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Government, Military and Veterans Affairs Committee
February 22, 2007

[LB394 LB433 LB460 LB539]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 22, 2006, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments and LB460, LB539, LB433, and LB394. 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: Good afternoon and welcome to the Government, Military and Veterans Affairs Committee. I'll start off by introducing the senators up here in front of you. My name is Ray Aguilar, represent District 35, Grand Island. On my far right, Senator Kent Rogert, Tekamah; next to him, Senator Russ Karpisek, from Wilber; Senator Mick Mines, Vice Chair, of Blair; on my immediate right is Christy Abraham, our legal counsel; in the empty chair here is Sherry Shaffer, the committee clerk; followed by Senator Mike Friend of Omaha; Senator Rich Pahls of Omaha; and Senator Bill Avery of Lincoln. The bills will be taken up in the following order: LB460, LB539, LB433, and LB394. Sign-in sheets are at both entrances. Sign in only if you're going to testify and put the sheet in the box up here on the table. Print your name and indicate who you are representing. Before testifying, please spell your name for the record. Introducers will make initial statements, following by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. Listen carefully to the testimony ahead of you and try not to be repetitive. If you have a prepared statement or exhibit, give it to the pages, and they will distribute it or make copies. Turn off your cell phones and pagers. And our pages for today are Adam Morfeld, Sioux Falls, South Dakota; and Kristin Kallsen of Big Springs, Nebraska. Before we get started on the bills, we have a couple of gubernatorial appointments we need to take care of. I would invite up Tim Hofbauer, from the State Emergency Response Commission. Tim, I understand, is a reappointment. [HOFBAUER]

TIM HOFBAUER: Yes. [HOFBAUER]

SENATOR AGUILAR: Welcome. [HOFBAUER]

TIM HOFBAUER: (Exhibit 1) Thank you. [HOFBAUER]

SENATOR AGUILAR: I'd like to have you just tell us a little bit about yourself, and then we'll see if we have any questions, and go from there. [HOFBAUER]

TIM HOFBAUER: Sure. I'm the emergency manager for Columbus and Platte County. I've been doing that on a part-time basis for about the last 12 years; on a full-time basis for the last couple of years. I've also been a previous member of the State Emergency Response Commission and the representative of the emergency management position.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

And as far as...I'm a certified emergency manager through the state of Nebraska, as well as a number of FEMA and EMI training courses. [HOFBAUER]

SENATOR AGUILAR: Thank you very much, Tim. I'll start off with a question. What do you view as the biggest challenge to this commission? [HOFBAUER]

TIM HOFBAUER: The biggest thing is one of the functions of the State Emergency Response Commission is getting information out to the public, providing information to the public about hazardous chemicals and materials. And it's just really getting the public to take that to heed and to understand that. You know, everybody is always talking preparedness and being ready to do that, be ready, prepared, and a shelter in place and various things of that sort. And that's probably the toughest thing is to just get people to listen and be willing to do things. I've also been very heavily involved in pandemic flu planning for our county. And, you know, the preparedness role is something that we continually preach. And it's...probably one of the toughest things is just to get the people to understand that. [HOFBAUER]

SENATOR AGUILAR: I understand. Any further questions? Senator Friend. [HOFBAUER]

SENATOR FRIEND: Thank you, Mr. Chairman. Tim, I'm glad you brought that up. Do we...it's not may...it's not just the public. I mean do we...do committee members like us, do people...what are we staring at here? A bird flu epidemic hits Nebraska three weeks from now. What...we're ready? [HOFBAUER]

TIM HOFBAUER: You know as far as that, that's probably another area, that's one of the areas I've been working on. I think in our particular county there's been a lot of planning going on. We've done the planning for at least a year and a half now, working with our Health Department. So the planning side, I think, is working real well. Whether we're 100 percent planned, we'll never know until we...if we ever need to activate that plan. You know, the thing is again back to the community, to get the community to react appropriately, if need be. [HOFBAUER]

SENATOR FRIEND: Well, thanks. [HOFBAUER]

SENATOR AGUILAR: Further questions? Senator Avery. [HOFBAUER]

SENATOR AVERY: Does your agency have any responsibility for planning how we're going to respond to the flooding that now is occurring up around Fremont? [HOFBAUER]

TIM HOFBAUER: Actually, I responded last night to flooding in my county. So as far as, you know, emergency management goes, yes, we're very heavily in that area. The

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 22, 2007

State Emergency Response Commission, their role in that area would be, as far as the hazard chemicals and things of that sort. If there were a plant affected or, you know, maybe some tanks or something that were affected by flooding, you know, that might involve some action on the side of the commission as far as maybe planning in the future, maybe some changes in planning or in reporting, things of that sort. But as far as a direct response, at this point, probably not. That's probably more at the emergency management site. [HOFBAUER]

SENATOR AVERY: I was told this morning that our emergency response resources were so heavily devoted to the power outages, that they really didn't have much left over for dealing with what's going on, on the Elkhorn and, I guess, the Platte River. Do you know anything about that? [HOFBAUER]

TIM HOFBAUER: That I don't know. I know in the Platte County area, where I'm from, we were somewhat lucky as the ice came through and kind of washed out about three o'clock this morning. And so it came through our county relatively quickly. I know Schuyler, Colfax County was dealing with it on my way up, and I'm sure Fremont and the counties on down, on into Omaha and that area are probably going to be seeing that here in the next day or so. [HOFBAUER]

SENATOR AVERY: So you passed it down river? [HOFBAUER]

TIM HOFBAUER: We got it...rid of it, yeah. I wish we could say we did, but yeah, it did on its own. [HOFBAUER]

SENATOR AVERY: Thank you. [HOFBAUER]

SENATOR AGUILAR: Further questions? Seeing none, thank you for joining up today, Tim. [HOFBAUER]

TIM HOFBAUER: Thank you. [HOFBAUER]

SENATOR AGUILAR: Dana Miller, please. Welcome. [MILLER]

DANA MILLER: (Exhibit 1) Thank you, Mr. Chairman. [MILLER]

SENATOR AGUILAR: Tell us a little bit about yourself. [MILLER]

DANA MILLER: My name is Dana Miller. I'm a fire chief from way out west, in Scottsbluff. I've been in the fire service for about 26 years, 6 of that being on the volunteer service, and 20 of it being on the career fire department. Promoted up through the ranks to chief of the department about six or seven years ago. I've actually been on the State Emergency Response Commission for going on six years. I've been holding

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

the title of chairman of that commission for the last two years and represent the firefighters from across the state of Nebraska. Background with career and volunteer side, gives me a nice perspective of how the firefighters and what their needs and concerns are as it relates to hazardous material responses and interacting with the other agencies, both local and throughout the state. Actively involved on the national, regional, and state associations, both on the volunteer and career side of the departments. [MILLER]

SENATOR AGUILAR: Thank you. Do you feel that your department has enough availability of HAZMAT training, in that area? [MILLER]

DANA MILLER: Well, our particular department, in Scottsbluff, is one of the ten MOU cities, Memorandum of Understanding cities, that the Governor's Office and NEMA, Nebraska Emergency Management Association, setup statewide to try to address a comprehensive plan of trying to accommodate as many areas of the state as possible. So our particular area is very heavily into equipment and training, and was prior to the formation of those MOU cities. We'd had a major event with a sugar factory explosion, back in the early nineties, that ramped us up quite a bit and made us be well aware of our vulnerability being outstate. [MILLER]

SENATOR AGUILAR: Great. Thank you. Further questions? Seeing none, you had an easy day. Thanks for coming today. [MILLER]

DANA MILLER: Thank you. [MILLER]

SENATOR AGUILAR: Now ready to open the hearing on LB460, Senator Lathrop. [MILLER LB460]

SENATOR LATHROP: Thank you, Chairman Aguilar. Members of the Government, Military and Veterans Affairs Committee, my name is Steve Lathrop, that's L-a-t-h-r-o-p. I represent District 12 in Omaha. And I'm here today to introduce LB460. LB460, in short, would replace the presidential primary in Nebraska with an Iowa-style caucus. LB460 does two things that I think are important. One, it moves the date that we will or can or will have caucuses, which we believe will improve our visibility, improve the change that Nebraska will become a player in the presidential elections, or in the primary process, and the other thing it does is it moves us to a caucus system as opposed to simply voting in a primary. I think there's an advantage to becoming a caucus state. The caucus will allow citizens to come and meet on a particular date, in this case the second Saturday in February. Folks will come together at their polling place in each precinct and discuss politics. They will discuss who's going to be their...represent them as president, and they will discuss the merits. I believe the fact that it will be a caucus, instead of simply walking into a booth and filling in an oval, is that it will engage people more into the process. They will, I think, necessarily become

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

more educated on the issues because they'll need to be conversant with the issues when they go to a caucus. And so I think LB460 is good for those two reasons. I will say this, because I know every time there's an article in the paper about LB460 they say, really, you guys, you're not going to accomplish what you think you're going to accomplish; it will be over by the time you get to the second Saturday in February. I would disagree. I think that the second Saturday in February is close enough in time to the Iowa caucuses, that we will see people who are working for delegates in Iowa become engaged in Nebraska because our caucuses will follow close enough in time that it will be worth it for them to, not just land in the airport in Omaha and take a limousine over to the western side of Iowa, but they'll stop in Omaha, and we'll see them stop in Grand Island or Lincoln because we're only a month later and we'll be having our caucus. On the whole, I think this will work to advance Nebraska as a player. It will also have people more engaged in the process, which I think can only help in the process of choosing a presidential candidate. [LB460]

SENATOR AGUILAR: Thank you, Senator Lathrop. I have one quick one. In relation to the Iowa caucus, that's the first one, where would the second Saturday in February be on that list? [LB460]

SENATOR LATHROP: The second Saturday in February would put us in the Saturday following Super Tuesday. So I believe that's approximately a month following the Iowa caucuses. [LB460]

SENATOR AGUILAR: Thank you. [LB460]

SENATOR LATHROP: So I think that's close enough in time that people would say, well, I'm going to spend a little bit of time in Nebraska, because their caucuses are only a month away. [LB460]

SENATOR AGUILAR: Senator Adams. [LB460]

SENATOR ADAMS: I think it's admirable and encourageable that we try to get people to participate. And the idea of a caucus, where people sit down eye-to-eye, with one another and discuss the issues ought to do that. My question, I guess, or concern is that given voter turn out numbers as they are, when all you have to do is walk into a booth and color in a circle, do you really think it will be improved by people having to go out and sit down and talk to one another and discuss issues versus just taking five minutes and casting a vote? [LB460]

SENATOR LATHROP: I don't know that this will improve voter turn out. In other words, if you have, in for example my precinct, if you had 5,000 people show up to vote in the presidential primary, would we have more than that? I don't...frankly, suspect we'd have fewer. But what we would have is right now people are choosing their president by

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

watching a few commercials on TV. They don't have one speech...I remember when Gary Hart came to Nebraska. That's the last presidential candidate, I think, that ever spoke anywhere in Nebraska that I can recall. And I think we'll see more of that and we'll have an opportunity for people to come to Nebraska and talk about issues important to Nebraska. So while we may be trading some voter turnout, maybe part of what we give up with a caucus process, we'll also have an opportunity, I think, to have presidential candidates talk about issues important to Nebraska. And we'll also have the electorate engaged. They're going to go and debate the issues and talk about why they think their candidate is better than the next guy, which is, I think, a better system than seeing who can spend the most money on TV. [LB460]

SENATOR AGUILAR: Senator Avery. [LB460]

SENATOR AVERY: Let me see if I understand how this would work. You would have a caucus in conjunction with county conventions, right? [LB460]

SENATOR LATHROP: No. I think the caucus would be...we would have precinct caucuses and the delegates chosen there would go to the county conventions. [LB460]

SENATOR AVERY: And they would...there would be a preference expressed then for their presidential candidate. Is that what you would do in these caucuses? [LB460]

SENATOR LATHROP: That's exactly right. [LB460]

SENATOR AVERY: Like a straw vote? [LB460]

SENATOR LATHROP: The delegates...as I understand how this process works, and of course since we haven't done it, I'm going to tell you what my understanding is and not exactly how it would happen. But the national party can set the rules for the delegates. That tells the state what to do. The states can tell the county, and the counties can tell the precinct. And what we will do is have precinct caucuses where we will determine delegates for each presidential candidate. [LB460]

SENATOR AVERY: So this would be a delegate selection process at the caucus level and then these delegates would then go to the county conventions, because the way it works now... [LB460]

SENATOR LATHROP: The delegate selection is a different...who becomes the delegate is not what happens, but how many delegates would be for the presidential candidate will be determined. I think ultimately whoever wins the state gets to choose who the delegates are, and that's more of a tradition than a requirement, as I understand that process. [LB460]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 22, 2007

SENATOR AVERY: And we'll still have the primary? [LB460]

SENATOR LATHROP: No, we won't have a primary. This would be... [LB460]

SENATOR AVERY: This would replace the primary? [LB460]

SENATOR LATHROP: This would replace the primary, yes, sir. [LB460]

SENATOR AVERY: Okay. [LB460]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator. Will you be around to close? [LB460]

SENATOR LATHROP: Thank you. I'll waive. [LB460]

SENATOR AGUILAR: May I see how many want to testify on this? See two. Welcome. [LB460]

VINCE POWERS: Good afternoon, sir. My name is Vince Powers, P-o-w-e-r-s. I am the national committeeman for the Nebraska Democratic Party. And I'd like to explain what will be occurring in 2008, at least as far as the Democrat's are concerned, and then why I think this would be helpful for all voters, if it were to pass. First of all, the Nebraska Democratic Party voted, a few weeks ago, we are going to hold a presidential caucus February 9, 2008. It's a done deal. We will select, the Democrats will select our presidential preference on February 9, Saturday, four days after the window opens. Both national parties, I can only speak to the Democrats. February 5 is the first time the window opens, you either have a primary or a caucus. We could go February 5 or not. We chose February 9 for a couple of reasons that really aren't important here other than to say there are four states, we have Iowa, the Iowa caucus, we then have Nevada, we then have New Hampshire, then you have South Carolina. Those are all pre-window. The window opens and right now no one knows for sure what's occurring, but it appears that Tuesday will be, as Senator Lathrop called it, a super Tuesday where California, Illinois, Michigan and Florida, among other states, will be going. And these will be heavy TV. We expect that after February 5 there will only be probably two, maybe three presidential candidates left. We expect the Nebraska Democratic caucus on that Saturday. Right now the only other place in the country that will be picking, the Louisiana Republican Party will be picking on February 9 as well. The Louisiana Democratic Party chose not to. So we are doing it. I don't know what the Republican Party will do in Nebraska, because that's none of my business. But my business is the Nebraska Democratic Party and why we would like LB460 to go forward as amended. We would like the amendment to be that if any party chooses to do...if either party chooses to do this, that party will not have a presidential selection process. So right now, if you don't pass LB460, we still pick our preferences on the 9th of February. In

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

May, there's always going to be a primary for...well, your jobs and all the other jobs, and there will be a presidential primary. But it won't have any effect on our selection process. It will be simply a straw poll; it won't matter, because we will have already selected them. So we think that what would be best would be to have an amendment, however that process works in committee, so that if the Republican's choose, through their rules, to go with a caucus, they can do that as well; if they don't, they can do that. But for us, we would like our voters walking in as Democrats in May not to have that selection, just because it will be confusing. And so our party, through our State Central Committee, has done it. And I guess to sum up, this is a great country and it's run by two, great political parties. The Democratic National Committee gave us our opportunity to do this, and our great state party has chosen to go with it. We would ask that you pass this as amended. And as an aside, I think that four years from now it will be a completely different system. I think it's gotten way too front-loaded. But whether it is or isn't, we're going to be a part of it. And we're going to see what happens. And I can say...just answer one of the questions, since this has occurred, there has already been an Edwards for President Committee formed in Nebraska; there's an Obama for President Committee being formed. You're going to see that because at least on our side of the ledger there's a lot of excitement going on, you're going to see more involvement politically. Where it takes us, we don't know. But we think there will still be an election on February 9. Thank you. [LB460]

SENATOR AGUILAR: Questions? Senator Adams. [LB460]

SENATOR ADAMS: Let me run through this to make sure I'm straight. So the National Democratic Party will determine how many national delegates that Nebraska will be able to send to the convention? Is that... [LB460]

VINCE POWERS: The parties do that. [LB460]

SENATOR ADAMS: That will be predetermined? [LB460]

VINCE POWERS: That's predetermined, correct. [LB460]

SENATOR ADAMS: All right. So what really is going to happen in the caucus is that you will be determining how to divide up the pie of delegates that you are allotted? [LB460]

VINCE POWERS: Exactly. [LB460]

SENATOR ADAMS: Okay. And they'll be precinct caucuses? [LB460]

VINCE POWERS: Exactly. [LB460]

SENATOR ADAMS: And then will there be county conventions... [LB460]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

VINCE POWERS: Yes, as there are now. [LB460]

SENATOR ADAMS: ...to send delegates to a Democratic state convention? [LB460]

VINCE POWERS: Correct, exactly. [LB460]

SENATOR ADAMS: Okay. And then in May the primary that we're all more accustomed to will be nothing more than truly a beauty contest with the Democratic candidate? [LB460]

VINCE POWERS: Exactly. [LB460]

SENATOR ADAMS: Okay. [LB460]

VINCE POWERS: And, I might add, which is how it's always been anyway, because every May it's already been decided. So there's always these names on. But, yeah, what we want to avoid is let's say that all the commentators you hear on TV are wrong. We go February 9, and come May there's actually someone left, we don't want any confusion on that. And I think Mr. Erickson, who's been very helpful, is going to testify. And he might be able to talk about that language. But in essence we're decoupling from the primary process. There's still a primary. There's still going to be a great deal of interest in the Senate, and Congress, and local races. It's just that we will have already said 20 percent for candidate A, 30 percent for candidate B. [LB460]

SENATOR ADAMS: All right. Okay. [LB460]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB460]

VINCE POWERS: Thank you very much. [LB460]

SENATOR AGUILAR: Next proponent. Any opponents? Neutral testimony? I should have known. (Laugh) [LB460]

NEAL ERICKSON: Sorry about that. [LB460]

SENATOR AGUILAR: Welcome. [LB460]

NEAL ERICKSON: Chairman Aguilar, members of the committee, for the record, my name is Neal Erickson. I'm Deputy Secretary of State for Elections, here on behalf of Secretary of State, John Gale, who unfortunately could not be here. He is at a Federal Election Assistance Commission meeting in Atlanta. And that's Erickson, E-r-i-c-k-s-o-n. I'm here to testify in a neutral capacity on LB460. And what I'd probably do is provide a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

little bit of history of this bill. This is the third time this bill has been introduced. And where it's genesis came from, I think as both Senator Lathrop and Mr. Powers indicated, we started to see, oh I don't know, as far back as maybe 1992, maybe 1988, what is called a front-loading of the primaries, states trying to crowd to the front so they have some impact on the presidential nomination process. Back in about 1998, the National Association of Secretary of States recognized this program and started developing plans on how to address it. And what they came up with was called the Regional Rotating Primary. And that would be...the country would be divided into four different regions. The primaries would be held on a monthly basis in February, March, April and May. And the idea behind it was by using a regional basis you're going to get the candidates addressing issues that are important to that particular region, because sometimes the issues do change from, you know, issues that are important here in Nebraska may be different from issues that are important in California. So this plan was developed and put forth by the National Secretary of States Association. We looked at how we could accomplish this in this state. How could we...what were the steps we could take to do that? Well, we have a couple situations. We have our primary in May. That...we needed a little more flexibility. We needed to rotate that. We needed to...in one cycle we might be in February, one cycle we might be in March. Well, the difficulty was we recognized that it was probably unlikely that the Legislature was ever going to allow a full blown primary to be held while they were in session. And so we had to look at how we were going to decouple the presidential nominating process from the rest of our primary. Two choices developed. We could have a separate presidential primary at a cost roughly, approximately \$1 million to put that election forward, then have our regular primary in May, or we could go to a caucus system and allow the parties to function or to conduct a caucus system. So the precursors to LB460 were put forth in that. We decoupled the presidential nominating process from our primary, put it into a caucus system, and I think we put a date in there, originally I think there is a date in the bill. But the idea was if we could get some kind of national agreement, and get some type of rotating primary, that this provided the flexibility necessary to accomplish that goal. This year we've seen the continuation of the front-loading process. Everybody is trying to be up at the beginning. Iowa, New Hampshire traditionally have been at that realm. The Democratic Party this year threw Nevada into that mix, allowed them to do that. I think one thing that's important to remember is that we, to a degree and to a large degree, follow the rules that the national parties set. They set their delegate selection plans, we attempt to accommodate them through our processes. Nevada got bumped up this year. I think that created a little bit, to a degree, a race to the beginning. We've got a number of states that are...a number of large states that are running that first week of February. I saw an article today, by David Broder, that was kind of lamenting that. I've seen articles in News Week, talking about potentially having New Hampshire before the new year. This may be where we're going with this. In terms of this bill and considering the action the Democratic Party has taken, the state Democratic Party has taken, I think this bill becomes more important in a different sense. I think arguably they have the ability to establish these caucuses whenever they want to. There's a section in law that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

allows that. But if the May primary goes forth with those Democratic presidential candidates on there, it is nothing more than a beauty contest. And do we really need to be holding that primary at that point in time? So if LB460 doesn't survive in its original form, one thing that certainly should be done is, as Mr. Powers suggested, if you're going to amend it to allow any party to hold a caucus, we certainly should remove...if they decide to hold a caucus, remove the primary from the May ballot in order to save ballot space. And so the caucus system is a viable system. I've worked in Iowa, in the caucus system, in 1984; I got experience firsthand. It's rather unique. It's an interesting process. And that's kind of the history on this bill and kind of where it came from. And I'd answer any questions you might have. [LB460]

SENATOR AGUILAR: Thank you, Neal. Do you have an opinion as to why it failed the first two times it came before this committee? [LB460]

NEAL ERICKSON: Well, one thing about it is you're going to need agreement from both political parties to be able to do it. And it's kind of...the parties work differently in terms of the way they select their delegates or establish their rules on delegate selection. The Democratic Party has a little more leeway. They can do that almost at any time through their National Committee. The Republican Party is limited by their bylaws of doing that only at presidential conventions. And there was an attempt in 2000, by the Republican Party, to amend that. They actually came with something that was called the Rhode Island Plan. It was a similarly rotating primary system. But what they did was, rather than do it regionally, they paired states together, or grouped the states together, so they had approximately the same population. You know, for example, we may get stuck in with a group from California, Illinois, etcetera, in order to equalize the number of votes that were being cast on that particular day. It got bogged down in 2000. The politics of the matter is, to be real honest with you, when you have an incumbent president up, you're not going to have that issue appear at convention; they don't want to mess with it at that point in time. So the only time you'll really see the Republican Party have an opportunity to discuss this at their presidential national convention is going to be when there's an open seat; 2000 was an example of when that could have occurred, 2008 is another example of when that can occur. So we might see some discussion there, but it's going to be a long-term problem. And if it's not resolved, we are going to continue to see this front-loading. [LB460]

SENATOR AGUILAR: Thank you. Further questions? Senator Adams. [LB460]

SENATOR ADAMS: If we go to a caucus, the county precinct, what's the role of the Secretary of State's Office and the county election officials in that caucus process? [LB460]

NEAL ERICKSON: Absolutely nothing. And I think Senator Avery had asked the question earlier about the way LB460 was originally drafted to allow the precinct caucus

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 22, 2007

and the county convention to occur on the same day. And the reason for that, it wasn't required, but it was allowed. And the reason for that was that really small counties, that may not have a well established or any type of county organization at all, we were able to kill two birds with one stone, so to speak. [LB460]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Neal. [LB460]

NEAL ERICKSON: Thank you. [LB460]

SENATOR AGUILAR: Any more neutral testimony? Senator Lathrop, to close. [LB460]

SENATOR LATHROP: Just briefly, you've heard testimony that the Democratic Party has already made a determination that they want to use the caucus system. That is not an attempt by the Democratic Party to force anyone's hand, it's just a decision that they've made. It would be my hope that LB460 would go through in the form it's in and that the Republican's would join the Democrats and having the caucuses at the same time so that we can take advantage of the increase in political interest and the energy that will follow from having both parties do it. If the Republicans are not interested in this, they want to stay with the primary process, that's fine. What we need to do then is...or what we want to accomplish then is to amend LB460 so that we can essentially say, if a party chooses to have a caucus, which we can do even without LB460 obviously, is that we not have those folks appear on the primary. Otherwise we have one result in the caucus, and then we end up with a second result in the primary. [LB460]

SENATOR AGUILAR: Questions? [LB460]

SENATOR LATHROP: We do want the Republicans on board on this, if we can. [LB460]

SENATOR AGUILAR: Senator Mines. [LB460]

SENATOR MINES: Thank you, Mr. Chairman. Senator Lathrop, the point is, I think, without both political parties involved in either process, it's almost a nonevent if you have one political party in the caucus process as opposed to both, is it not? [LB460]

SENATOR LATHROP: Well, I don't think they caucus in the same room, probably shouldn't. And so... [LB460]

SENATOR MINES: No, but I...as far as awareness and... [LB460]

SENATOR LATHROP: I think it can become an event. But it's certainly going to have a lot more energy, a lot more interest, and a lot more awareness if both parties are doing

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Government, Military and Veterans Affairs Committee
February 22, 2007

it on the same day and at the same time. [LB460]

SENATOR MINES: In your mind, is there a downside to having only one party do a caucus process? [LB460]

SENATOR LATHROP: It's the flip side of having a lot of interest and generating a lot of interest. [LB460]

SENATOR MINES: Yeah, I think you're right. [LB460]

SENATOR LATHROP: If it's just one party, you may not have the same level of interest because, if you're a Republican and you're not participating in it, you know, you're not going to vote for a Democrat anyway, you may not care what the Democrats are doing. But at the same time, I think that it's going to involve more people. And whichever party does it, it may be the Republicans the next time, and the Democrats may choose to... [LB460]

SENATOR MINES: Yeah, exactly. [LB460]

SENATOR LATHROP: ...have a primary. The Republicans will find that there will be more interest generated. You will bring people there that will engage in a political dialogue, and that can only improve the process, I think. [LB460]

SENATOR MINES: Okay, good answer. [LB460]

SENATOR LATHROP: Thank you. [LB460]

SENATOR AGUILAR: Thank you. Oh, I'm sorry. Senator Pahls. [LB460]

SENATOR PAHLS: I have a question, Mr. Chairman. Have you ever been involved in the Westside school system's caucus system, how they elect their school board members? [LB460]

SENATOR LATHROP: No, no I haven't. [LB460]

SENATOR PAHLS: I was just curious. [LB460]

SENATOR LATHROP: Actually, part of my district is in District 66. I've been to their forum, but I've not participated in any caucus. And my home is not in their school district. [LB460]

SENATOR PAHLS: Okay, I was just curious whether...because they've been doing that since, what, 1947. They've had caucuses and that's how they elect their school board

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

members. And I was just curious if their rate has gone up of participation by the caucuses? [LB460]

SENATOR LATHROP: And I wouldn't be able to answer that, I'm afraid. [LB460]

SENATOR PAHLS: Okay, thank you. [LB460]

SENATOR AGUILAR: Senator Friend. [LB460]

SENATOR LATHROP: My cosponsor. [LB460]

SENATOR FRIEND: Thank you, Mr. Chairman. I actually didn't have a question. I just had a comment. I was intrigued by this. Read it a couple of times. Senator Lathrop, I just wanted to let you know, it's intriguing because, to me, because at the very first glance at this I think that what you are trying to do is to create interest. I didn't read it as a...boy, Steve is really trying to get the Democrats into edge here. There's nothing in that language that indicates that to me. Now, the problem that I see, and maybe the committee can hash some of that stuff out, is will that, you know, that nationwide edge, or will that attention...I mean is that something that we could, you know, parlay from a bill like LB460? It's why I put my name on it originally. I talked to you about it. [LB460]

SENATOR LATHROP: Right. Yeah, we did. And I... [LB460]

SENATOR FRIEND: We're about the only Democrats and Republicans that, you know, that... [LB460]

SENATOR LATHROP: That ever did anything together? (Laughter) The one thing I can say about it is we know that if we leave a primary in May, we're out of it. The Republicans will know who their presidential candidate is, and the Democrats will know who their presidential candidate is by May. And no one is going to stop in Nebraska. And no one is going to call anybody in this room and say, geez, I'm running for President, or I'm calling for the guy that is, can you help us out? That's going to happen if we have caucuses. And we may not. And the next presidential election depends upon the circumstances, depends on how the election unfolds, or the primary process unfolds. But we might in four years after that. I just think it provides an opportunity for us. And we know if we sit in May, in a primary, we're out of the hunt. It's...this whole process is getting front-loaded, and it's only getting worse. And we'd like to nose our way up towards the front of the line. [LB460]

SENATOR FRIEND: Okay. [LB460]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Lathrop. [LB460]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 22, 2007

SENATOR LATHROP: Okay. Thank you very much. [LB460]

SENATOR AGUILAR: We're now ready to open on LB539. Senator Rogert, please. Welcome. [LB460 LB539]

SENATOR ROGERT: Thank you, Senator Aguilar. Members of the great Government, Military and Veterans Affairs Committee. For the record, my name is Senator Kent Rogert, R-o-g-e-r-t, and I represent the 16th Legislative District. I'm here today to introduce to you LB539 for your consideration. And this bill is on behalf of the Secretary of State's Office. LB539 seeks to amend the nonpartisan presidential petition process by moving the submission deadline from September 1 to August 1, and removing the requirement that signers must not have voted in the primary election in order to be eligible to sign the petition. In effect, this would also remove a requirement that the petition must not be circulated before the primary election. Statewide ballot certification process requires extensive proofreading on the accuracy of the data for every candidate, office and issue to appear on the ballot. It also requires the printing, mailing, and electronic delivery of the specific certification to each of the 93 county election officials in the state of Nebraska. With that in mind, if the petition candidate in question is a state candidate that will affect the certification ballot for each county, and if the signature verification is completed late in the day on the deadline, it creates undue strain in the certification process. The time compression between September 1, when nominations petitions are due, and the certification deadline that usually falls between the 10 and 14 of the same month, makes it more difficult to conduct signature verification and prepare for certification of the ballot, and even more difficult since Labor Day usually falls within that first week of September as well. Currently, Nebraska is only one of three states in the U.S. that still have the primary voter exclusion requirement, the other two states being Oregon and Texas, both of which have proposed legislation to repeal this requirement. Other states that originally had this restriction, but since have abandoned it, include California, Colorado, Illinois, New York, Rhode Island, Washington, and West Virginia. This restriction requires an extra step for the county election officials conducting the petition signature verification process. We understand in moving the petition deadline from September 1 to August 1, LB539 reduces the time permissible to gather signatures by one month. So in order to compensate for the loss of time in gathering signatures, this bill removes the primary voter exclusion requirement to strike a good balance and allowing them to circulate petitions earlier than is currently permitted. Nebraska already allows registered voters to sign a petition for other partisan or nonpartisan state, county, city, and local offices, regardless of whether or not they voted in the primary election. No other petition has this restriction. LB539 seeks to update the election law and establish administrative consistency for presidential state partisan and nonpartisan petition candidates, as well as to include Nebraska with the other 47 states in the U.S. that presently do not have this requirement in addition to the other two that plan on repealing it. I appreciate your attention to this bill. And Neal

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

Erickson, Deputy Secretary of State for Elections, is here to testify in support, and I'm sure will be happy to answer any questions you may have. [LB539]

SENATOR AGUILAR: Questions for Senator Rogert? Seeing none, thank you. How many testifiers do we have on this bill? Seeing one, bring it. Welcome back. [LB539]

NEAL ERICKSON: Senator Aguilar, members of the committee, for the record, my name is Neal Erickson, Deputy Secretary of State for Elections, here on behalf of Secretary of State, John Gale, to testify in support of the measure. I'd like to thank Senator Rogert and the staff for carrying this piece of legislation, and actually did a very excellent job in terms of explaining it. The only thing I'd probably add to it is to give you kind of an example that we ran into in 2004, where we had two presidential petition candidates, Ralph Nader, and a gentleman name Colero, who turned their petitions in on September 1. Because of the luck of the calendar, the election was early that year. We had a certification date the following Friday. We had Labor Day in between. We literally did not know, they also didn't collect a large number over, so we were kind of trying to fight for almost every signature and look at every signature. And we didn't know literally until noon, on the day we had to certify those names for the ballot, whether those two had made it onto that ballot or not. Moving the deadline up earlier, as the bill calls for, to the first of August, would certainly help the local election officials and our administration. I think Senator Rogert is right in a sense that in terms of kind of a trade-off, you have the presidential or, excuse me, the primary requirement that they have not voted in the primary in order to sign is something that is not common anymore. To be perfectly honest, it makes it easier to verify these signatures if we don't have to look at that restriction; we don't have to go look at their vote history to see if they voted to verify the signature. And it does create a good balance or trade-off for those that might be interested in petitioning on the ballot for president. So with that, I'd answer any questions you might have. [LB539]

SENATOR AGUILAR: Questions from the committee? Senator Mines. [LB539]

SENATOR MINES: Thank you, Mr. Chairman. Neal, how is this different than the bill we saw last year? [LB539]

NEAL ERICKSON: It's not, it's the same, it's the same. (Laugh) [LB539]

SENATOR MINES: Same bill. You just keep coming back, don't you? [LB539]

NEAL ERICKSON: You don't ask, you don't get. (Laugh) [LB539]

SENATOR MINES: I didn't know if there were any significant changes (inaudible)? [LB539]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

NEAL ERICKSON: No, it's pretty much the same. And I know the committee amended it last year. [LB539]

SENATOR MINES: Yeah. [LB539]

NEAL ERICKSON: And certainly if, you know, I think you can take a look at it, and if that's what you decide to do again,... [LB539]

SENATOR MINES: Be okay? [LB539]

NEAL ERICKSON: ...I would certainly understand that. [LB539]

SENATOR MINES: Thank you. [LB539]

NEAL ERICKSON: Thank you. [LB539]

SENATOR AGUILAR: Further questions? Thank you. Any other proponents? Opponents? Neutral? Senator Rogert, to close. [LB539]

SENATOR ROGERT: No. [LB539]

SENATOR AGUILAR: Senator Rogert waives closing. That closes the hearing on LB539. Ready to open on LB433. Senator Friend, please. [LB539 LB433]

SENATOR FRIEND: (Exhibit 1) Thank you, Chairman Aguilar. Members of the Government, Military and Veterans Affairs Committee, my name is Mike Friend, F-r-i-e-n-d, and I represent the 10th Legislative District in northwest Omaha. I'm here to introduce...I'm here to sit on the committee, but I'm here at this very moment to introduce LB433. Senator Mines, and others, you've seen this before. I have a feeling if it's not successful, you're going to see something like this again, if we hang around long enough. In 1991, well actually on two occasions you've seen a bill like this. Senator Doug Kristensen, who was also the Speaker for a period of time, put forward a couple of initiatives like this and it actually succeeded; the Governor vetoed it both times. LB433 eliminates language in current Nebraska statute that makes the selection of presidential electors, at least three out of the five of them, congressional district specific. In 1991, through the adoption of Senator Schimek's LB115, the Legislature changed our method of allocating our electoral votes from a winner-take-all basis to a scheme where two...well, scheme, to a situation where two electors are chosen at-large by the statewide popular vote, and the other three are selected by popular vote in each congressional district. LB433 reinstates the former method of allocating the five electoral votes to the popular vote winner statewide. Currently, there is only one other state that selects its presidential electors in this manner, that's Maine, as Senator Pahls probably knows the way he's looking at me. In 1995, Senator Kristensen's bill to revert

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 22, 2007

back to a winner-take-all was passed by the full Legislature 27 to 15. Governor Nelson vetoed it. In 1997 he offered the bill again, passed the full Legislature 28 to 15, vetoed by Governor Nelson again. In 1991, when the change was made, one of the arguments offered, among a few others, was that adopting a split electoral vote allocation would draw more attention to Nebraska from the presidential candidates. I have a handout, but what you will see on the handout is that dating back to 1992, it can be determined that this experiment has failed. Nobody showed up, they're not coming. Now if that was an argument, or that was the assumption, or one of the only ones to pass, then I think it could be considered that that...or I think we can make the argument that that experiment has failed. There is a reason that, I think, only two states have done this. And it's not...there's not a domino effect out there. I think the reason is because it changes the electoral process in a way that if every state did it, the electoral process would no longer be that useful. More or less, you could simply go back to allowing the United States House of Representatives to select the President of the United States. Now, maybe there are some that feel that's the way it should be, I'm not particularly one of them. I think we have to consider the upcoming census in a few years. In 2010 possibly some strange things could happen to the situation in Nebraska in regard to our district seats. We may lose one of them. And I think this is more or less a 20 percent reduction in our states electoral votes from five to four, more or less making it, in my opinion, that much more important to consolidate our votes for president as virtually every other state does. I don't know the politics behind, you know, a bill like this getting out of committee, getting passed by the Legislature, and a Governor vetoing it. I can guess and we can all have that fun debate, but I'm not going to do that. What I'm going to do is say this makes sense. And I'm not going to tell you either that this is one of those things like some of the things that Senator Aguilar and I used to deal with in Judiciary Committee where we really feel like we're making a difference to folks in our community, but this goes back to the kind of conversations that Senator Avery and I have had, and we all have had in regard to how our government functionally operates in the best manner. We can disagree on that. I think that we have a situation here, in regard to our electoral votes and the way we distribute them, that's a tad dysfunctional. And I guess with that, I would be happy to take any questions that you throw at me. [LB433]

SENATOR AGUILAR: Questions? Senator Avery. [LB433]

SENATOR AVERY: Thank you, Mr. Chairman. What's been the experience in Maine? Do you know? As far as I can remember, their system is just like ours, and they've not had anything turn out, other than winner-take-all, right? [LB433]

SENATOR FRIEND: That's correct. [LB433]

SENATOR AVERY: Yeah. [LB433]

SENATOR FRIEND: That's correct. [LB433]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

SENATOR AVERY: So what we're really doing here is, maybe you don't agree with this, but it seems to me that this is a modification of the Electoral College where you're trying to alter it from a winner-take-all system where, let's say, Omaha CD2 votes for one candidate, and then if everybody else in the state votes for another candidate, then Omaha would still get that electoral vote. That would be one vote for that candidate. So that empowers the voters in Omaha, right? [LB433]

SENATOR FRIEND: What I'm saying...that's the existing system. [LB433]

SENATOR AVERY: Um-hum. [LB433]

SENATOR FRIEND: What I'm saying is that if we stripped...if LB433 strips the language and more or less says that if you...it doesn't matter what districts you win in Nebraska. If you're Al Gore and you won Nebraska in...I mean, if you win Omaha... [LB433]

SENATOR AVERY: You get all five votes. [LB433]

SENATOR FRIEND: ...you're taking all of it. [LB433]

SENATOR AVERY: Yeah. [LB433]

SENATOR FRIEND: Just because you won the second congressional district and you didn't win the third, that's irrelevant, you get it all. [LB433]

SENATOR AVERY: But...so one of the arguments is then made for the system as it now might have been, in fact, if I'd have been here, I would have made that argument, is that we are modifying the Electoral College, which is probably an antiquated system as it stands. And we are vesting more weight in the vote of those people in the congressional district. If the voters in Congressional District 2, say I choose candidate X, and the voters in 3 and 1 say, I choose candidate Y, still the voters in District 2, their vote counts simply because that one electoral vote will go to that person. That's the current system. [LB433]

SENATOR FRIEND: Therein lies the argument. [LB433]

SENATOR AVERY: Right. [LB433]

SENATOR FRIEND: And that is probably what guys like you and I would be on the floor discussing. [LB433]

SENATOR AVERY: Right. I hate the Electoral College. (Laugh) [LB433]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 22, 2007

SENATOR FRIEND: Well, I gathered that by the discussion, or at least the points that you made. I don't, I like it. [LB433]

SENATOR AVERY: Now we get into a philosophical discussions about why. But we can do that later. [LB433]

SENATOR FRIEND: Maybe we will. (Laughter) [LB433]

SENATOR AGUILAR: Further questions? Senator Karpisek. [LB433]

SENATOR KARPISEK: Thank you, Mr. Chair. Don't you think though that the state is so diverse that, not compared to Maine where, I've never been to Maine, but I think of it as being all kind of the same, where we have Lincoln and Omaha, and we have Sandhills, and everything in between, that we could probably be split into two or three states. And that's why we have this system and it does give more of the diversity, more of a voice? [LB433]

SENATOR FRIEND: Yes and no. If it did, what Senator Avery just pointed out was...is true. Maine and Nebraska aren't splitting their electoral votes. The electoral system works, and that's a debate that we can have out on the, if we get the opportunity, we can have on the floor. And as you know, I like to talk about these things. But you bring up a good point. Yes and no, the answer is both. Yes, from the standpoint of sure, we'd love the third district to have its own autonomous approach to government issues. But we're not splitting them. It hasn't been happening. It doesn't happen in Maine. [LB433]

SENATOR KARPISEK: It's been a moot point. [LB433]

SENATOR FRIEND: More or less. We have statutory language here that just kind of makes us stick out like a sore, more or less, like a sore thumb, and it's not effective at all. If anything, it just makes us stick out. And somebody from Fox News or CNN to say, oh, by the way, keep an eye on Maine and Nebraska, not that it means anything, but...you know, we're going to hang around another half hour to figure out exactly what happens. And we all know what's going to happen. So I could go on all day. But, Senator, your point is well taken. But it just hasn't happened in that way. [LB433]

SENATOR KARPISEK: Thank you, Senator Friend. [LB433]

SENATOR FRIEND: Sure. [LB433]

SENATOR AGUILAR: Further questions? Senator Avery. [LB433]

SENATOR AVERY: One more. You said the Electoral College works. It does. What it does is puts another layer on the system between the vote of citizens and the actual

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

selection of President. So you can actually have, as we have seen, a popular vote go one way, the Electoral College go the other. It puts more power in the hands of the large states and less power in the hands of the smaller states. And what we have currently in place now is the possibility that, you know, people's vote might actually lead to a single or more electoral vote going to a candidate that the rest of the state didn't vote for. And that's a more direct connection between the actual outcome of the election and the votes of the people in a district. [LB433]

SENATOR FRIEND: Okay. But I mean, do you just want me to comment on that? [LB433]

SENATOR AVERY: But now, philosophically, you may prefer to have the Electoral College, which is a device that the founding fathers put in place actually because they didn't trust us, the voters. They put that Electoral College in place in order to provide the ultimate check on the vote of ordinary citizens and ordinary people. And it was intended to be a group of people, local notables in every community, every state, getting together, after the popular vote, and then they would sit down and decide, now did the popular vote actually turn out the way it ought to have? And if not, we will decide how the vote should have turned out, and that's how they often voted. Now you go back to Sam Tilden, a race with Rutherford B. Hayes, it's a clear case where Tilden actually won the race, and we've had others as well, and the Electoral College said, no, we don't like that outcome, we're going to have Rutherford B. Hayes as President. Therein lies the problem with the Electoral College; it's an anti-democratic procedure that I find objectionable. [LB433]

SENATOR FRIEND: Okay. [LB433]

SENATOR AVERY: And what we have done in Nebraska is modify that a bit to bring back a little bit more of the democratic principles intended, or I hope were intended by the founding fathers. [LB433]

SENATOR AGUILAR: Further questions? Seeing none, last chance, going once. [LB433]

SENATOR MINES: No, I wouldn't dare. (Laughter) No thanks. This would be good debate on the floor. Thank you. [LB433]

SENATOR FRIEND: You're welcome. [LB433]

SENATOR AGUILAR: Any proponents to the bill? You have to come to us. Welcome. [LB433]

TIFFINY CARLTON: Thank you. My name is Tiffany Carlton. The last name is spelled

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

C-a-r-l-t-o-n. I'm here today in my capacity as executive director of the Nebraska Republican Party and am here to testify in support of Senator Friend's bill, LB433, which would restore Nebraska to its original system of delegating their electoral votes on a winner-take-all basis. One thing I want to make sure I do when I'm here today is clarify why the party supports this bill and to say, indeed, it has wide support across our party. In fact, in 2004 the Nebraska Republican Party, on its presidential year platform, adopted language that basically expressed the Republican Party's support of a winner-take-all election system. I think when it was adopted in 1991 it was done so for noble reasons, and some of the very reasons that we've talked about today in this room. One of the things that's nice to see is across the political parties, regardless of our political affiliation, one of the things we want is for Nebraska to have as much significance as possible and be as much of a player as it can in the national elections and in a presidential election. Senator Friend mentioned one of the thoughts in starting this bill was that our state would garner more of that national attention, that we would get presidential candidates that would come and visit our state. And again I'll reiterate what he said, we just simply haven't seen that happen. What we've seen is the promise of all these things that were supposed to happen when this bill was passed. And essentially, it's failed to live up to any of those promises. Our problem with the bill or with the system as it currently is, is the potential for the harm that it could cause our state, especially when we're talking about national significance. We believe it has the potential to dilute the impact our electoral votes have. Right now our state, because of its smaller population in regard to other states, has five electoral votes. Which I think we could all agree isn't as many as other states have or as many as we'd like. What we've essentially done with our current system is break the state down even more. So that instead of just having five electoral votes, we've diluted it down to a smaller scale where we really have almost four subelections going on. There's the two electoral votes, the two votes for our two Senators, which come from the popular vote, and then one for each of the three Congressional Districts. And so you have the case, you know, I would argue how does it empower the voters of the district? What about the voters of the third district? Is there any chance, as things are now, that a presidential candidate is going to come and visit Grand Island, Nebraska for its one electoral vote? The question was asked earlier, doesn't that empower the voters of Omaha? They vote different than the rest of the state? I would argue, no, and what ever...what it does is done at the expense of the voters in the rest of the state. It's done at the expense of the voters in the third district; it dilutes the power that we have as a state even more. Just a couple of other comments. I thought when I was sitting here listening, it's ironic when we talk about whether we like or don't like an Electoral College system. And, Senator Avery, you said that you didn't like an Electoral College system. But this is essentially an electoral system within the state of Nebraska that we've created now because now we're back to the popular...it's not a winner-takes-all. If you don't like an Electoral College, that's...essentially we've created another Electoral College within the state instead of allowing the popular vote of the state to determine where the five electoral votes go. I just would reiterate that we already clearly have a challenge as a state to remain

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

significant on the national scale. And the Nebraska Republican Party is concerned that things as they currently are have the potential to dilute the impact that our votes have now even further. And so we fully support the winner-take-all system and urge you to adopt LB433. [LB433]

SENATOR AGUILAR: Questions for Ms. Carlton? Senator Adams. [LB433]

SENATOR ADAMS: Well, being a Republican, this will sound like a traitorous question that I shouldn't ask. But the way you've set your testimony up, I can't help but ask. So would it be fair to say that the Republican Party of the state of Nebraska would like to go back to a winner-take-all? Given the nature of the power of the Republican Party in Nebraska we avoid a John Kerry, Al Gore, Bob Dole, or Ross Perot anomaly happening? [LB433]

TIFFINY CARLTON: Okay, and so is your question... [LB433]

SENATOR ADAMS: Well, given the power of the Republican Party in Nebraska, when you go to a winner-take-all, you have in effect just further solidified five electoral votes for the Republican Party rather than four, because one slipped through the cracks out in the third district, in 1992, with Ross Perot or however you might want to set it up. [LB433]

TIFFINY CARLTON: Sure, I think that is hypothetical. Certainly, the Republicans are in a strong state now, but I think my responsibility and the parties responsibility is to think not just, when we're debating these bills, to not just think of what the political setting is now, but to think of what it could be in the future. And I think it would be shortsighted of a political party to ever adopt or argue in support of a bill that's beneficial to us now, and to be shortsighted and not see the flip side. What we believe is that this is the best scenario for the voters of the state of Nebraska. And it's not about where we stand now as a party, or where the voter registration advantage lies now as a party. [LB433]

SENATOR AGUILAR: Senator Avery. [LB433]

SENATOR AVERY: Let's see if I get this right, I think I do. Let's take hypothetically. [LB433]

TIFFINY CARLTON: Okay. [LB433]

SENATOR AVERY: And we're not concerned here with the prospects of this, whatever happens. Hypothetically, you could have a third district vote so overwhelmingly for the Republican candidate under the current system, and the Democrats could squeak out a victory in the first district, and squeak out a victory in the second district. And the way it is now, the Democrat would get two electoral votes, and the Republican would get

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

three. What you're saying you want to do is to say that we don't want it like that. What we really want to have is that even if you have a majority voting for the Democratic candidate in CD1, or you might have the same thing in CD2. We want to be able to take all the votes, all the electoral votes, all five of them, because we won really big in the third district. What I'm saying is that perhaps what you really want to do is to empower the voters in every congressional district so that their vote actually does make a difference, it matters and it counts. [LB433]

TIFFINY CARLTON: No, Senator Avery, I disagree with that. With the first scenario, no, that's not what we're saying at all. It's not that we want all five of those. We want whoever, hypothetically, wins the popular vote, whether it be the Republican candidate or the Democrat candidate, depending on the year to receive the vote. You argue that, again in the hypothetical situation, the Democrats vote might really count and just in the situation we've created because they might squeak by with two electoral votes. What I'm saying is I believe that is shortsighted because on a national scale it's not going to make a difference. I believe hypothetically, even with the voter registration the way it is now, the Democrats have a better chance to make a difference on the national scale by getting all five of Nebraska's electoral votes, not creating, you know, turning Omaha into it's own substate worth one electoral vote, which is essentially what it is. [LB433]

SENATOR AVERY: Well, if you were to take a map of the whole United States and you were to take the red and blue states and you would color them according to how the votes were distributed in terms of percentage, do you know what color you'd get? Purple. [LB433]

TIFFINY CARLTON: Okay. [LB433]

SENATOR AVERY: But yet when you look at the Electoral College and how votes are distributed, it's clearly red and blue. We are not a red and blue country, we are a purple country. There are a lot of very close elections which are decided by not very many votes, and that means under the current, not in Nebraska but nationally, all the votes go to whoever won by 50 percent plus 1. So what we now have in Nebraska, and what they now have in Maine, is a way in which you can at least have each congressional district know that their votes will count if, in fact, their votes happen to go against the rest of the statewide trend. And you're saying you don't want that? [LB433]

TIFFINY CARLTON: No, I'm saying that I would argue that their votes don't count. It makes us all feel better and feel like our votes count, but on a national scale pragmatically Nebraska only has five electoral votes, creating a smaller subdistrict. And only giving them one vote makes us...might make people feel better as a state, but doesn't have national significance. [LB433]

SENATOR AGUILAR: Senator Adams. [LB433]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 22, 2007

SENATOR ADAMS: If we go to a winner-take-all system, I'm jabbing at you again here, have we formally solidified the power of either the Republican or the Democratic Party over any other third party candidate? [LB433]

TIFFINY CARLTON: No. A third party candidate always has difficulties and challenges. I would have to maybe think about that one a little more. [LB433]

SENATOR ADAMS: Okay, all right. [LB433]

TIFFINY CARLTON: Maybe philosophically, I don't think pragmatically no. [LB433]

SENATOR ADAMS: Okay. [LB433]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB433]

TIFFINY CARLTON: Thank you. [LB433]

SENATOR AGUILAR: Are there further proponents? Are there any opponents? Welcome. [LB433]

LAUREL MARSH: Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I'm here today on behalf of ACLU Nebraska in opposition to LB433 because basically we don't all think the same. The ACLU recognizes the issue of presidential nomination and election as a civil liberties question on the grounds of equal protection, and under the principles of one person, one vote. And I'm going to read this, because I want to make sure that I give it to you correctly. ACLU believes that the Electoral College, from its basic inception, was and is an undemocratic institution. It was brought into being based on a concept of elitism, under which the most distinguished citizens of each state would choose a President and Vice President of the United States unhampered by the wishes of those who selected the electors. ACLU believes that the Electoral College should be abolished, and the President of the United States should be chosen by direct popular election. Our position is based on the principle that each individual is entitled to equal protection of the laws, and in having an electors vote equally weighted and on its corollary enunciated in the one person, one vote rule. And so, basically, the changes that are looked at in LB433 take us a step...and when we go back to a winner-take-all philosophy, we take us a step away from one person, one vote instead of a step towards one person, one vote, and that is the basis of our opposition. Are there any questions? [LB433]

SENATOR AGUILAR: Questions for Ms. Marsh? Senator Adams. [LB433]

SENATOR ADAMS: Philosophically, I have some more thinking to do. But I think I tend

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

to agree, the Electoral College has probably seen its day. However, one could also argue if we go back to the election of 2000 that what the Electoral College did do, like it or not, being Republican or Democrat, it cleared the air when it was all over with. Otherwise, we might have been counting and recounting, and recounting, and recounting, and recounting. But the Electoral College made it crystal clear who won. Would you see that as an advantage to having the college the way it is? [LB433]

LAUREL MARSH: No, I would not. [LB433]

SENATOR ADAMS: I didn't think so. [LB433]

LAUREL MARSH: I think that there would need to be some safeguards built into a system. And I think that that election really heightened the need for security in our voting. We've always prided ourselves, as a state and nation, on being able to have clean elections, where you cast a vote, your vote is counted, and that's pretty reliable. And to the degree that there were flaws in that system and that expectation was not met, I think that we need to fix that system. But I don't think that it changes our position. [LB433]

SENATOR ADAMS: Okay. [LB433]

SENATOR AGUILAR: Senator Avery. [LB433]

SENATOR AVERY: I'll have a private conversation with my colleague later that's about how crystal clear that outcome was. (Laughter) [LB433]

SENATOR AGUILAR: Further questions for Ms. Marsh? Seeing none, thank you for coming today. [LB433]

LAUREL MARSH: Thank you. [LB433]

SENATOR AGUILAR: Further opponents? Neutral? Seeing none, Senator Friend, to close. [LB433]

SENATOR FRIEND: Thank you, Mr. Chairman. Real quickly, I'm sure you would all appreciate that. Unless you have more questions, I'd be happy to answer those. But let's keep it...I think it's important that we keep in mind that the green copy of this bill is not, in my purview, it's not in this state Legislature's purview to make a value judgment or try to change the law in regard to the Electoral College. It's not our job. That's not what I'm doing here. That's not what this bill does. This is not a debate about the American Electoral College, especially in regard to the way federalism should operate and the way the national and federal conceptions of democracy should be distributed. If the system is flawed, I guess, in the long run I can accept that. But if you're trying to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

work within a flawed system that we have no control over, as state legislators, what do we have control over to make a system that we operate better within that flawed system, that we absolutely have no control over? We deal with that type of stuff every day. I guess my final point would be that that's all I'm trying to do here. I could agree with Senator Avery until the cows come home about how the electoral system, the American electoral system is messed up. Doesn't matter. It doesn't change the fact that this bill is actually trying to make a system of whatever you want to call it, somewhat more palatable and somewhat, in a lot of ways, more uniform and more fair, and something that was meant to be created or meant to be used in the creation of the American Electoral College. The Electoral College, let's say that it actually works, okay? Just for fun. It wasn't meant to work in the way that we're using it. That's about all I'd really have, Mr. Chairman. [LB433]

SENATOR AGUILAR: Questions for Senator Friend? Seeing none, thank you. [LB433]

SENATOR FRIEND: Thank you. [LB433]

SENATOR AGUILAR: That closes the hearing on LB433. We're ready to open on LB394. Senator Burling, please. [LB433 LB394]

SENATOR BURLING: Thank you, Senator Aguilar. Members of the Government Committee, I'm Carroll Burling, B-u-r-l-i-n-g, represent District 33 in the Legislature. I'm here today to present to you LB394. This bill is brought to you after consultation with the Secretary of State's Office and the purpose of it is to clarify that post primary conventions of established political parties may nominate candidates in one of two situations: where a vacancy on the ballot has occurred, or in cases of special elections. So I'd take you back to the last election cycle where the State Auditor was nominated by a major political party at a post primary convention to be on the November ballot. I guess I'd call this bill a bill that causes us to ask ourselves, do we in Nebraska want to preserve the primary voting system? If major political parties or any political parties are allowed to nominate people after the primary election to be on the general election, I submit to you that undermines our primary system that we have been using since 1907. There is no current group of statutes that identifies the direct primary law in Nebraska, even though we've been using it that long. So Neal Erickson will be following me, to explain it better than I can. There's also a provision in here that would change the wording on proper committees to say "central committees," so it's uniform throughout the bill, and some other minor changes that he may want to submit, to explain to you as a committee. I think you all know the situation that occurred last election cycle. And so you just think back to that. I don't need to explain it to you. But I think if we allow that to continue without clear statute on when a political party can nominate people for a general election ballot, our primary election process is in jeopardy. So are there any questions? [LB394]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

SENATOR AGUILAR: Questions for Senator Burling? Senator Avery. [LB394]

SENATOR AVERY: Senator Burling, why are you so fond of the primary process? [LB394]

SENATOR BURLING: Do we want that in Nebraska? Maybe we don't want it. If we don't want it, let's say so. But we've been using it since 1907, and there's no statute that really lays out exactly how that should work. If we don't want the primary process, then I think we should say so. But I don't think we can have what happened last year, allowing a political party to not have a candidate in the primary election, and then nominate one post primary. And we can't do that and conserve the primary process, because what would stop anybody from just circumventing the primary and going straight to the general? [LB394]

SENATOR AVERY: Well, it seems to me that one could argue that it's in the interest of the democratic process to make it possible for political parties to get candidates on the ballot. Maybe they failed to do so in the primary, but then the opportunity comes later and you have more choices to put before the voters. And that enhances the democratic process. Don't you think you could make that argument? [LB394]

SENATOR BURLING: I think you could make that argument. And I guess my answer to that is the same as before. Maybe we don't want a primary election process in this state. Maybe we want to do away with it. But we ought to... [LB394]

SENATOR AVERY: It could be done by convention, state convention. [LB394]

SENATOR BURLING: We ought to do it one way or the other, I think. And right now I think you can do it either way. [LB394]

SENATOR AVERY: Yeah, you can do it either way. [LB394]

SENATOR BURLING: You can say, I want to be... [LB394]

SENATOR AVERY: I think the law currently is that if you don't produce a candidate in the primary, the state convention has the authority to nominate people for any vacant, or any office where they don't have a candidate, they have the option of nominating persons at the state convention. Isn't that correct? [LB394]

SENATOR BURLING: It appears that that was the decision of the judge. [LB394]

SENATOR AVERY: Yes. [LB394]

SENATOR BURLING: It wasn't the decision of the Secretary of State. So that's why I'm

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 22, 2007

saying our law needs to be more clear. [LB394]

SENATOR AVERY: Um-hum. [LB394]

SENATOR BURLING: So that there is not that discussion. [LB394]

SENATOR AVERY: But wouldn't your law close off that possibility? [LB394]

SENATOR BURLING: Yes. [LB394]

SENATOR AVERY: Only in case of a vacancy, which means you actually had a person emerge in the primary, and for some reason that person is no longer available to remain on the ballot. And that would then allow the parties to nominate someone else,... [LB394]

SENATOR BURLING: Yes. [LB394]

SENATOR AVERY: ...and in the case of special elections. So you would close off that avenue of the state convention filling unfilled slots on the ballot? [LB394]

SENATOR BURLING: If we're going to have a primary election process, we should close that off. [LB394]

SENATOR AVERY: Okay, I get it. [LB394]

SENATOR AGUILAR: Further questions? Senator Karpisek. [LB394]

SENATOR KARPISEK: Thank you, Mr. Chair. Senator Burling, I'm just thinking farther. I think the heartburn was that this candidate had lost in the primary and then got on for another position. Do you think that's more of the problem? [LB394]

SENATOR BURLING: Well, what that situation did was highlight for us a flaw in our law. So let's take the people out of it, and we have a situation where there was disagreement between the judge and the Secretary of State, and justly so, because the law wasn't clear. And I think this clarifies it. [LB394]

SENATOR KARPISEK: I guess, I was just wondering if there could be something, an amendment to say if that person has already lost in the primary that they can't switch to a different position and try to run for that position? [LB394]

SENATOR BURLING: You might ask Mr. Erickson that question. I don't know what we might do in that situation. [LB394]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

SENATOR KARPISEK: Good enough. Thank you, Senator. [LB394]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator Burling. [LB394]

SENATOR BURLING: Thank you. [LB394]

SENATOR AGUILAR: Will you be around to close? [LB394]

SENATOR BURLING: I'll waive. [LB394]

SENATOR AGUILAR: Next...first proponent. How many want to testify on this? It's all about you. [LB394]

NEAL ERICKSON: I'll try to give you an early day, today. Senator Aguilar, members of the committee, for the record, my name is Neal Erickson, Deputy Secretary of State for Elections, here on behalf of the Secretary of State's Office to testify in favor of LB394. I think...I thank Senator Burling for introducing this measure on our behalf. He did a commendable job of explaining the basic components of it. You know, he did mention the part about the post primary conventions. He did mention the part about the...rearranging some of the language on proper committee. One other thing that was added to this bill is how we deal with the declination of nomination. And that's where...it's a little bit different than a vacancy; that's where somebody actually declines their nomination. Current law treats that a little bit differently than a vacancy. And this bill would throw that into the vacancy realm just as well and use the same process for that. With that, I think probably the best way to do is answer questions you might have. [LB394]

SENATOR AGUILAR: Questions? Senator Karpisek. [LB394]

SENATOR KARPISEK: Neal, do you think that instead of going this way, I mean was that a lot of the problem, just that the candidate lost one race, and now is trying for another position? [LB394]

NEAL ERICKSON: If we're referring to the situation last year, actually that candidate, that person, that individual was not a candidate in the primary election. While Witek was announced to be the Lieutenant Governor candidate of Congressman Osborne, in the primary system that is...we don't choose Lieutenant Governor at that point. You're not allowed to choose your Lieutenant Governor, officially, until you've actually won the primary. So technically, she was not a candidate at that point. [LB394]

SENATOR KARPISEK: That answers that one. Thank you, Neal. [LB394]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 22, 2007

SENATOR AGUILAR: Senator Avery. [LB394]

SENATOR AVERY: Neal, why wouldn't we want a candidate selection process that would produce as many candidates as possible, for as many slots on the ballot as possible, to put as many people before the voters as possible, to give the voters as many choices as possible in a democratic process? [LB394]

NEAL ERICKSON: Well, I think...I understand why. And I think there probably are some, I think you would agree, some rational limits to that. We don't want the ballot filled with candidates that aren't capable of garnishing even let's say five votes. On a statewide basis that would clutter the ballot and offer a lot of confusion. [LB394]

SENATOR AVERY: But you're talking about a major party nomination here. [LB394]

NEAL ERICKSON: Right. And one other thing, the way the primary system is set up is that we allow candidates to run for that office, become the party nominee at that point. If we provide situations where candidates can bypass the primary, why run in the primary at all or why even have the primary? And we could go to a system where the conventions were simply allowed to nominate whoever they wanted to. And one thing I'd point out, and the reading of the current law, it was not with...you know, what our opinion of what the court case was about. It certainly wasn't about Auditor Witek. It was about the ability of the convention to nominate candidates. The way one political party read that, we are capable of doing that under any circumstances. We are capable of doing it in a vacancy. We are capable of doing it when there is not a vacancy. We are even capable of overriding a primary election result and nominating candidates just because of the way the statute was written. Prior to 1995, the statute had a phrase in there. Yes, political party conventions could nominate candidates at their convention, except for offices covered by the Primary Election Act. In 1995, that phrase was removed. Part of the reason, I mean there's no legislative history specifically on why that phrase was removed, so we don't know exactly. But at that point in time, there was no identifiable primary election interest. So that may have been a factor in why that phrase was removed. But by leaving just that simple sentence in there, that political parties at their convention have the right to nominate at conventions, theoretically, that could be taken to have unfettered discretion on the part of the conventions, on the part of the conventions to nominate candidates. We don't feel that's the appropriate process. We feel, and you talk about a democratic process, to a degree I think it's an undemocratic process. We're taking away from the voters, and we're putting it into a convention, where, you know, the way this one... [LB394]

SENATOR AVERY: It is a partisan convention and the delegates there are representing other people in their party. [LB394]

NEAL ERICKSON: Yes. [LB394]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

SENATOR AVERY: That's not nondemocratic, Neal. [LB394]

NEAL ERICKSON: When...well, I can tell you just from a personal example, I didn't choose my delegates based on the fact of who they were going to nominate for an Auditor candidate. That thing popped up a week before the convention. I wasn't able to vote on precinct delegates. I didn't get a chance to vote in the primary on it. You know, what, 150,000 other Democrats didn't get to vote on that. [LB394]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Neal. [LB394]

NEAL ERICKSON: Thanks. [LB394]

SENATOR AGUILAR: Any other testimony? Senator Burling, to close. Senator Burling waives closing. That closes the hearing on LB394 and the hearings for today. [LB394]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 22, 2007

Disposition of Bills:

LB394 - Held in committee.
LB433 - Held in committee.
LB460 - Held in committee.
LB539 - Held in committee.

Chairperson

Committee Clerk