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Government, Military and Veterans Affairs Committee
January 25, 2007

[LB248 LB298 LB311 LR8CA]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 25, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB248, LB298, LB311, and LR8CA. Senators present: Ray Aguilar, Chairperson; Mick Mines, Vice Chairperson; Greg Adams; Bill Avery; Mike Friend; Russ Karpisek; Rich Pahls; and Kent Rogert. Senators absent: None.

SENATOR AGUILAR: Welcome everybody to the Government, Military and Veterans Affairs Committee hearing. Like to start off by introducing the committee members. To my far right is Senator Russ Karpisek from Wilber; next to him, Senator Mick Mines from Blair; our committee counsel, Christy Abraham; my name is Ray Aguilar, from Grand Island; next, on my left is Sherry Shaffer, the committee clerk; next to her is Senator Mike Friend from Omaha; and taking his chair now is Senator Rich Pahls from Omaha; the next senator in line is Senator Greg Adams from York; and Senator Bill Avery from Lincoln. And he's going to sit down, too. Bills will be taken up in the following order as they were posted on the door: LB248, LB298, LB311, and LR8CA. Sign-in sheets are at both entrances. Sign in only if you're going to testify, and then put the sheet in this box up here on the table. If you're not going to testify but would like to be on the record, either as a proponent or an opponent on a bill, there is another sheet that you can fill out; and those are on the table as well. Print your name and indicate who you are representing. Before testifying, please spell your name for the record. Introducers will make the initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. Listen carefully and try not to be repetitive. If you have a prepared statement or exhibit, give it to the page and he will distribute it or make copies. We need 12 copies. Turn off your cell phones and pagers. Our pages for the day are Adam Morfeld of Sioux Falls, South Dakota; and Kristin Kallsen of Big Springs, Nebraska. Senator Nantkes, to introduce LB248.

SENATOR NANTKES: Good afternoon, Chairman Aguilar, members of the committee. My name is Danielle Nantkes, that's spelled N-a-n-t-k-e-s, for the record. I'm here representing the "Fighting 46th Legislative District," and here to introduce LB248. LB248 was brought to me by the Lancaster County Election Commissioner as a measure to increase government efficiency and streamline the election process for road improvement district elections. Current law requires that each time an RID is created it must be done by conducting a special election using a polling place and an election board of at least three members. It also requires that initial board of trustees for the RID is elected at the same time. LB248 would allow the elections to be conducted by mail, and would allow subsequent election of the board of trustees to be conducted by mail in odd numbered years. The bill would further allow the dissolution of the district if 50 percent of the property owners signed a petition. The petition would then be presented to the county board for action. Here today with me is the Lancaster County Election

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Commissioner who has some specific expertise on this issue, otherwise, if there are any questions from the committee. [LB248]

SENATOR AGUILAR: Questions for Senator Nantkes? Seeing none, thank you. [LB248]

SENATOR NANTKES: Thank you. [LB248]

SENATOR AGUILAR: First opponent of LB248...I'm sorry, proponent. Didn't mean to confuse you. How many are here to testify on this today? I see just one. And I'd also like to announce that we've been joined by Senator Kent Rogert of Tekamah. [LB248]

DAVID SHIVELY: Good afternoon, Senator Aguilar and members of the committee. My name is David Shively, that's S-h-i-v-e-l-y, and I am the Lancaster County Election Commissioner. I'm here today in support of LB248, which would allow all of our elections for the road improvement districts to be conducted by mail. Since 2001, my office has conducted elections for the creation of seven road improvement districts. We'll be conducting an eighth election on February 13, which will create an eighth one here in Lancaster County. State law requires that when we do...when one of these road improvement districts is created it must be done using an election board, polling place just to have a special election for them. We have had, when we've created these districts, anywhere from 41 registered voters has been one of the smaller ones, to about 160 registered voters in doing so. So there's not a whole lot within that district when we conduct those elections. While state law currently allows us to conduct issue-related elections by mail, it does not allow us to do any type of special election by mail if candidates are involved. And when you create a road improvement district, according to the law, on the same ballot you also elect the initial board of trustees for that road improvement district. So therefore we cannot do that election by mail. So this bill would allow us to do that. It would save us some time and effort. With the road improvement district election that we have coming up on February 13 we have, I believe, it's 47 registered voters. We currently have 9 requests for absentee ballots for that already, so it's going to be between 35 and 40 registered voters that would be eligible to come in and vote that day. So it's going to be a very long day for our three board members that will be working at that poll. So that just gives you an idea that doing this by mail we can save a little bit of time, and I also think we could probably save a little bit of money as well. The bill also will allow us to...the ongoing elections of the board of trustees, to be able to conduct them by mail. After...once the road improvement district is created, then they are on the ballot every statewide election in the even-numbered years. This bill would change that to allow us to do those elections by mail, but do them in the odd-numbered years. And that's about...using the same date as they do for the sanitary improvement district elections, which are a little bit different than this, but it also uses the same dates for that as that. We would move that from the even-numbered years, though, to the odd-numbered years. I estimate that we'll probably save, you know,

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maybe \$300 to \$400 each time we do this. It's not a huge savings, but it is a savings nonetheless for us. And it just makes it a little bit a long, tiring day for a board that has only 40 voters that need to come in during that day to be able to vote, and they have a 12-hour span to come do it; and they'll be able to do it by mail as opposed to going to the polls. So I'd just encourage you to advance this to the floor. I'd be happy to answer any questions if you have any. [LB248]

SENATOR AGUILAR: Thank you, Mr. Shively. Questions? Senator Adams. [LB248]

SENATOR ADAMS: If this were enacted then let's...hypothetically you have a road improvement district and you have a landowner living within that district who, though it's their official residence, they spend the winter in Arizona. Would you mail them a ballot or would the ballot just go to that address? [LB248]

DAVID SHIVELY: The mail-in laws that we have now do permit for a type of absentee voting. So if they know the election is coming up, they could request the ballot to be mailed to them at that address. We would, unless we had information from the voter that they're wintering somewhere else, it would go to their home, unless they indicate to us that they would want that ballot mailed to them... [LB248]

SENATOR ADAMS: Okay, thank you. [LB248]

DAVID SHIVELY: ...at a different address. [LB248]

SENATOR AGUILAR: Other questions? Seeing none, thank...I'm sorry. Senator Karpisek. [LB248]

SENATOR KARPISEK: Thank you, Mr. Chair. Mr. Shively, would these voters need to mail anything in or tell you ahead of time to send them the ballot? Or would it just be right away, whoever is on there, it gets sent? [LB248]

DAVID SHIVELY: Whoever is on...whoever would be a registered voter within the district would be sent a ballot, and that would be automatic. [LB248]

SENATOR KARPISEK: And so then what keeps this from turning into the next thing, a city election, or a county election, or a national? [LB248]

DAVID SHIVELY: Well, this is specifically on road improvement districts. That doesn't...you know, what's basically happened here in Lancaster County is we've created, as far as the election looks for us, we've created another political subdivision, like a village. And so these can be created real easily and be dissolved real easily. And I think in some of the other cases that they can't be...you know, villages can't be dissolved, school districts can't be dissolved that easily. So I would hope that it wouldn't

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advance to that. I think this is something we do for...sanitary improvement districts are done by mail, which is a little bit different than...those laws aren't conducted under the election statutes. They are conducted under different statutes. But it's worked for them, and they deal with property owners as opposed to registered voters. It just gives us that option, I think, to save a little bit of money and to take some confusion on election day. Because one of the things that also happens to us when we have these created, when you have a precinct, and then in two of our precincts we have three road improvement districts that lie within that precinct. So a separate ballot face has to be prepared for each one of those road improvement districts. And in one case in our...in one of those precincts we have where we have to create two ballot faces at that general election because there are people within that road improvement district are in two different school districts. So it take some confusion away from the polls on election day as well. You don't normally have that like in a village, because most villages, everyone within the village is in the same school district, and there aren't any splits within a village. So I hope that we wouldn't move beyond that. I think this just creates...helps on a situation where, if these keep growing, we've been averaging one a year since we started this in 2001. [LB248]

SENATOR KARPISEK: That was my other question. That's my only concern is so we don't set a precedent here and it just keeps snowballing. But thank you, Mr. Shively. Thank you, Mr. Chairman. [LB248]

DAVID SHIVELY: Yeah. [LB248]

SENATOR AGUILAR: Senator Mines. [LB248]

SENATOR MINES: Thank you, Mr. Chairman. Dave, thank you for showing up today. By creating or dissolving a road improvement district, do you affect the value of the adjacent property owners? I mean, is it affected one way or another? [LB248]

DAVID SHIVELY: That's a good question. I'm not sure, it may just in the sense that...what...the people that have created the road improvement districts basically have done, they've paved their roads within their area. That's basically all...the only reason that these road improvement districts are created. So it's going to...it might help their value. Whether it helps a neighboring value where the road isn't paved, I don't know. It probably depends on where that road actually was and how close it is to that other...other... [LB248]

SENATOR MINES: But by creating a road improvement district, you do...there is an effect on the property owner's value. [LB248]

DAVID SHIVELY: Well, I would assume there would be. [LB248]

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SENATOR MINES: And the question I might have is, since we're looking at...or since this highlights voters as opposed to property owners, take the example that the Senator from York had, property owner is out of town. The property owner is not a registered voter, property owner out of town doesn't know what's going on. I mean, are they disenfranchised by this process in your opinion? [LB248]

DAVID SHIVELY: Not any more than someone that owns property in a school district but doesn't reside within the school district. I mean it would be the same principle. [LB248]

SENATOR MINES: But they do reside within the improvement district. [LB248]

DAVID SHIVELY: Right. But, and maybe I misunderstood what you're asking then. If they reside within...if they have a summer...a winter home here... [LB248]

SENATOR MINES: I have a home, I have a home and we want to create a road improvement district. I have a home in that district and I winter in Phoenix six months out of the year. Because notification goes to registered voters and not property owners, I don't know about that change because I've not registered to vote. Am I disenfranchised in your process? Why shouldn't the property owners be, as opposed to the voters, be part of this process? [LB248]

DAVID SHIVELY: Well, that's basically what happens in sanitary improvement districts. I guess I'm a little bit lost. If they own property and they maybe just winter in Arizona, but they also live in the summer in the home that's there... [LB248]

SENATOR MINES: Right, right. [LB248]

DAVID SHIVELY: ...that voter basically has to make the decision whether they're going to be registered to vote, if their permanent address is in Lancaster County... [LB248]

SENATOR MINES: But they don't have to register to vote, that's my point. You don't have to register to vote. And if you don't, as a property owner, you don't get notice. That's my question. [LB248]

DAVID SHIVELY: But it would be the same with any type of election or school bond election or anything that we have currently, if they own...and this happens to me a lot, like when we have a bond election for Lincoln Public Schools that someone may live outside of Lincoln and not within the boundaries, they may live in the Waverly School District, but they own property here. I mean it's basically the same principle that you're talking about. And I get those questions asked a lot before bond elections. [LB248]

SENATOR MINES: Okay. [LB248]

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DAVID SHIVELY: They don't have a vote on the school board, they don't have a vote on the bond either. So I mean it's not going to be unique to this, because it happens with other districts. [LB248]

SENATOR MINES: Okay, thanks. [LB248]

SENATOR AGUILAR: Further questions? Senator Adams. [LB248]

SENATOR ADAMS: Following up on what Senator Mines has said, if it's a road improvement district, then I'm assuming that these absentee property owners have a specific assessment against their property versus, okay, I own a lot here in Lincoln, I live in Waverly. I guess I have a property tax assessment for the school, like everybody else. But am I correct in thinking that in this road improvement district I've got a specific per foot assessment? [LB248]

DAVID SHIVELY: I...to be honest with you, I don't know how they break that down. I'm assuming it's on the value of their property and not on...it's taxable on the property and how large the actual lot that they own is and is assessed at. I would assume that. I don't know that exactly. [LB248]

SENATOR ADAMS: Do you know who sets that assessment? Is it the county board or is it this RID? [LB248]

DAVID SHIVELY: The RID, I would assume, has some taxing authority on that. [LB248]

SENATOR ADAMS: So, I'm thinking out loud here. So I live in someplace else, but I own property within the RID, so I have a specific assessment, a front footage assessment, but I don't get to vote because I don't occupy the property. [LB248]

DAVID SHIVELY: Right. Again it would be similar to, you know,... [LB248]

SENATOR ADAMS: Yeah, I understand what you're saying. [LB248]

DAVID SHIVELY: Right. [LB248]

SENATOR ADAMS: Thank you. [LB248]

SENATOR AVERY: Dave, there is nothing radical about this proposal. I mean this is something we do in a lot of different kinds of elections. Is that not right? [LB248]

DAVID SHIVELY: We do it in the sanitary improvement elections, correct. Sanitary improvement district elections though is based on property owners as opposed to

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registered voters. [LB248]

SENATOR AVERY: I'm talking about generally the whole process of voting by mail. [LB248]

DAVID SHIVELY: Right. We're allowed to do that on issue or (inaudible) races only right now. You cannot do that if there's any candidates involved with that. [LB248]

SENATOR AVERY: What about those small...those small areas where you have fewer than 7,000 inhabitants? [LB248]

DAVID SHIVELY: Yeah, there are some, but...yeah. But those plans have to be approved by the Secretary of State before they do that. So, yes, we do allow that. And you know, I forget about that because I'm not in that category. But we do allow that statewide in county...I think it's counties under 7,000. [LB248]

SENATOR AVERY: Yeah. I know, I was on that task force, Vote Nebraska Initiative, and we talked extensively about expanding the vote by mail. In fact, in my own race, vote by mail played a significant role because we were able to get to those voters early, thanks to your help, by the way. (Laugh) I just wanted to get that on the record that it's not something new and different. [LB248]

DAVID SHIVELY: Right. No. [LB248]

SENATOR AGUILAR: Senator Pahls. [LB248]

SENATOR PAHLS: This is just a little bit off to the side but, Dave, you brought something to my attention. Okay, let's say you're an SID. If I own 14 properties, although I don't...I do not...I own them, but I don't live there. Do I have 14 votes? [LB248]

DAVID SHIVELY: In an SID election there are actually two ballots that are mailed out. One is to resident property owners. So if you're a resident property owner, you get so many votes. And then when we mail out a ballot based on property owners, and that is dependent on the number of lots that a person owns in a sanitary improvement district. So it's done a little bit differently. [LB248]

SENATOR PAHLS: So in other words, if there's an SID of 400 and there...100 of them are people living there. The other 300, I actually still control that, as long as I own the rest of those lots? I mean I'm just... [LB248]

DAVID SHIVELY: Right. [LB248]

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SENATOR PAHLS: This is just information for me, not... [LB248]

DAVID SHIVELY: Right, you have that many votes. [LB248]

SENATOR PAHLS: Okay, okay. [LB248]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Shively. [LB248]

DAVID SHIVELY: Thank you so much. [LB248]

SENATOR AGUILAR: Any other proponents? What about opponents? Neutral testimony? Seeing none, I would read into the record we have a...never mind. (Laughter) That closes the hearing on LB248. We'll now open...would you like to close, Senator Nantkes? I'm sorry. Thank you. [LB248]

SENATOR NANTKES: Thank you. [LB248]

SENATOR AGUILAR: We're now ready to open on LB298. Senator Burling, please come forward. [LB248 LB298]

SENATOR BURLING: (Exhibit 1) Thank you, Mr. Chairman and members of the Revenue...Revenue, Government Committee. Good to be back. Spent six years on this committee and I really enjoyed it. So thank you very much for giving me the opportunity to introduce to you today LB298. I'm Carroll Burling, B-u-r-l-i-n-g, represent District 33 in the Legislature. I'm introducing this bill on behalf of the Secretary of State's Office. And following me will be Mr. Erickson, who can answer the more pertinent questions to this issue, probably, than I can. LB298 modifies Nebraska Statute 32-168 by increasing the number of signatures required to place the name of a candidate on the ballot for a statewide partisan office from the current requirement of 2,000 signatures to a new requirement of 4,000 signatures. In addition to that, it provides that 50 signatures must be obtained from at least or each of one-third of the counties in the state. In addition to that, for nonpartisan office, other than members of the Board of Regents and Class III school districts, current statute requires that the number of signatures required to place a candidate on the ballot shall be at least 10 percent of the total number of registered voters voting for Governor or President of the United States at the immediate preceding general election in the district or political subdivision in which the officer is to be elected. LB298 would place a 2,000 signature cap on this requirement. Now for those same nonpartisan offices, current statutes requires that if the district in which the petitions are circulated comprises more than two counties, at least 25 signatures shall be obtained from each county comprising the district. LB298 intends this 25 signature requirement applicable to only those counties that have at least 100 registered voters. Now yesterday we caught something that we want to bring to your attention. And an amendment...have you been handed out AM93? [LB298]

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SENATOR AGUILAR: Yes, we have. [LB298]

SENATOR BURLING: Thank you. I would request that the committee would amend this bill with AM93 before it advances on to the floor. And I urge you to advance this on to the floor. And I'll try to answer any questions. [LB298]

SENATOR AGUILAR: Questions for Senator Burling? [LB298]

SENATOR AVERY: I have one, just a technical question about the...at least 10 percent of the total number of registered voters voting for Governor or President. How you going to decide which one? [LB298]

SENATOR BURLING: Well, you see the last immediate general election, you don't always vote,... [LB298]

SENATOR AVERY: The year...okay. [LB298]

SENATOR BURLING: Just like this last one, we voted for Governor, but not for President. [LB298]

SENATOR AVERY: Right, I got it. [LB298]

SENATOR BURLING: So...and two years from now it would be the President. [LB298]

SENATOR AVERY: That was a bonehead question, sorry. (Laugh) [LB298]

SENATOR BURLING: Well, that's all right. [LB298]

SENATOR AGUILAR: Further bonehead questions? (Laughter) Seeing none, thank you, Senator Burling. [LB298]

SENATOR BURLING: Thank you. [LB298]

SENATOR AGUILAR: Proponents? [LB298]

NEAL ERICKSON: Senator Aguilar, members of the committee, my name is Neal Erickson. I'm Deputy Secretary of State for Elections, that's E-r-i-c-k-s-o-n. I'm here on behalf of Secretary of State John Gale, who unfortunately...well, I shouldn't say unfortunately, is at a Real Estate Commission meeting today, so could not attend to testify. I'd like to start out by thanking Senator Burling and his staff for introducing this and kind of explain where this bill came from. Actually, the genesis of this bill was Secretary Gale and Senator Burling were talking about another piece of legislation and

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one of the things they talked about and got into was petitioning on the ballot, and whether the statewide threshold of 2,000 was too low. And I think there was some consensus between the two of them that yeah, it probably was too low for a statewide office. And that's kind of how this bill was born. So a bill was decided to be introduced increasing that threshold, and then a suggestion came up to put some kind of distribution requirement, so that not all those signatures could come from say one county or from one specific area. Hence, there is a requirement in this proposal that requires signatures in at least one-third of the counties, 31 is the current number of counties. Then, once we were opening up this section, there was a couple situations that we've encountered in the past, and they both involved nonpartisan offices. Number one, there is a...there is the ability to petition onto a nonpartisan ballot under certain circumstances, and it's 10 percent of the vote for Governor or President within that district for the last election. But there was no cap. So what happened is in some of the particularly urban areas, community colleges, NRDs, occasionally some public power districts, those signature thresholds could reach 8,000 or 9,000, much more than 2,000 statewide for a partisan office in current law. So one way to address this was to put some type of threshold cap in there. And that was put into the proposal at 2,000. The other situation we had was on nonpartisan races was distribution requirement. If there is two or more counties, and at least 25...in the district, at least 25 signatures are required from each of the counties. Well, this impacts some of the real small districts. Occasionally, we'll have a school district that goes into a county and there may be only 30 registered voters there. And, you know, trying to get 25 of those 30 in order to get on there has been a little difficult, maybe close to impossible actually. We actually had a situation about ten years ago where it went into a county and only had 19 registered voters. There was no physical way for them to get 25 signatures, because there weren't that many registered voters there. So to address that issue what we did was put in saying, okay, you have that 25 signatures as a distribution requirement seems reasonable, but only if there's at least 100 registered voters there. If it's not...if there aren't 100 registered voters there, then that distribution requirement does not apply. So that's kind of the history on the bill and where it came from and addresses a few different situations from its original increase in threshold. But once you have those sections opened, might as well try and address some of the problems we've encountered in the past. With that, I'd answer any questions you might have. [LB298]

SENATOR AGUILAR: Questions from the committee? Senator Friend. [LB298]

SENATOR FRIEND: Thank you, Mr. Chairman. Mr. Erickson, how long has the threshold for a partisan office been at, to the best of your knowledge, been at 2,000? I mean is it pretty... [LB298]

NEAL ERICKSON: Well, it's been longer than I've been doing this job, which is a dozen years, and I think longer than...as long as I've been involved in politics. So now we're getting to about 25 years or so. [LB298]

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SENATOR FRIEND: And it would be...I would hesitate, I don't want you to guess on maybe the genesis or why somebody would pick a number like that. But do you think they...but historically, do you think they go back and look at the population? I mean is there a...has there been a historical reason for setting numbers like that in statutes? [LB298]

NEAL ERICKSON: Well, generally the reason for establishing any kind of petition process is to indicate some level of support. One thing about it, petitioning isn't a particularly easy process. And 2,000, particularly if somebody is doing it by themselves, is a pretty substantial number. Now the reason we looked at 4,000 was, you know, if we went too high you'd get into a situation where rather than petition on as a candidate, they'd create a political party, which that threshold is about 6,000. So this was kind of in between those, and that was the reason for it. I mean you see varying petition levels on, depending what the office is, I think, for example mayor of Omaha they require 1,000 signatures, city council is maybe 300, if I remember correctly. You just...it...it's kind of to show a level of support. Is 2,000 enough? You know, at least I think Secretary Gale and Senator Burling came to the conclusion that it probably wasn't enough and maybe we should increase that a little bit. [LB298]

SENATOR FRIEND: Thanks. [LB298]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Neal. [LB298]

NEAL ERICKSON: Thank you. [LB298]

SENATOR AGUILAR: Further proponents? How about some opponents? Neutral? Senator Burling waives closing and that closes the hearing on LB298. [LB298]

SENATOR MINES: And I will open the hearing on LB311. Senator Aguilar, the principal introducer. [LB311]

SENATOR AGUILAR: Thank you, members of the Government, Military and Veterans Affairs Committee, Vice Chairman Mines. Good afternoon, members. Secretary of State John Gale asked me to introduce this bill. And I want to thank him and his staff for all of their assistance on it. LB311 changes provisions relating to petition signature verification in order to conform to the requirements set forth in the Nebraska Supreme Court case Stenberg v. Moore. In Stenberg v. Moore the Nebraska Supreme Court declared Section 32-1409 to be unconstitutional on its face because it required an exact match of information on petitions and the information on the voter registration records. Although the Secretary of State applied the statute in a way which did not require the exact match, the court still upheld the statute was unconstitutional. This bill is an attempt to reestablish the statute and to provide guidelines on signature verification

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which meets the criteria set forth in this case. Thank you for your time on this bill. And I'd be happy to try to answer any questions. And I also understand the Secretary of State's Office will be here to testify and answer any of your technical questions. [LB311]

SENATOR MINES: Thank you, Senator. Are there questions for Senator Aguilar? Seeing none, can I see a show of hands, those in favor of this bill? I see one. Those in opposition? I see none. Those neutral capacity? I see none. Neal, you're up. [LB311]

NEAL ERICKSON: Thank you, Senator Mines. Members of the committee, once again for the record, my name is Neal Erickson, Deputy Secretary of State for Elections, here on behalf of the Secretary of State John Gale. Once again, I'd like to thank Senator Aguilar and Christy for working on this bill for us. And I think probably, I hate to take much time at all, but kind of got to give you a little history background on the petition verification process to understand what this bill actually does. Going back to 1993, petition verification used to be fairly simple. You know, you are on the registered voter list, you can compare the signatures, etcetera. You could find out whether that person was registered or not. If you moved, you were no longer a registered voter. If you moved across the street, you were no longer a registered voter. So what you signed on the petition as your address was going to match your voter registration, or you were not a registered voter. But in 1993 and the state enacted in 1995, the National Voter Registration Act changed that, and they instituted something called fail-safe voting, which allowed you to move within a county and not reregister; you were still a registered voter. But you could move and if you signed a petition with your new address, you still might be a registered voter. But we didn't have any record of that person with that address. And that created a little bit of a problem for us--how do we determine whether these people are registered voters or not? So in 1997, the Legislature passed a bill saying that in order to verify that signature it had to match the information on the registration record. That was the language they used; it had to match. We actually, the Secretary of State's Office used a process a little bit broader than that. I mean, we took into account nicknames, things like that, clerical errors, you know, if they had signed it Mick Mines and the name was Michael it was counted. We actually provided a list of nicknames, or common nicknames to the clerks that we said would count. I mean I...there were a couple interesting things about that process. I found out, number one, the federal government actually produces a list of common nicknames for immigration officials. And the one that I...I never knew Peggy was a nickname for Margaret. But that ended up making the list. In 1998, the...during the debate on that bill in '97, there was a lot of discussion about whether this was going to require an exact match. Did you have to sign that petition Michael Mines and have the address exactly the same? And the contention was it had to be an exact match or it wasn't going to count. Now we had all the time said, no, we were going to use, you know, in effect, some common sense about this. But what we were trying to do was make this process work. The Attorney General filed suit on that, saying that the bill was or the legislation, the statute was unconstitutional on its face, not in application, not the way we were applying it, but on its

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face, because it said "match", and that meant all that information had to match the registration record or the signature was no good. Well, the court bought that argument and said, no, this requires an exact match and therefore it's unconstitutional. As a result of that court decision, one of the things that was done was the Attorney General, we were a little frustrated with that court decision, needless to say. But the Attorney General's Office drafted guidelines on verification, what we should count, how we should count, etcetera, which we accepted and we've used for the past four election cycles. In addition, the following year, in 2000 they, at least my understanding was it was drafted by the Attorney General's Office. Senator Dierks introduced LB805 which, among other things, it had a lot of things with various court cases, other court cases that had occurred, such as saying petitioners don't have to be registered voters...or circulators don't have to be registered voters. But one of them was rewriting this section, 32-1409, sub (1), that the court had declared unconstitutional. Well, it ran out of time, didn't pass, and honestly, has never been reenacted. So right now, even though 32-1409 sub (1) appears in your statute books, the note right underneath it says that a court has declared this unconstitutional in 1999 in Stenberg v. Moore. Well, with that in mind, we thought maybe it was about time to actually put 1409 sub (1) back into statute. Like I said, this is basically LB805 with a couple tweaks on it to comply with Stenberg v. Moore, and that's what we're bringing forth today. Our current verification process complies with this. We believe that this language in LB311 meets the standards of Stenberg v. Moore, but it's just putting something back on the books that should be there. So with that probably lengthy history lesson, I'll ask for any questions you might have. [LB311]

SENATOR MINES: Thank you, Neal. Questions? Great testimony. Thank you. [LB311]

NEAL ERICKSON: Thank you. [LB311]

SENATOR MINES: Anyone else in support of LB311? Anyone in opposition of the bill? No neutral? Senator Aguilar, to close. [LB311]

SENATOR AGUILAR: I'll waive closing, but for the record, I'll say my name is Ray Aguilar, A-g-u-i-l-a-r. [LB311]

SENATOR MINES: Thank you, Senator. And I'll turn the committee back to you. [LB311]

SENATOR AVERY: We love it when you follow procedure. [LB311]

SENATOR ADAMS: He can't ask other people to do it, if he doesn't. [LB311]

SENATOR AGUILAR: Thank you. We're now ready to open on LR8CA. Senator Avery. [LR8CA]

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SENATOR AVERY: Thank you, Mr. Chairman, members of the committee. My name is Bill Avery, A-v-e-r-y. Do I need to spell Bill? I am representing District 28. The bill that I have before you is LR8, which proposes a constitutional amendment be placed on the ballot so that voters can decide whether to change signature requirements for initiative petitions. Specifically, LR8 would increase the number of required signatures to put a constitutional amendment on the ballot from 10 percent to 15 percent of registered voters. Now additionally, this resolution would lower the required number of signatures to enact a law from 7 to 4 percent of registered voters. Now what am I trying to fix? Since at least 1990, Nebraska's Constitution, I think, has been under attack, mostly by people in organizations located outside our state. Most of these efforts have been funded overwhelmingly by wealthy outside interests. During this period, since 1990, a 16-year period, 18 initiatives have succeeded in getting onto the ballot, 16 of which sought to amend the constitution. So clearly people wish to amend our constitution, whether they wish to change our laws. A search of public records shows that during this period nearly \$9 million was raised to fund these efforts. Over 96 percent of this money was in the form of reportable contributions of more than \$250 each. So we know where most of the money came from. And here's the stinger--70 percent of the \$9 million came from out-of-state sources. Let me talk to you about a recent example; you're all familiar with it. Last year we had a group called Stop Overspending Nebraska Committee that tried to amend the constitution by placing a fixed lid on state spending. That group's primary financial support came from a group called America At Its Best, that was based in Montana. America At Its Best, in turn, got most of its money from individuals and groups elsewhere; we know that to be New York State and, I believe, somewhere around Maryland, Washington, D.C. Public records show that Stop Overspending Nebraska received \$2.5 million from America At Its Best and less than \$5,000 from Nebraskans. This was not an issue, in my opinion, that emerged from deeply felt concerns about state spending by Nebraska citizens. Now don't get me wrong, I am not arguing against the petition process; I have deep respect for the right of citizens to petition their government by popular initiative. This right is especially important to Nebraska with our unique single body Legislature where the initiative is frequently referred to as our second house, as Senator Friend has said many times. So I support the initiative process. I think we need to keep it; it's important to the people in the state. But I also have deep respect for our state's constitution, so much in fact that I think it deserves to be protected from the desires and whims of outsiders who think they know best how we ought to run our own business. I did a lot of door-to-door campaigning when I was running for this office. And I frequently heard people complain, they were offended by this outside interference. The Nebraska Constitution is not a trivial document. It's not written in pencil so that whoever has the biggest eraser can come in and change it willy-nilly to suit their own interest. The value of this legislation is that it raises the bar for constitutional amendments at the same time that it lowers the bar for the enactment of laws by way of petition. And by doing this, we make it a bit more difficult for forces outside our state to amend the constitution. These are forces that, I

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think, have a casual disregard for the best interests of the citizens of our state; they don't really care about what we care about. They care about their issues, and they want us to amend our constitution to reflect those issues. But at the same time, this legislation makes it easier for statutes to be enacted by petition. Now I would argue that this is in the interest of citizen groups comprised of ordinary Nebraskans who may wish to use the initiative process to enact laws. Now I recognize that what I am proposing has a risk. The risk might be that outside interests look at the increase in the number of signatures required to amend the constitution. They decide, well, we can't clear that bar, so we're going to go after the enactment of laws. So you just simply shift their focus from one area to another. Well, should they choose this path, I would remind the committee that the Legislature has the authority to revisit these laws and we can overturn them with two-thirds vote...two-thirds majority in the Legislature. In fact, we just did that yesterday on the repeal of Initiative 419, I believe it was. I'm referring here to Initiative 418 that was passed by the voters in 2004 that put restrictions on what we, as a body, can do to amend, repeal, modify, or impair a law enacted by initiative. We must have a supermajority to do that, that's 33 votes. Another thing that we need to bear in mind is that if voters say, well, you're restricting me too much in what I can do or what we can do on constitutional amendments, they can still come to the Legislature to get support to place a constitutional amendment on the ballot if they find the 15 percent rule too restrictive. Other states have no initiative provision, such as Iowa, some states have more generous ones, some more restrictive. I do believe, though, that we need to pay attention, take some action on this issue, whether we can get it passed in an election, this would be November of '08, remains to be seen. But I do think it's something that we need to address. With that, I will stop and take any questions you might have. [LR8CA]

SENATOR AGUILAR: Questions for Senator Avery? Senator Adams. [LR8CA]

SENATOR ADAMS: Just one quick one, Senator. And I know it's not a fair question probably... [LR8CA]

SENATOR AVERY: Don't ask it. (Laugh) [LR8CA]

SENATOR ADAMS: ...because you've answered it in your bill. But if you had to choose between the thresholds, you could only have one or the other, which is most important to you? [LR8CA]

SENATOR AVERY: I think the constitutional amendment. [LR8CA]

SENATOR ADAMS: Thank you. [LR8CA]

SENATOR AVERY: You mean if I had to say...so you raise the bar at the constitutional amendment... [LR8CA]

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SENATOR ADAMS: Or lower it for initiatives, and you could only have one... [LR8CA]

SENATOR AVERY: Yeah, only have one. [LR8CA]

SENATOR ADAMS: ...part of the bill or the other. [LR8CA]

SENATOR AVERY: Yeah, I would definitely go for the constitutional amendment. [LR8CA]

SENATOR ADAMS: Thank you. [LR8CA]

SENATOR AVERY: That's where most of the outside money is focused. [LR8CA]

SENATOR AGUILAR: Senator Mines. [LR8CA]

SENATOR MINES: Thank you, Mr. Chairman. Senator, is this an either or? If I choose to run an initiative and don't reach the 15 percent threshold, do I qualify under the...as a statutory change? Or do I have to pick ahead of time? [LR8CA]

SENATOR AVERY: I don't know the answer to that. Can I ask Christy? Is it okay to ask counsel? [LR8CA]

SENATOR AGUILAR: She's going to have to come up or he's going to have to come up and identify himself. [LR8CA]

SENATOR AVERY: Josh, do you have the answer to that? Josh is my legislative aide, and I am not sure. That's a good question though. I think...let me just tell you what I think the answer is. [LR8CA]

SENATOR MINES: That's all right. [LR8CA]

SENATOR AVERY: I think the answer is that a constitutional amendment, once you file for a constitutional amendment, you're stuck with that. And you have to file separately for a statutory initiative. [LR8CA]

SENATOR MINES: Okay, thank you. I see nodding in the audience. [LR8CA]

SENATOR AVERY: Is that your understanding, Rex, Lynn? Thank you. [LR8CA]

SENATOR MINES: Thank you. [LR8CA]

SENATOR AGUILAR: Further questions? Senator Karpisek. [LR8CA]

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SENATOR KARPISEK: Thank you, Mr. Chairman. Senator Avery, we're going by the percent of registered voters on this again. We've heard testimony about, and even in the first bill today about percentage of voters in the last election, the Governor or the President. Is there a reason why you would rather do the percent of registered voters rather than the percentage of who voted last? [LR8CA]

SENATOR AVERY: Yes, the bar is higher, because the purpose here is to make it more difficult to amend the constitution, less difficult to enact laws. And I could give you some numbers. If we look at the number of registered voters in 2004, the way it is now it takes 116,000 a little over 116,000 signatures to put a constitutional amendment on the ballot. With this change it would be 174,000. To put a law on the ballot, under current law, it takes about 81,214 votes. With this change it would be about half that or a little more than half, 46,408. And the numbers change, of course, every two years, depending on the number of registered voters. And I have the numbers for 2006, if you'd like to have them. [LR8CA]

SENATOR KARPISEK: Thank you. Thank you, Mr. Chair. [LR8CA]

SENATOR AGUILAR: Further questions? Senator Friend. [LR8CA]

SENATOR FRIEND: Thank you, Chairman Aguilar. Senator Avery, are you...you had mentioned that you would be, I guess, concerned or it would be at least something that you would consider. I don't know if troublesome was the terminology you used, but you'd be a little bit worried about the idea of infringing upon people's rights in both areas, from a constitutional amendment standpoint and then as a general law making idea. And you did a good job of explaining how, you know, that infringement can be averted, if you will, based on a couple of the ideas that you shared. Wouldn't it...I guess one of the concerns that I have, if I even...I'm not even sure that I have them, but this is just a thought process. Fifteen percent on a constitutional amendment, I would submit to you that that's not monumental for some...for an organization like the Gold Coast in Las Vegas. And I'll tell you why, they'll just toss money at the subject matter. Now we've dealt with ideas...we've dealt with the idea of dealing with the signature for...or gathering signatures and paying for them. But, you know, these people are obviously crafty enough, they can work around these things. If that is the case, and I would submit to you that they'll throw money at it and they'll go get that 15 percent, it's not as much of an issue for them. Wouldn't...I would also submit that that 15 percent would be an issue for an average Nebraskan saying, you know what, I have a right, I'm a resident, I have a right to petition my government, and this is financially...this is virtually financially impossible for me to handle. [LR8CA]

SENATOR AVERY: Yeah, I recognize that problem. I think the constitution ought to be hard to amend, I really do. Now and then, too, they always have the option of coming to us and asking that we sponsor a resolution calling for that constitutional amendment to

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go on the ballot; we can do that. And that just requires a simple majority. [LR8CA]

SENATOR FRIEND: And that was...and I thought that was good. That is a thought process and an idea that I don't know that I would sidle up necessarily to you with, but it's legitimate. And I find it a good answer and it will promote debate. My concern, if I have any, and I don't think it's rhetorical, I would appreciate your comment, is obviously I've laid some of these ideas out before in the short time that I've known you and worked with you that, and we've debated some of this in the past, too, in the Legislature. Our constitution is full of all kinds of stuff. I agree with you, I don't think it should be. But a year, year and a half ago we changed our constitution to funnel money over to the State Fair. Guilty as charged, I was involved in the process. And there was a huge debate, huge and a long debate on whether that was appropriate. Here's my point, it's easy for us to change the constitution in this Legislature. All I need to do is get a halfway decent idea and go to 48 other people and say, you know, I've got their support. And if you get that out to the people and it seems like a good idea out there, you're in. Fifteen percent, I'm worried, Senator. I think...and I think that that could be deemed by some as too restrictive. I'm not making a determination. Based on what our constitution is now, is my point, that could be deemed as somewhat restrictive. And I would...I don't know if that's rhetorical. I would let you certainly comment and add to that if you'd like. [LR8CA]

SENATOR AVERY: I can't say that this number would achieve exactly what I'm trying to achieve. I do think, though, that the bar needs to be raised. I don't want to raise it so high that ordinary citizen groups can't clear the bar, but I'd like to make it more difficult for the interests you were just talking about, Gold Coast, groups like that. Yeah, I'm sure they could throw endless amounts of money into something that they wanted badly enough. [LR8CA]

SENATOR FRIEND: Yeah. [LR8CA]

SENATOR AVERY: But we couldn't...you know, we could raise it to 50 percent and they could probably go clear the bar with the right amount of money. So I don't know. I'd be willing to work... [LR8CA]

SENATOR FRIEND: And hence, when that happens, I think...well, that's my fear. [LR8CA]

SENATOR AVERY: Yeah. [LR8CA]

SENATOR FRIEND: And you've...and I think we've found a common area. That's my fear that there are some that will find no bar too high. [LR8CA]

SENATOR AVERY: Yeah. [LR8CA]

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SENATOR FRIEND: There are others, and unfortunately there are probably a lot of them residing in the state that have that right that we've given them. That's my fear. I guess that's only a comment. [LR8CA]

SENATOR AVERY: But I'd be willing to work with the committee if you want to adjust some of these percentages. [LR8CA]

SENATOR FRIEND: Yeah. Well, thank you, Senator; you have good information. [LR8CA]

SENATOR AVERY: I like your position about the initiative process being the second house. It may not be unique to you, or may not be original with you,... [LR8CA]

SENATOR FRIEND: Oh, it's not. [LR8CA]

SENATOR AVERY: ...but I heard it from you first. [LR8CA]

SENATOR FRIEND: Yeah. Well, thanks. [LR8CA]

SENATOR AGUILAR: Further questions for the senator? Seeing none, thank you. [LR8CA]

SENATOR AVERY: Thank you. [LR8CA]

SENATOR AGUILAR: Proponents of the bill? Welcome. [LR8CA]

DICK HERMAN: (Exhibit 1) Thank you. Chairman Aguilar and members of the Government Committee, before I even begin, I want to answer a question that Senator Karpisek passed about registered voters being the basis. It's in the constitution now; you don't have any alternative to say the number of people that voted for Governor or President or something. It's in the... [LR8CA]

SENATOR AGUILAR: Could we have you state your name before you go ahead. [LR8CA]

DICK HERMAN: Pardon? [LR8CA]

SENATOR AGUILAR: Could we have you state your name and spell it before you proceed. [LR8CA]

DICK HERMAN: Oh, excuse me. My name is... [LR8CA]

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SENATOR AGUILAR: Sorry, everybody makes that mistake. [LR8CA]

DICK HERMAN: My name is Dick Herman. I live in Lincoln. The name is H-e-r-m-a-n. Except for a couple of years in uniform, I've lived in this state since 1951. And I've testified before this committee when Senator Aguilar was sitting, I think, over there and remembers some of that material. LR8CA has its immediate roots in the conduct of the 2006 initiative campaigns. Some critics called the system highjacked and were critical of the amount of money being put in it by outside sources. Secretary of State John Gale said the process is out of hand. And you had a couple of bills before you, I think, last week essentially from the Secretary of State. And philosophically, there's a built-in tension in our system between representative government and democracy, which you all represent, and direct democracy. Large amounts of money from outstate helped foster several proposed initiatives last year. And Senator Avery mentioned New York resident, Howard Hunt, was a critical source of great funds fueling one set of petition ventures. The money was needed to pay petition circulators in this and several other states in the process. But the availability of money is central to this issue. Two United States Supreme Court decisions are critical: Buckley v. Valeo I think in 1976, and Christy can verify that, essentially equated money with protected constitutional speech. If you have a lot of money, you've got a lot of access for speech. If you don't have a whole lot of money, you don't have the capability. That was one element. And then the U.S. Supreme Court, in 1988, had another case, and this one was in Colorado. And it ruled that states with petition systems like ours cannot bar paid circulators, which really upset what had been the Nebraska ethos. Nebraska has had a bifurcated system, citizen petition system, since 1912. As Senator Avery mentioned, the lesser number of signatures is needed to place on the ballot if it's successful a statutory proposal. A greater number is needed for proposed constitutional amendments. The current numbers of 7 and 10, 7 for statutory, 10 for constitutional amendments, have not fundamentally changed since 1912. The circumstances have wildly changed, but the numbers have not changed. So I want to make that point. Back in 1912, of course, we had a bicameral. And at the time, the only people who voted were men. So things have radically changed in terms of our governmental structure. In 1920, we had a Constitutional Convention, which was all men, incidentally. And they had a fascinating debate. I was thinking of bringing the proceedings of those constitutional conventions here because I read those and I find all kinds of interesting language and proposals in which they were fearful of the Bolsheviks, which was curious at that time. They also, at that convention, represented the bias of the state in terms of putting things in the constitution. And even now, and I went and picked up a copy from the Secretary of State, still in there, Article I, which is the Bill of Rights, Section 27 says, English can be the only language in this state. Twice this Legislature has put...authorized on the ballot changes in that particular section where parents can teach their children in some language other than English. Twice the voters of this state have rejected it. Senator Stuhr was quite significant, I think from your area. She even knew the principals that went to the U.S. Supreme Court in a really famous case, called Meyer v. Nebraska, in

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which the Supreme Court said that parents have a predominant right over the education of their children. So I don't know whether you'll ever have an opportunity to read those proceedings, but even in 1920, and that's only eight years after the language was put in the constitution, which wasn't a whole lot of experience in terms of elections from 1912 to 1920. About close to half the delegates to that convention were very apprehensive about the initiative petition system. And they even had a vote on...to raise what was then 10 percent to 15. It failed, but not by a whole lot, it was a pretty good vote. In those proceedings of the 1920 convention I was really startled, if I had hair it would stand up, by the prescience of the delegate from Buffalo County, a Mr. McDonald. He said, and I want to quote here, an amendment to the constitution can be framed by one man, one man, if he has the time, has the energy, and the money to spend to do it. He can frame it to suit himself without consultation with others, without deliberation, without discussion, without an opportunity to modify it, and it could be put on the ballot and could be passed by a very small minority of the state's voters. So that situation still prevails. One man with enough money and time and energy can do so. In terms of dropping 7 percent to 4, we've had examples in this state, of which I know at least one or two, where voluntary groups with their own views of things could not get on the ballot because they couldn't meet the 7 percent threshold. They didn't worry about the 15, it was the 7 percent. And in fact, if this were dropped from 7 to 4, it might enliven the body politic on a variety of statutory changes which do not come to the Legislature. You could have something like somebody...a group saying we're going to petition so we can't have assault weapons in this state, or you can petition in the criminal area of mandating certain lengths of prison term for drunken driving. That would be possible, statutory, that's what you folks do, and you make those kinds of decisions. The 15, I think, you're in the 10 to 15 raises the bar and you ought to contrast it with what you are doing. When you have a constitutional amendment proposed like this one, you get four cracks at the apple--one in committee, and if it advances from committee, then you have three on the floor--General File, Select File, and Final Reading. You can look at all these proposals in great detail, unlike anything which is coming through the initiative process. There was no consideration on how decisions were made to put things on the ballot. Besides not knowing where the money came from, you didn't know who wrote the thing. So you have that authority to be much more deliberative, much more reasonable, far more careful than that which comes through the initiative process. As I cited the English amendment, in an emotional time in our history, that amendment came about in the aftermath of World War I, when there was a great bias against Germans, Nebraskans who had a German heritage. And that's the reason it's in the constitution. And I went and looked it up, it's still there. And you pay a devil of a time getting something like that out. You have to be very careful what you put into the constitution. I'm not at all sure that people who run constitutional amendments through the initiative process have that level of care that members of the Legislature do, or at least the opportunity to do so. So 15 percent really is an attempt to protect the constitution, as Senator Avery said, and protect the constitution when you elevate from 10 to 15. I think that's at a barrier which needs to be raised. I'm not quarreling with the idea that 15 percent may be too low

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against people who have tons of money. But at the same time, I know that when there's a whole lot of money in a campaign, the voters of this state take exception. And they don't like it when you're trying to buy the state or buy candidacy. Those kinds of folks generally lose. I've been around the state for some time and that has been my experience. A rival of mine, so to speak, when I was still a working editor, was Harold Andersen of the Omaha World-Herald. He was the editor and publisher of the Omaha World-Herald. And on this one, Andy and I agree in a large sense. And he put out a piece of material, I guess, in September. And this is for committee members. I don't totally agree with him because he's in dreamland when he thinks the people of this state will repeal what was passed in 1912. People like the petition system, but they like to have it regulated carefully. So I'm subject to any kind of questions you want to ask, if you have any. [LR8CA]

SENATOR AGUILAR: Questions for Mr. Herman? Seeing none, thank you. And thank you for being here. [LR8CA]

DICK HERMAN: Sure. [LR8CA]

SENATOR AGUILAR: You never fail to educate and enlighten this committee... [LR8CA]

DICK HERMAN: Well, I don't know... [LR8CA]

SENATOR AGUILAR: ...and make us realize how important our deliberations truly are. [LR8CA]

DICK HERMAN: It really is, yes. [LR8CA]

SENATOR AGUILAR: Thank you. Further proponents? [LR8CA]

JACK GOULD: Senator Aguilar, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I'm here representing Common Cause Nebraska. And I want to, first of all, say that we share the concern for the constitution and we recognize the point about the amounts of money necessary to make changes, and that there are people with unlimited amounts, no matter how we raise the numbers. But at the same time, the increase makes it more expensive, makes it a little more difficult. And for that reason we support Senator Avery's position on raising the numbers for the constitutional change. The other side of the issue is, of course, the question of statutes. And I think it's important to recognize that if we do lower it that we are not taking any power away from the Legislature, that in the end the Legislature will always have the ability to make changes in the statutes. And as a result of that, there shouldn't be any real concern that the public is going to do some outlandish thing. I speak for a group that's concerned primarily about ethics in government, and we're not always a very popular organization,

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I must say. I wish we were more popular. But I can give you some concrete examples of what can happen. We were in the middle of a petition drive back in the nineties, and I can't give the exact date, but the petition effort dealt with the question of revolving door, it dealt with gift legislation. And none of the senators present had anything...involvement with this, so I feel comfortable speaking about it. But in the middle of that effort is when the legislation passed it raised the numbers, and it went from 50,000 signatures to a situation where we had to come up with 90,000 signatures. And also the percentages by county pretty much took this whole effort out of our hands. I mean we were sunk really before we started. There was a question even with what we had whether this legislation would pass and we'd be able to get it onto the ballot. But it's an issue that the public was concerned about. And I bring up the revolving door because we see at the national level there are efforts in the Senate to raise the two-year limit on senators coming back as lobbyists. And we have seen many of the states now putting that into legislation. But we have tried three times to bring that kind of legislation before the body. And the poor senators that have had the courage to bring that bill have suffered. And I sympathize with them, but we continue to try because we believe that revolving door legislation protects the integrity of this body. And so we continue to try to do that. And if there are any of you that are interested in bringing that legislation next year, I will leave my phone number (laugh) and my e-mail with you. But it's an example of the kind of things that citizens groups may want to do and may even have the majority of Nebraskans behind them. But it becomes extremely difficult, short of a petition effort, to get that kind of legislation passed. And so I would hope that, you know, you would view this reduction on statutory petitions as a way of opening a doorway that may be slammed to groups like ours, and at the same time groups that do have a very important interest in the integrity of this body. Thank you. [LR8CA]

SENATOR AGUILAR: Questions for Mr. Gould? Seeing none, thank you. Further proponents? [LR8CA]

LYNN REX: Senator Aguilar, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. We support the concept of this proposal. I don't know if the numbers are where the committee actually wants to end up. I think the reason why this is such an important proposal for you to consider as state senators is because, in fact, as you place issues before the voters as a ballot question to amend the state Constitution, these same groups that basically are, whether it's the 423 group or other types of groups, they, too, could come before you and they, too, could present their arguments. You are the elected representatives. It is not just one person, it's not a couple people in New York, it's not a couple of people out in North Platte drafting something. And I will tell you 423, having spent my summer and fall working on that issue, was one of the most poorly crafted proposals, I'm trying to be diplomatic, just full of problems. It was the Right to Work Act for attorneys, had that passed. But the reality is, they didn't want to come before you because, in working that campaign, you, the Legislature, folks that had been...had gone through a process, you'd

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received support and that's why you're sitting here, because people voted you into office, you were identified as the problem. You were the big spenders. You were the ones out of control. Now anyone that's worked within this process knows that is absolutely ludicrous. And I'm not suggesting that folks not have the right to petition their government, that's part of our constitution. If you go back and look historically, you'll find that predominantly only the states west of the Mississippi gave that right to their citizens; the folks east of the Mississippi did not predominantly do that. But I think what is so important with this proposal is that it lets folks, it lowers the bar on statutory changes. And I do think this would result in more statutory proposals before the voters of Nebraska. And I'll tell you why I think that is far preferable to what's happening now. I think the reason why that would be preferable is because after these proposals, if in fact they wouldn't work, let's assume...let's take 423 as a state statute instead of a constitutional amendment, I can assure you it wouldn't take more than two cycles of dealing with your budget and the Legislature itself would be changing that proposal. And citizens would support that. And the reason why they would support that is because there are so many folks who would be impacted across the board, which is why AARP, why so many other folks were there front and center working to protect people that basically are also helped to elect you. And the reason why I think that is so important is because as you get more of these types of proposals forward, when they don't work the Legislature itself, by a two-thirds vote, can change it, because by that point you can say, look, two years, four years, you can say, this is the problem. This is what's happened. In Colorado, when their taxpayer bill of rights passed, which was the analogy to what we had here on the SOS thing, which is...and that proposal was presented in over 26 states, I think what's important for you to know is that was adopted in 1992. It was basically...the provisions were suspended in 2005. It took over 1,000 organizations and \$10 million to get that done. Now I can assure you that as hard as it is to pass a constitutional amendment, it is even harder to get it out once it's in. And that's why I'm suggesting to you that this proposal is superior to probably anything that you've seen in terms of dealing with this particular issue. We've had other bills, Senator Schimek had some before you earlier this year which I think were also valuable. But I would really encourage you as a committee to look at this. Maybe you don't want to make it 15, maybe you want to make it 14, maybe you want to make it 16. But I think what's so important is I think, as a Legislature, you have an obligation, and an affirmative obligation to protect the constitution. And I say this full well knowing that the League of Nebraska Municipalities may very well be back some day doing an initiative petition ourself. Had 423 passed, we would have been there with a number of organizations trying to reverse it. And it wouldn't have been a \$2 million or a \$3 million proposal then. By that time, I'm sure, it would have been up to \$15 million. And I was...I didn't have a chance at the time when Dave Nabity testified on a bill a few weeks ago, when he made the comment that there was, quote, out-of-state money coming in on those opposing 423. That out of state money, frankly, just Nebraska dollars coming home. Those were dollars paid for by teachers predominantly and by the elderly, through dues, through AARP. That's the only money. We didn't have a benefactor in New York City writing us

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checks, shuffling it through three and four different national organizations. We didn't have that, we will never have that. And I'm just suggesting to you that as one that has spent a lot of years, 30 years, working on these issues, on and off, as they have occurred, that as a Legislature, and certainly as this committee, there's an obligation to look at these types of proposals and say, what can we do to protect our constitution? The reason why, on a national level, we were told that we were being selected, and by selected as a state, because we were low-hanging fruit; Nebraska was considered an open state. We had nothing protecting us in terms of whether or not some of the other issues that you've already addressed, so I'm not going to review all those, but in terms of whether or not you have to be a Nebraskan, whether or not you can be identified, whether or not through a badge or a number or some way so that you don't find out that we have the same kinds of activities we had here. And the one incident which they said that we put everywhere and told people about, which is true we did, because it was the only one we had, because it was the only one we could identify. The only petition circulator identified in this state was the individual that spent ten years in prison in Florida for second-degree murder because he assaulted a university student. That's the only person you know about that circulated these petitions, by name. So I'm suggesting to you that 423 and that effort, and there have been other efforts in the past, but I have never seen anything like 423 in the 30 years that I've worked on this. And I think it's really important that we do afford citizens, Nebraskans to come forward, because that's what this was all about, Nebraskans amending our constitution, not somebody else having a national agenda to lower corporate income tax because that's where they make their money. So I'm just suggesting again we really support the concept of this. We appreciate the senator bringing this forward. And in talking to some lobbyists today, I think, some people said, well you know, you know, we just don't know, we just don't know about this. But I think this is something that really has to be explored. And there are people that feel very strongly about it, but were concerned about the political implications of coming forward today. I'm not, because I think it is so important that as a committee you also have support from organizations like ours and others to say it is your job. That is your job. Protecting our constitution is extremely important. And I can't emphasize that enough. So with that, I'd be happy to respond to any questions you have. [LR8CA]

SENATOR ROBERT: Ms. Rex, and you can defer this to Senator Avery if you want, I didn't know if he was going to close. So I just wanted to state this before we get out of this. As I look out across the hearing room today, I don't see any opposition. That concerns me a little bit. I think it's odd that we had a couple bills last week before us, similar to nature, and we had a room full of people in opposition. So I guess I would ask, are we not doing the right thing with this legislative resolution to restrict what the people want? Is this something that those high-paid out-of-state circulators are not concerned about because they can, as Mr. Friend said, buy their way out of it anyway? And, you know, that worries me. So I guess that's my...I think...I agree with you that it is a good concept. But are we restricting the wrong people with this? And when we had legislation

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in front of us that restricted specifically those interests that we're concerned about, the high-paid, out-of-state circulators, we had very voiceful opposition, and we don't have any today. [LR8CA]

LYNN REX: Well, one thing I think is, and I don't know why they're not here. If I was cynical, I'd say, because they knew the cameras wouldn't be here. But since I'm not as cynical as that, I would suggest that maybe there are other reasons. I don't know what those area. But I can tell you that I do think it is really important to consider that this opens the door for Nebraskans. It lowers the threshold for Nebraskans to deal with some of the statutory issues that they want to do. And if you find out, as a legislative body, and you will, whether they work or not, and frankly let me give you an idea. If I had a proposition, proposition A, and I did that as a state statute, you've lowered the threshold, I can get the signatures, I get that as a state statute. If that works after two years, after four years because I have to wait a little bit, I'm going to come back in and I'm going to say, okay, it's working, now I want you to pass it as a constitutional amendment. And as a Legislature you're going to have the information on whether it works or it doesn't. Had 423 passed, especially those of you that are new senators, those of you that have had the experience knew that this would happen, and maybe some of the new ones did, too, I would imagine that you did, but your year would be phenomenally different than the year you're experiencing today. Your year as a state senator would have been dramatically different. You would be gutting huge programs across the state of Nebraska. And the problem with some of these proposals is it doesn't always happen in year one, sometimes it happens in year two, year three; it's like a city, deferred maintenance, you know, it's an analogy. But I would suggest to you the reason why I think this proposal is so important is because it lets folks put it in as a statute, the Legislature gets a chance to see if it works. If it doesn't, it doesn't take \$10 million or \$20 million to change it. It takes two-thirds of elected folks that were here, you as elected representatives. And we are a representative government. And the initiative referendum process, historically and in every other way, was intended to be for extraordinary types of issues, not just the run of the mill, let's run it up the flag pole and see if it sticks. Not let's just put it in 26 states and see where the low hanging fruit is, who has the laws which are tighter, where they're not going to be able to get the signatures, who has the laws to do it. In terms of a money issue, I think that we are a cheap date as a state, and that's one reason why we were selected as well. So I guess, I don't know if that's responsive or not, but... [LR8CA]

SENATOR AGUILAR: Further questions? Senator Friend. [LR8CA]

SENATOR FRIEND: Lynn, thank you, Mr. Chairman. Real quick, I...not to be disrespectful to anyone who's testified here, because they're good arguments. Lynn, you always make good arguments and Jack Gould, Senator Avery. I'm not placating you guys. I mean, these are good arguments. The problem that I have, and I'm going to follow up on what Senator Rogert said,... [LR8CA]

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LYNN REX: Okay. [LR8CA]

SENATOR FRIEND: ...the problem that I have is that I haven't heard a good reason to crank that aspect, the petition process in regard to a constitutional amendment, up to 15 percent. When I would submit to you that it doesn't matter what you're talking about, what type of special interest, it could be a sugar daddy in New York City, or it could be the National Education Association, which dumps nearly \$1 million into stopping 423, which I voted against in the booth, by the way. And I had...there was plenty of pressure for guys like me, coming from the ideological makeup that I am, to say, you know what, vote for a 423. I'm not lecturing you, Lynn. [LR8CA]

LYNN REX: Um-hum. [LR8CA]

SENATOR FRIEND: What I'm saying is, we crank this up to 15 percent, the only people coming in here with petitions are special interests and sugar daddies. That's my point. And I have not heard an argument yet, with all due respect,... [LR8CA]

LYNN REX: Okay, okay. [LR8CA]

SENATOR FRIEND: ...that indicates to me that if Senator Rogert and I said, you know what, we think Chairman Aguilar would make a...him and a lot of his folks would make good, I don't know, name the issue, I mean, we're trying to go out and create a petition process as residents. This restricts us, hugely. And I don't know why there's no people in the room either, Senator. But I'll tell you this, 15 percent, and I'll leave it at this, doesn't affect the sugar daddy, it doesn't affect the NEA. Call it whatever kind of money you want, that it's Nebraska money coming back to us, not all of it,... [LR8CA]

LYNN REX: Um-hum. [LR8CA]

SENATOR FRIEND: ...these are special interest groups dumping money back into Nebraska to either defeat something or to see something successful. If 423 passes, you said it yourself on the record, you'd have been back again with all kinds of groups, whether it's special interest money or not, to defeat or to repeal that on petition. Now do you really think, and I'm not going to hang Pat Loontjer out to dry,... [LR8CA]

LYNN REX: Um-hum. [LR8CA]

SENATOR FRIEND: ...you really think she could get a grassroots organization to do something like that, if it was 15 percent? I would submit to you it would be more difficult for her than it would be unless if she had any A money behind her. [LR8CA]

LYNN REX: But I would also submit to you, Senator, if I may, that it would be much

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easier for her to put it in as a state statute. If I had something I wanted to put forward, put it in as a state statute,... [LR8CA]

SENATOR FRIEND: Well, well... [LR8CA]

LYNN REX: ...see if it works. [LR8CA]

SENATOR FRIEND: Well, said, well said. And... [LR8CA]

LYNN REX: And then you come after a constitutional amendment. [LR8CA]

SENATOR FRIEND: And, Lynn, I'm not specifically talking about that 4 percent, and we can't discuss that. But I do, if I haven't made it clear enough, have concerns about 15 percent. In the last six years that's all I've heard are conversations about how we've made it too restrictive to deal with our constitution, that's what I've heard. And, Mr. Chairman,... [LR8CA]

LYNN REX: Well, let me suggest to you... [LR8CA]

SENATOR FRIEND: ...I...and, Lynn, we can talk about it off line. [LR8CA]

LYNN REX: Okay. [LR8CA]

SENATOR FRIEND: I wanted to make a statement. I know where you're coming from. I do have some concerns, though, and I guess I just wanted to let you know.... [LR8CA]

LYNN REX: Okay. [LR8CA]

SENATOR FRIEND: ...on the record. [LR8CA]

LYNN REX: And I want to underscore a point. We are not supportive of just lowering one and not addressing the other side of it. [LR8CA]

SENATOR FRIEND: I understand. [LR8CA]

LYNN REX: In other words, because I think that gets you nothing. I mean I think what this does is it sends a very clear message that for Nebraskans we think... [LR8CA]

SENATOR FRIEND: A message to me... [LR8CA]

LYNN REX: ...the initiative process ought to have... [LR8CA]

SENATOR FRIEND: A message to me that is just a message, nothing more, because

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they're going to crank it up, and they're going to...they turn that wheel that much harder. You want to see money pumped into that, you go look at that 15 percent. As a sugar daddy, as a...whatever...I keep using sugar daddy (laughter)...sorry, Mr. Chairman, I will. [LR8CA]

SENATOR AGUILAR: And I'm going to interrupt here just a minute to... [LR8CA]

SENATOR FRIEND: I digress. [LR8CA]

SENATOR AGUILAR: ...just to ask that when you do have an exchange like this, please allow each other to finish your statement, don't talk over each other. You're driving the clerk nuts, trying to keep up. (Laughter) Do you have another point you want to finish? [LR8CA]

SENATOR FRIEND: I do not. Thank you, Mr. Chairman. Thanks, Lynn. [LR8CA]

SENATOR AGUILAR: Lynn? [LR8CA]

LYNN REX: Thank you very much. I do think this is a very important consideration for you. Thank you. Thanks. [LR8CA]

SENATOR AGUILAR: (Exhibits 2, 3, and 4) Any other proponents? I would read into the record then these letters of support. And I think it's important to point out that some of these letters are signed by people here that were the opposition on some of the bills that you were here. So I think the lowering of that percentage point does make a difference in why they're not here opposing this bill from the git-go. And the letters are from Billie Pierson, Larry Wright, John Copenhaver. Any opponents? Neutral testimony? If not, that closes the hearing on...I'm sorry, Senator, would you like to close? [LR8CA]

SENATOR AVERY: I'm not going to take much time. Mike, I would have loved to have had you on a seminar, I would have. Let me just address a couple of things. This is not perfect and I admit that, but it does make us a bit less vulnerable perhaps, maybe not. But I think it's worth a try. Your point about sugar daddies and special interests might be the only ones who can do it now; at 15 percent maybe that's true. But I think that's the case already at 10 percent. That's all I have. [LR8CA]

SENATOR AGUILAR: Questions for Senator Avery? Senator Mines. [LR8CA]

SENATOR MINES: I do. Senator, in a bill we heard earlier today by Senator Burling to change the number of signatures, there was a provision that signatures had to come from different counties, a set number of signatures from different counties. Yours doesn't include that. Is that something that might be considered? Is it, in your opinion, good, bad, what do you think? [LR8CA]

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SENATOR AVERY: I think that might be in the legislation or the statute that we're changing, we're just changing the numbers. [LR8CA]

SENATOR MINES: Okay. [LR8CA]

SENATOR AVERY: I believe that it's there. [LR8CA]

SENATOR MINES: All right, I just didn't see it, I'm sorry, but okay. [LR8CA]

SENATOR AVERY: Well, maybe I don't know as much about it. (Laughter) [LR8CA]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator. [LR8CA]

SENATOR AVERY: Thank you. [LR8CA]

SENATOR AGUILAR: And that closes the hearing on LR8CA and ends the hearings for today. [LR8CA]

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Disposition of Bills:

LB248 - Advanced to General File.
LB298 - Advanced to General File, as amended.
LB311 - Advanced to General File.
LR8CA - Advanced to General File.

Chairperson

Committee Clerk