but I think that there is some good degree of interest in that process. It would be simply administrative. It would not be...require any hearing. It would not require any attorney. It would simply be an application, a background check to ensure there has been no further criminal activity in that three years, and then it would be granted administratively in bulk in such ever numbers as qualify under the standards. I intend to continue to pursue that with the Board of Pardons in the hopes that it can be accomplished without having to face the challenge to the legislation or face an attempt at a constitutional amendment. And a resolution from this committee in support of that process would be very helpful. But I deeply dread getting up the hopes of people who have a felony conviction on their record, thinking that a piece of legislation is going to restore their right to vote. What it may do indeed instead, create an unfortunate and unforeseen consequence of making them subject to prosecution for a new felony for voting when they're not entitled to vote under the Nebraska Constitution. And there have been prosecutions filed against voters who have attempted to vote, thinking they had the right to vote as felons because of prior attempts to give them that right by legislation. And to attempt to do it again, I think may further confuse what people's rights really are and subject them to possible prosecution, where warrants of discharge could accomplish that easily within the constitution with the support of this committee. Thank you.

SENATOR BROWN: Are there any questions for Secretary Gale?
Thank you.

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JOHN GALE: Thank you, Madam Chair.

SENATOR BROWN: Is there any additional neutral testimony on LB 53? Well, I would like to thank everyone for cooperating so that we could get through this today. Senator Schimek.

SENATOR SCHIMEK: Yes, thank you. Senator Brown and members of the committee, I would...I'm overwhelmed by the response here today and I really would like to thank some of the people who came here to testify, because like one of the other testifiers, I believe in some instances it's very hard to come and be public about what's gone on in your life at an earlier period. And I think that's true of the pardons process, as well. I would respectfully disagree with the Secretary of State, and I would also acknowledge that I'm no attorney and I don't want to pretend to be one, but I think there are good legal arguments for passage of legislation. And we have been waiting three years, and I don't know how much longer it's going to take, unless we do pass a bill. It is a matter of public policy, whether...I mean, the state does regulate who gets to vote, to some degree so does the federal government. And to me it seems like it's a matter of public policy; the Legislature should be involved in it. But having said that, I also know that there are two sides to this discussion. I very much appreciate your attention. I do not want to take any more of your time, but I just want to say thank you to everybody who participated. Thank you.

SENATOR BROWN: Any questions for Senator Schimek?

SENATOR PAHLS: I just have a question.

SENATOR BROWN: Senator Pahls.

SENATOR SCHIMEK: Sure.

SENATOR PAHLS: Has this concept the Secretary just promoted to us, has that been entertained by you in the past?

SENATOR SCHIMEK: No.

SENATOR PAHLS: Okay.

SENATOR SCHIMEK: No.

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SENATOR PAHLS: Okay. That's all right now.

SENATOR SCHIMEK: And I think I mentioned it earlier, but the bill did get to the floor last year.

SENATOR PAHLS: Okay. Okay.

SENATOR SCHIMEK: We just ran out of time, simply. Thank you.

SENATOR BROWN: Any further questions? Then this will conclude the hearing on LB 53. We will now move to the hearing on LB 35. Senator Schimek.

LB 35

SENATOR SCHIMEK: Thank you, Madam Chairman and members of the committee. I don't believe either of these next two bills will be time consuming at all. They too were brought by the Vote Nebraska Initiative, and I would like to just briefly explain LB 35 and then answer any questions that you might have. For the record, I am DiAnna Schimek; I represent the 27th Legislative District, the "Historic District." All this bill does, all it does is change the term from "absentee" voting to "early" voting. It is so simple. We could have put some of these bills together but we chose to put them in three separate bills, thinking that if you wanted to and you agreed with them, we might even package them into one bill. But the reason that the task force recommends this is that it more accurately conveys the current process. You don't have to be absent on election day in order to get a ballot ahead of time. It really is a form of early voting. And so as not to mislead people about what it really is, we think it ought to be labeled differently. I can't think of anything else I really need to tell you, except that. It's very simple.

SENATOR BROWN: Any questions for Senator Schimek? Seeing none, thank you. Any individuals wishing to testify in support of LB 35, please come up.

DIANE OLMER: My name is Diane Olmer; I'm the election

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commissioner at Platte County. My last name is O-l-m-e-r; getting used to the system here. I agree totally with what Senator Schimek said. One thing we have happen on election day or when registration period is going on, people come in and they make the effort to come to the courthouse to register to vote. And sometimes it's elderly or whatever, and maybe they had to come many miles. And they come in and they register going, okay, when is the election day and where do I go to vote? And people worry about the weather or whatever, and I say, well, you know, you can vote right here and now. Oh, I can? People are still not aware of this fact. And I'm thinking, just by changing the name and when I put that notice in the paper it might make more people aware of it that just don't know it. So it's kind of an easy fix to...we try to inform people on it, but it's word of mouth. When I put my notice, it's still called absentee voting. So if it was called early voting, I think that would be enough to alert the few that haven't figured it out that they can do it at their convenience just because they want to, so.

SENATOR BROWN: Thank you. Any questions? Thanks.

DIANE OLMER: Thank you.

SENATOR BROWN: Any others wishing to testify in support?

SECRETARY GALE: Madam Chairman and members of the committee, John Gale, Secretary of State, Chief Election Officer. I am testifying in favor of this bill. There is a beauty to the simplicity of it, but there is extraordinary confusion in the public mind because we keep calling it absentee and people still think that they are required to meet some conditions in order to vote in this manner. It's, as I testified earlier, this is a direction an awful lot of our country is going for increased convenience to the voter and increased turnout, which has been a major problem over the last 30 years in America, of declining interest of voters and participation. In the state of Oregon, which is all mail-in ballots, every registered voter gets a ballot. They have 85 percent participation. In many states, as I had indicated, in the state of Washington they have some 60 percent who vote by mail-in ballot as an early voter. In Florida, it's some 33 percent. There's other legislation

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that you'll be considering at other hearings that is going to, we hope, increase the opportunity for mail-in elections in Nebraska. But in Nebraska we've only had 16 percent participate by early or absentee voting. In this past election, despite the record turnout of some 800,000 voters, it was still an extraordinarily small percentage compared to other states. In the 2000 election, it was 12 percent. Now, those percentages are applied against different basis. In 2000, we had 600,000 voters, this year we had 800,000 voters. So numerically there was quite a jump from some 75,000 absentee voters to over 100,000 absentee voters. So there is definitely increased interest. But I think with the change proposed in this bill, it will enable the media and the campaigns and the political parties to make it very, very clear that you don't have any preconditions other than simply requesting the right to an early ballot and casting that ballot. And we think that will take some pressure off of our election commissioners; it will allow a more orderly processing of ballots; it will also allow voters a little more thoughtful period and deliberative period of time when they can work on their ballot at home, at the kitchen table, without the pressure of trying to appear and vote at a precinct. Thank you.

SENATOR BROWN: Any questions? Thank you.

SECRETARY GALE: Thank you, Madam Chairman.

SENATOR BROWN: Any additional testifiers in support of LB 35? Any in opposition? Any neutral testimony? Senator Schimek waives closing and we will close the hearing on LB 35 and move on to LB 98. Senator Schimek.

LB 98

SENATOR SCHIMEK: Yes. Thank you, Madam Chair and members of the committee. For the record, my name is DiAnna Schimek. I'm here to open on LB 98, which is a bill allowing an election commissioner or county clerk to determine whether to conduct a special election by mail. Now those of you who have been here for awhile remember when Senator Cudaback had a bill that we debated quite a bit up on the floor about whether we should allow balloting by

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mail. And what we finally decided to do was to allow it on issue elections that subdivisions would have. And in the current existing language, the political subdivision wanting to place the issue on the ballot decides whether it will be by mail or not. This approach leaves it up to the election commissioner or county clerk to decide whether the results should be...or whether the ballot should be done by mail or not. And they are the ones in a position to determine what the cost savings would be, and so forth. We do know that some states are using mail-in ballots for all of their elections; Oregon, most notable. And some of the fears that we had at the time we passed this original legislation were that there...it could lead to fraud and that turnout might not stay high; it might fall off after awhile. I don't think those things are proving themselves to be true in the long run. But anyway, this is a rather minor, but we think important issue, as well. So this is the recommendation; it comes to you on a 15 to 0 vote from the Vote Nebraska Initiative. Thank you.

SENATOR BROWN: Any questions? Senator Wehrbein.

SENATOR WEHRBEIN: Senator Schimek, do you see this as being the final decision or do you see the political subdivision having some input into it? Let's say it was a SID; may have a reason to want mail versus the clerk maybe not wanting mail, or vice... Say, a lot of people drive out of town for the day, or like an SID or something?

SENATOR SCHIMEK: Right. I would say that I can't imagine that the election commissioners and county clerks would not listen to the local subdivisions if there were some good reasons. But there is nothing in the bill that would mandate that. But I know that they are elected officials, just like we are, and they would be listening to their constituencies, as well.

SENATOR WEHRBEIN: So what this really does is change the final decision process...

SENATOR SCHIMEK: Right.

SENATOR WEHRBEIN: ...is really all it does.

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SENATOR SCHIMEK: That's right.

SENATOR WEHRBEIN: Goes from...is there another reason behind it other than common sense?

SENATOR SCHIMEK: No. No. And eventually I really suspect we may be revisiting this issue again. In fact, I think there is a bill this year that revisits this issue. In fact, I think it's Senator Fischer's bill. It's in a slightly different twist to it, but it involves candidates. And I would suspect somewhere down the line we as a committee are going to talk about whether we need to be doing more of that or less of that. But for now, this is all.

SENATOR WEHRBEIN: Thank you.

SENATOR BROWN: Any other questions? Thank you. Any testifiers in support of LB 98?

GLENDa DeBRiE: I'll be very brief. Once again, I'm Glenda DeBrie, Buffalo County Election Commissioner. And actually I worked with Senator Cudaback; I'm probably the one that started this whole thing because I had a township board that needed funds. There were 66 people in the township. We had to conduct an election. They had to pay poll workers for a 12-hour day, even if all 66 people showed up at the polling place. They had to do the advertising, everything else. So it was quite expensive for them to do that for 66 people. So I was involved in it when it first got proposed, and I am very much in favor of it. There is times where you can save the taxpayers money and save us money by doing a mail-out ballot. And I work very close with the board and they said, well, couldn't we just mail these out? And I said, I'm sorry, not at this point. I worked on it; we got it passed; and I've not had one since. But there is a time that maybe a township board, a small area it would affect, and it does save everyone time and money. So that's all I have to say. Are there any questions?

SENATOR BROWN: Any questions? Thank you.

GLENDa DeBRiE: Um-hum.

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SENATOR BROWN: Any further testimony in support of LB 98?

JOHN GALE: I feel like the Duracell battery bunny; I keep coming back. John Gale, Secretary of State, Chief Election Officer, and I am testifying in support of LB 98. It was an issue with the Vote Nebraska Initiative, and all of the election officials on that committee voted very favorably in support of this idea. For many, many years, I think it was table talk that bonding underwriters really didn't want to have large turnouts for special elections that were going to create bonded indebtedness because they felt that if there was a large turnout they'd have a less chance of success. Well, when you realize what a huge issue property taxes are, and how despite the increased state funding for schools, increased state funding for political subdivisions and schools, we continue to have a large property tax burden in Nebraska, I think it's incumbent on all of us to give the majority of voters in every district of whatever size, an opportunity to vote on an increase in property taxes. And we think this would be an idea whose time has come, by allowing our election commissioners or county clerks to make that decision as an impartial person rather than the political subdivision maybe acting under the advice of their bond underwriter. This is really an issue for the voters to decide, and not for the bond underwriter or bond counsel to decide. And by allowing a mail-in mail ballot election, it has to be based upon a review of the costs of holding the election and the expected voter turnout. So there are some standards of review that the county official would have to meet in order to make a ruling that the special election of the political subdivision would be by mail. I would suggest one change however. The bill, on page 2, lines 23-24, state that "A review of the costs of holding the election by mail and the expected voter turnout favor holding the election by mail." I'm afraid the word "favor" is an ambiguous term, a subjective term, and not an objective standard, and could result in a lot of unnecessary litigation over how a county official, county clerk, or election commissioner determined "favor." I think that should simply read that, "A review of the costs of holding the election by mail and the expected voter turnout has been conducted." Simply that it has been done; not that something favors or doesn't favor such a mail election, but rather the objective, independent county official has done that review. I wanted to mention, just a

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couple of years ago I remember how stunned I was because we had been worrying about voter turnout, particularly in small political subdivisions. There was a special bond election in the Grand Island area, and they had an 11 percent of voter turnout. Now that means total turnout, so it means that the winner, whether it was an approval or a defeat, would have been about 6 percent of the eligible voters voting to determine a property tax. And I think that's really untenable in American democracy when we're encouraging voter turnout. I would say to Senator Wehrbein with regard to SIDs, voting in SIDs is based upon property ownership and not based upon citizenship or residence, and also the law requires that all elections held in an SID be by mail. So there already are some exceptions in that area, where you as legislator have required mail ballot only. So I would fully support LB 98.

SENATOR BROWN: Thank you.

JOHN GALE: Thank you.

SENATOR BROWN: Any questions? Senator Mines.

JOHN GALE: Senator.

SENATOR MINES: Mr. Secretary, the verification of voters in a mail election, is it a foregone conclusion that now we accept the voters at face value? If you mail a ballot to me and I fill it out, you assume it's me doing it as opposed to someone else. I mean, is verification an issue?

JOHN GALE: Well, we already face that issue, of course, today, because we do have the absentee ballot or early voting going on in every election. So at this point we have not had any degree of fraud in Nebraska that has concerned us to have to try to face that issue. The federal government, under the Help America Vote Act, requires that all first-time registrations by mail must also submit evidence of residence, whether it be a copy of their driver's license or a copy of a utility bill...

SENATOR MINES: Good idea.

JOHN GALE: ...or if they don't submit it with that

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registration by mail, they have to bring it with them when they vote. But that's for first-time registrants. But we've had some instances, I remember here in Lancaster County there was a woman who requested an absentee ballot for her deceased mother, and she felt that it was kind of honoring her mother by casting a ballot for her. You have some aberrations like that, but in terms of any significant fraud, at least we have not come across it nor has any county attorney reported it to us. So we are fortunate to be in a state where honor and integrity do count in our election system. The county clerks have the opportunity to do verification. Under the new statewide interactive voter registration system, there will be much more interface with Crime Commission, State Patrol, Bureau of Vital Statistics, Social Security, so there will be dramatically more verification of people who are registered vote.

SENATOR MINES: Good.

JOHN GALE: Thank you.

SENATOR BROWN: Any further testifiers in support of LB 98? Any ir opposition to LB 98? Any neutral testimony? Senator Schimek waives off. Seeing no further testimony, the hearing on LB 98 is concluded and our hearings for the day are concluded.