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Government, Military and Veterans Affairs Committee  
March 09, 2011

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[LB277 LB523 LB685]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, March 9, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB277, LB685, and LB523. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Lydia Brasch; Charlie Janssen; Russ Karpisek; Rich Pahls; Paul Schumacher; and Kate Sullivan. Senators absent: None.

SENATOR AVERY: (Recorder malfunction) ...Committee. My name is Bill Avery. I am Chair of the committee and represent District 28 here in Lincoln. Before we start today, I want to introduce members of the committee, starting on the end down here to my right: Senator Rich Pahls from Millard; and next to him is Senator Lydia Brasch from Bancroft; soon to join us to fill the empty chair is Senator Charlie Janssen from Fremont; and next to him sits Senator Scott Price from Bellevue, who is Vice Chair of the committee; and to my right here is Christy Abraham, the legal counsel for the committee; and soon to appear will be people for these two vacant seats here, Senator Russ Karpisek from Wilber and Senator Kate Sullivan from Cedar Rapids; at the very far left here is Senator Paul Schumacher from Columbus; and at the very end is Sherry Shaffer, the committee clerk. If you are testifying for or against any of the bills on today's agenda, we will ask you to fill out this form; please print clearly. It provides information that we need to put in the record. If you are not planning to testify but you wish to be recorded for or against any of the bills on the agenda today, we would ask that you sign this form and just leave it at the tables at each entrance. These forms are available; copies are available at each entrance. And after you do that, we're going to ask you if you have anything to distribute to the committee, we would ask that you give copies to the clerk, and she will have them distributed by the page, who is Kyle Johnson from Sutton--that all we have here today? And please provide 12 copies; if you do not have 12 copies, let us know; and we'll have the page get the appropriate number. We will be using the light system. The light system is: green, yellow, red. Starting with green--that means you have four minutes; and when the amber light comes on, you have one more minute to finish your testimony; and when the red light is on, you should be finished. If you are here with a cell phone or a computer that makes noise, please put it on "silent," turn it off, or put it on "vibrate"--for a phone; I don't believe you can put a laptop on "vibrate." If you had planned to testify from material on your computer, we ask that you not bring that to the table for testimony; it's better that you have written notes. And we are slowly moving into the 21st century in what we do with new technology, but right now we have generally a consistent policy that laptop computers are not allowed up here nor back there unless you're a part of the certified press. We value open discussion in this committee, as I often say in here. We're the only legislature in the country that requires a public hearing on every bill introduced. We take that tradition very seriously, and we welcome you here to participate in these deliberations. We will start with the order of the agenda as posted outside the room: LB277, followed by LB685 and then followed by LB523. We'll start

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with Senator Coash, LB277. And I do have to leave for another committee.

SENATOR COASH: You're excused.

SENATOR AVERY: Scotty.

SENATOR PRICE: Thank you, Chairman Avery. Senator Coash, welcome. [LB277]

SENATOR COASH: Thank you, Vice Chair Price. And good afternoon, members of the Government, Military and Veterans Affairs Committee. For the record, my name is Colby Coash, C-o-l-b-y C-o-a-s-h, and I represent the 27th District right here in Lincoln. LB277 is a technical bill, a clarification bill, that was brought to my attention by our Lancaster County Board. And our Lancaster County chief administrative officer is going to follow my testimony to give further clarification as to why this bill makes sense. So LB277 is a bill that clarifies the statute regarding the County Visitors Promotion Fund that is in Chapter 81-1255 by specifying that the authority to spend the money in the County Visitors Improvement Fund lies with the governing body of the county--for example, the county board or the county commission--not with the visitors committee. Furthermore, the bill clarifies that the role of the visitors committee is an advisory one with regard to spending the money in the County Visitors Promotion Fund. Whether the proceeds of the County Visitors Promotion Fund are used for improvement or for promotion, the final spending authority should lie with the governing body. That's the intent; it's to clarify who can spend the money. So thank you for this opportunity. And I will close and turn it over to the one testifier I have to answer any questions for you. [LB277]

SENATOR PRICE: Well, thank you very much, Senator Coash. Are there questions from the committee? Senator Sullivan. [LB277]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Senator Coash. I just, I guess, in thinking through this, it kind of begs the question as far as what parameters the county board has to spend that money, you know, because what you're saying is that they can take the advice, but it's their responsibility to spend the money. Does it say that they have to spend it in the way that's directed, to... [LB277]

SENATOR COASH: By the advisory committee? [LB277]

SENATOR SULLIVAN: ...tourism development? Or could they, if they've got a tight budget, use it for other things? [LB277]

SENATOR COASH: Well, I think for this particular fund, it's very specified in how they can spend it, and it is tourism, really. But it is the county boards who--or the elected officials who have to be responsible for that tax money. And when this particular County

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Visitors Promotion Fund was set up, the intent was to allow the county boards to spend that money along those statutory parameters and then have that advisory committee to help them make those decisions on where that money would be best spent. [LB277]

SENATOR SULLIVAN: Okay. [LB277]

SENATOR COASH: So I really look at this as a bill that, with a few language changes, can clarify those rules. [LB277]

SENATOR SULLIVAN: Okay. Thank you. [LB277]

SENATOR PRICE: Thank you, Senator Sullivan. Are there other questions? I would just ask, Senator Coash, do you see either there being now or perhaps with clarification that there be a more adversarial relationship between these visitor committees and the board? Because again, as Senator Sullivan brought out, the visitor committee could spend a lot of time and effort making a recommendation that the board could absolutely just say, nah, we don't care. We're going to go this other direction. Given even still within those parameters that you outlined they have to spend the money. And I mean what checks and balances are there to legitimize the existence of that visitor committee? [LB277]

SENATOR COASH: The committee was...the visitors committee was developed because those are industry professionals who would be able to speak to how you get the best bang for your buck, but that buck is taxpayer money and that needs to go...that responsibility needs to be at the elected officials' level. And I see that as a healthy relationship, and I don't see any adversarial relationship. I think those...both of those roles are...with this bill be more clearly defined and I think both sides would appreciate that clarity. [LB277]

SENATOR PRICE: (Exhibit 1) Well, thank you very much, Senator Coash. Any other questions? Seeing none, we'll go to the first proponent for LB277. And while we're waiting for that, I will read into the record that NACO has sent a letter in support of LB277. Welcome, sir. [LB277]

KERRY EAGAN: (Exhibit 2) Thank you. Good afternoon, Senator Price, members of the Government, Military and Veterans Affairs Committee. My name is Kerry Eagan. That's K-e-r-r-y E-a-g-a-n. I'm the chief administrative officer for Lancaster County Board of Commissioners. I'm here to testify on behalf of the county in favor of LB277. As Senator Coash indicated, this is simply a language clarification in an ambiguity which I've noticed years and years ago in the statute. It's a small change, but I think it is important. If I could answer one question from Senator Sullivan about are there definitions of how this money can be spent, yes, there are. Essentially with these visitor funds, there's two funds. There's a promotion fund, which is a 2 percent tax on hotels. That money is

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generally used for promotion, which is to, quote the statute, generally to promote, encourage, and attract visitors to come to a county and use the travel and tourism facilities within the county. The county board gets advice of the visitors committee in spending this money. In Lancaster County we have the visitors promotion committee which is very active, works in conjunction with our contractor, the Convention and Visitors Bureau, through the Chamber of Commerce in administering this money, coming up with a coherent plan, deciding how best to spend this money to attract visitors and get the most bang out of our buck, if I can use that cliché. There's also a second fund that's created. It's the Visitors Improvement Fund. The general purpose of that fund, again it's a 2 percent tax, is to improve the tourism facilities in the county. However, if those facilities are deemed adequate by the committee--and it's the committee that makes that decision, that determination of whether the facilities in the county are adequate--then as the statute reads now it says that the committee may use the money to promote...the committee may use the County Visitors Improvement Fund to promote, encourage, and attract visitors to the county to use the county's travel and tourism facilities. When you look at the intent of the statute, and as it should be, the final decision on how to spend tax money needs to stay with elected officials. As we do it now, it is the county board that does make the final decision with very serious input from the committee, a lot of interplay. We get that advice on any decisions that are made. But when you're talking about tax money, it really needs to be the elected officials where the final decision lays. And as you look at the other statutes under the county visitors or the Visitors Development Act, the state Visitors Development Act, the intent is clearly that the governing body of the county, with the advice of the visitors committee, administers the funds. So all this statute does, as you can see in the draft, it basically says the governing body of the county, with the advice of the committee, may use the County Visitors Improvement Fund to promote, encourage, and attract visitors. And it is a big decision because the improvement fund is supposed to be for improving facilities. And to take that money and then use it for another purpose really does...you want a lot of input from your visitors committee, but ultimately the county board is going to need to make that decision. And that's all this statute does is just clarify that language. [LB277]

SENATOR PRICE: Well, thank you very much, Mr. Eagan. Are there any questions from the committee? Senator Sullivan. [LB277]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you for that explanation. What's been the working relationship between your committee and the commissioners in Lancaster County? Has it been productive? Have they gotten along and accepted the advice of this committee? [LB277]

KERRY EAGAN: It's a very good relationship. The county board does not follow the advice of the committee 100 percent of the time just because, you know, they have a differing opinion. But we always invite the committee in to a county board staff meeting to discuss it. They make their case and 99 percent of the time the board is going to go

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along with the advice of the committee on how the money is spent, whether it's just the development of a general budget for the Chamber of Commerce to use in their administration of the funds or for a particular ad hoc project, whether it's the Agricultural Society or the new arena that we're looking at in Lincoln. So it is a very good relationship. There's a differing opinion sometimes, but I think that's healthy, but their opinion is definitely heard by the board and considered, not always followed, but 99 percent of the time it probably is followed. [LB277]

SENATOR SULLIVAN: Thank you. [LB277]

SENATOR PRICE: Thank you, Senator Sullivan. Senator Karpisek. [LB277]

SENATOR KARPISEK: Thank you, Senator Price. Thank you, Mr. Eagan. My thoughts are on the same line as Senator Sullivan. What's bringing this? There's got to be some animosity somewhere. [LB277]

KERRY EAGAN: There really isn't. It's just a clarification of an ambiguity. Maybe it's my lawyer instincts. I'm actually a recovering lawyer because I'm inactive license with the county board. [LB277]

SENATOR KARPISEK: You look to be doing better. (Laughter) [LB277]

KERRY EAGAN: It's a constant struggle. [LB277]

SENATOR KARPISEK: I'm Czech, I understand. [LB277]

KERRY EAGAN: Yes. It's really a clarification of roles. The visitors committee isn't coming forward and saying, hey, we get to make that decision, but that's what the language says. And I think you want to be as precise as possible in defining these relationships, and it really is nothing more than that. It's just an ambiguity that I've been working with for a number of years, and Senator Coash was kind enough to introduce it to clarify it. I think having those roles clearly defined is healthy quite frankly. [LB277]

SENATOR KARPISEK: Thank you for that. I guess the longer you're around here the more you try to read things in. Nothing usually comes just because it's the right, a good thing to do. [LB277]

KERRY EAGAN: I understand, especially the shorter the bill usually the more the ulterior motives. But in this case, what you see is what you get. [LB277]

SENATOR KARPISEK: And especially the sponsoring senator you have to...(Laughter). [LB277]

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SENATOR PRICE: Thank you, Senator Karpisek. I would add, Mr. Eagan, in light that we have the new arena coming to Lincoln so you're going to have 2 percent going to improvement program. Will that 2 percent be sucked up by the new arena coming in so that's not really going to be an issue for a long period of time? Or is this 2 percent outside...not going to be also dedicated to the new arena? [LB277]

KERRY EAGAN: Well, of course, with the new arena there's other funding sources. There's sales taxes, the additional taxes that Lincoln has. They're issuing bonds. These monies, interesting from an amendment from Senator Beutler when he was with the Unicameral a few years ago, allows this money to be spent to pay off bonds. We are in contact with the city regarding what their needs are going to be for the arena, but so far the county board has not dedicated 100 percent of that money to the arena. The Chamber of Commerce, through our Convention and Visitors Bureau, has recommended a formula that 25 percent of that 2 percent that's collected would be earmarked for the arena. Another 25 percent would be available for grants on an ad hoc basis as facilities make applications for grants, which is the process provided in the statute. And then you just keep the other money in reserve and for unforeseen circumstances or as needed or possibly promotion. [LB277]

SENATOR PRICE: Well, I'm glad you made a nice segue into what I really wanted to ask was how do we make the determination that improvements are necessary, are adequate, or inadequate? Is that called out anywhere? Because we're talking about that 2 percent in the VIP, right, which the visitor improvement program? If somebody says I want to improve this facility and then someone says, no, that's enough of an improvement or someone else says, yes, someone has to agree with that, I didn't know if those are articulated in the regulations somehow or another. I mean do you have some guidance you follow so that it stays the same across multiple decision points or is it ad hoc? [LB277]

KERRY EAGAN: It's ad hoc. And that one drives me crazy because there are no guidelines at all for determining what is adequate. All the statute says is that if the committee determines the facilities are adequate, then the committee can use the fund for promotion. So I want to clarify that it's not the committee that uses it for promotion, but what we do in this county is that every quarter the...in order to...if they request money for promotion, there has to be a finding by the committee, forwarded to the county board, which then incorporates it into a resolution saying, yeah, we've looked at the facilities--and it's for nonprofit-owned facilities and government facilities as provided in the statute--and that we feel they're adequate at this time, this snapshot in time, so go ahead and use, say, 25 percent of the proceeds connected from or collected from this period from June through December for promotion. So we're doing it on a quarterly basis and making that determination essentially four times a year. I wish there was more guidance on it. What I have suggested to the county board is that they do a master plan on that, work with the city and determine what are the nonprofit attractions.

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There aren't many of those, but there are some. But mostly it's through the university--the quilt museum, the Lied Center, certainly two big...the Children's Museum is a nonprofit example--and make sure that those facilities are adequate and try to do that on a master plan on a yearly basis and as we develop the entire budget, take a look at it that way. I think we're fine the way we do it and we could withstand a court challenge. But as again as a recovering lawyer, I worry about that and make sure that we do have a good record to determine that there is a finding of adequacy. [LB277]

SENATOR PRICE: Well, I appreciate the thoroughness of your answer because that does seem to be problematic. And again, we could be here in two more years for a bill to define adequate. But with that, I believe Senator Schumacher had a question, please. [LB277]

SENATOR SCHUMACHER: Thank you, Senator Price. Mr. Eagan, the tax that is...it's a 2 percent tax... [LB277]

KERRY EAGAN: Yes. [LB277]

SENATOR SCHUMACHER: ...and that's on hotels and motels. [LB277]

KERRY EAGAN: Yes, hotel rooms. [LB277]

SENATOR SCHUMACHER: And is that levied in every county? Does the state do that or the counties do that or who does the levying? [LB277]

KERRY EAGAN: As provided in the statute, the county board has to pass a resolution to establish a promotion fund, which cannot be used for capital improvement fund. That's a 2 percent tax. The county board can also pass a resolution to establish an improvement fund, which is supposed to be used for improvements. So it requires action of the county board to create those two separate funds. They're kept as separate funds by the county treasurer so they are separate funds. It's action of each individual county. Each county has the enabling power to do it, but it requires an affirmative action of the county board to establish the funds. [LB277]

SENATOR SCHUMACHER: And is it 2 percent per fund or the 2 percent gets divided between the two funds? [LB277]

KERRY EAGAN: Four percent total so it's 2 percent for the promotion fund and 2 percent for the improvement fund. [LB277]

SENATOR SCHUMACHER: And it doesn't have to do both. [LB277]

KERRY EAGAN: No. [LB277]

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SENATOR SCHUMACHER: It can do just one. [LB277]

KERRY EAGAN: It doesn't have to do either. It can do promotion. It could probably just do the improvement fund if it wanted. Although the way the statute is written, the first fund is the promotion fund and then in addition it says the governing body can also, after a public hearing, adopt an improvement fund resolution. So that kind of implies that you've got to do the promotion fund first, but not really. [LB277]

SENATOR SCHUMACHER: The first fund is a "shall", the second one is a "may"... [LB277]

KERRY EAGAN: Yes. [LB277]

SENATOR SCHUMACHER: ....I believe in the statute. Now the difference seems to be in the existing statute is that it's clear that as to the first fund, the promotion fund, the visitors committee will serve as an advisory committee in administering the proceeds from the tax, provide it to the county. The second fund, after it gets into that language, it starts talking in terms of the committee and nothing about the county board. So it almost looks to me and let your lawyer instincts cannot convince me otherwise, that as we have now the committee has got the spending authority as long as the county board creates that fund. [LB277]

KERRY EAGAN: There's the ambiguity. But when you read all the statutes together, which we lawyers have a tendency to do, it's clear that the intent of the statute, because it's tax dollars you're talking about, and (inaudible) statutes taken. For instance, 81-1258, the first line says "County Visitors Improvement Fund shall be administered by the governing body of the county with the advice of the visitors committee created in section 81-1255." So it's just in 1255 where this ambiguity exists. And your comments are precisely why I think this needs to be clarified because you can get the impression that the Legislature intended the committee to have that authority. But when you look at how the money is actually given out in grants, it's clearly the governing body that administers it. And I think the statute should be consistent. [LB277]

SENATOR SCHUMACHER: And in all counties then, as a matter of practice now, it is not the committee that's doing it, it's the county board that's doing it? [LB277]

KERRY EAGAN: I would venture a guess, yes, on that. I don't think all the counties have an improvement fund. I'm not sure even how many have the promotion fund. Certainly Douglas County, Sarpy County, Lancaster, I think Buffalo and Hall County, a number of counties do, but probably not all 93 counties. But, yeah, they would have to do both funds. I don't think a lot of them have the separate improvement fund. [LB277]

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SENATOR SCHUMACHER: Just for the world of pretend, what would be the advantage of leaving the committee have discretion over these limited funds instead of the county board? [LB277]

KERRY EAGAN: I think it creates a legal problem for one because I think it's a nondelegable duty. I think the ultimate decision on how to spend the tax money for the stated purpose in the statute resides with the county board. I don't think they can delegate that to an appointed, nonelected committee, which when you read the whole statute together is intended to provide advice and not administrative authority. So I think that does create some legal problems to delegate the authority to spend taxing money from the governing board. I think that needs to stay with the county board. [LB277]

SENATOR SCHUMACHER: Well, how would that differ then from I'm thinking of library boards where the municipal government makes a grant to a library board and they decide what books and what movies and whatever to do with the library rather than independently of the governing body? [LB277]

KERRY EAGAN: There's going to be a very detailed contract or provisions in that case. We do grants all the time. In fact, with this money you're ultimately spending it out in grants. But there's contractual obligations from the grantee to spend the money for the purpose stated in the grant. So I think that's a difference. It's a contractual relationship rather than an in toto transfer of authority to spend the money where the committee would then make all those decisions. I think that is, basically, the difference is the contractual relationship that you would create, whether it's a library board or a grantee or something. There has to be some ties, some nexus there in an agreement. [LB277]

SENATOR SCHUMACHER: Thank you. [LB277]

SENATOR PRICE: Thank you, Senator Schumacher. Are there any other questions or comments? Seeing none, thank you for your testimony, sir. [LB277]

KERRY EAGAN: Thank you. [LB277]

SENATOR PRICE: Are there any further proponents for LB277? Are there any opponents? Would anybody even like to testify in the neutral? Seeing none, Senator Coash, you are free to close. [LB277]

SENATOR COASH: Thank you and briefly we are unaware of any county that currently has a committee who is spending this money, and we're going to double-check for the committee to make sure that that's accurate. But as I said, as far as we know, everyone is complying with the spirit and the intent of the law, which is the county board spends the money with the advice of the committee that it is set out for. But we do have another statute...I'm going to copy this statute that Mr. Eagan just referenced to the committee

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so that you can see how those match with the bill that I'm trying to do and will look forward to working with the committee to move this forward. Thank you. [LB277]

SENATOR PRICE: Thank you, Senator Coash, appreciate your assistance. Senator, our committee staff has told us that (Section) 81-1258 has been articulated in our committee memo, so if we have questions, we do have access to it. Are there any questions from anybody? Seeing none, thank you very much, Senator Coash. That will close the hearing on LB277. We'll now proceed to LB685. Senator Schilz, welcome. [LB277]

SENATOR SCHILZ: (Exhibit 1) Thank you, Senator Price and members of the Government Committee. Good afternoon, for the record my name is Ken Schilz spelled K-e-n S-c-h-i-l-z and I represent District 47. Today I'm bringing forward a bill that deals with tourism in Nebraska, which as the third largest industry in the state, has the potential to grow revenue at all levels of government. As we make difficult budget decisions, I believe it is time we look for ways to maximize dollars and ensure that we are using the funds efficiently. The tourism industry in Nebraska is on the cusp of great things and it is my intent to bring legislation forward which would strengthen its components. I introduced two different measures this year that both deal with ways to grow tourism and in turn new revenue. LB684 was heard before the Banking, Commerce and Insurance Committee and calls for a comprehensive review and statewide plan for coordinating and developing our tourism industry. This bill received unanimous support and is on General File at this point. The measure before you is LB685 and AM31 which addresses, what I believe, are some structural barriers to our tourism industry. Experts will tell you that tourism, as we know it, has changed drastically over the last ten years and I have witnessed this firsthand in my own district. District 47 is home of some of the best tourist and destinations in the state due to Lake McConaughy and on any given weekend there are more Colorado license plates in the county than Nebraska plates. Yet I personally have experienced turf battles and the lack of strategic plan for my district and the state as it relates to this dynamic industry. LB685 is one piece of a much larger plan. I personally have been frustrated by local structures that in their day may have worked just fine, but now need to be revisited. We need to help ensure that we are bringing the right people, the right professionals to the table so we ensure that the greatest return on investment of our limited tourism dollars are...that it works that way. Bluntly, there's a lot of paranoia about changing the current structure. I think the reaction by some showcases why legislation like this is so important and, frankly, I did not anticipate the controversy that would be generated by this legislation. This bill is not targeted at any one county or community. And as I started talking to people across the state, I kept hearing similar stories of professional silos and lack of coordination and communication. I believe it would be prudent to revisit how we invest existing tourism dollars and how we can grow our attractions to bring in new people and tax dollars to our state. LB685 attempts to help bring more accountability and professional representation to our existing structures. This bill is one piece of a very

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complex puzzle and as written does not take any power away from the county boards that control out lodging tax funds. What this bill does is strengthen the grant determination process by providing guidelines and also establishes criteria for the visitors committee. Many communities move through this process correctly and bring together the right players to review grants and allocate funds. LB685 is not targeted to those communities, although this discussion will help them revisit their current process and each county that utilizes a lodging tax to improve their attractions will be positively impacted by this bill. There's a separate criterion for a metropolitan area because it is unique and because I did hear from a number of people from that area who voiced concerns about the lack of tourism experts involved in the grant disbursement process. I want to reiterate that this bill does not relinquish the control of the lodging tax dollars from the county board and for this reason I am unsure why anyone would oppose this legislation in its current form if they truly want to grow this industry. The fact that some feel there's no need for change tells me how important this bill has become. In my opinion, tourism needs to be coordinated by those who are professionals in the industry and I would go so far as to say that perhaps these professionals should be in control of these funds. At the end of the day this bill is about generating more overnight guests so we have more dollars to help keep our local attractions growing and thriving. The lodging tax is not the county's tax. These funds are generated by attractions, hotels and events and belongs to the tourism industry. Recent events in Nebraska have brought this issue to the forefront as Nebraska gained national exposure as a result of events like the U.S. Swim Trials in Omaha and U.S. Special Olympic Games held in Lincoln. Add in a new State Fair facility in Grand Island, a convention center in Lincoln, and the many other attractions like Lake McConaughy we have across Nebraska. The potential for growth is unlimited. But antiquated structures, turf battles and silos need to be removed to move us to that next level. I'm joined with tourism professionals and businesses that believe this state can achieve great things and who support the measures of this legislation. Tourism is becoming increasingly competitive because it is a thriving and lucrative industry. I feel this legislation and the resulting conversations could not come at a more important time for Nebraska as state and local government struggle to make ends meet. Thank you for allowing me the opportunity to introduce this bill and I would be happy to try and answer any of your questions. [LB685]

SENATOR AVERY: Thank you, Senator Schilz. Senator Pahls. [LB685]

SENATOR PAHLS: Thank you, Mr. Chairman. Senator, I have a question. Was this...and I can't recall the county, but there was a county, I think next door to Wyoming, they had a big bru ha, is that what is... [LB685]

SENATOR SCHILZ: Yeah. You know, that's part of it, Box Butte County, I think, is who you're talking about and that county actually just disbanded their visitors committee. And that was one of the instances that I heard of. I know there's been challenges or some issues in my home county, Keith County, as well as when I started to talk about it, other

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folks started popping up saying, hey, you know that sounds similar to what we're hearing in other places. So I've basically heard the kind of concerns I'm talking about across the whole state and that's why I introduced the legislation. [LB685]

SENATOR PAHLS: Okay. Another thing that caught my attention in your testimony, these dollars belong to who? [LB685]

SENATOR SCHILZ: Well, they belong...well, and as you saw in how they're spent, they're specifically targeted to be spent on tourism attractions. So when I said that they belong to the tourism industry, that's what I'm saying is that they are targeted specifically to go to pay for things that bring more tourists in that put more people in the hotel beds that work for those communities to bring tourism dollars to Nebraska. [LB685]

SENATOR PAHLS: And I'm not questioning it, but I'm just...of the testimony...Senator Coash's bill, am I misinterpreting? [LB685]

SENATOR SCHILZ: No, nope you're not. Now let's look at this correctly. Absolutely the county should have the final authority on where those dollars get spent, but those dollars are specifically...that's what I was saying. [LB685]

SENATOR PAHLS: Okay. Thank you. [LB685]

SENATOR AVERY: Senator Price. [LB685]

SENATOR PRICE: Thank you very much, Chairman Avery. Senator Schilz, just to follow up, what we're saying is, that the only reason that the purpose for this pillow tax, the reason it's even gathered is for working with...to promote tourism, correct? [LB685]

SENATOR SCHILZ: Absolutely. [LB685]

SENATOR PRICE: Okay. And the other question you've mentioned a few times, can you give any specificity to some of the issues that have arisen because there's that ambiguity. [LB685]

SENATOR SCHILZ: You know, I can give you examples from places where, and I won't name towns or cities or anything, but actually where people have told me, well we want to be careful not to bring these folks in because we don't get along with them. I'm paraphrasing now. And they were talking about a convention and visitors bureau and that same county's chamber. And I'm like, you know, they should be two groups that are working together to make stuff happen, not at each other's throats. And so that's one indication. And there may be other folks that can more specify what some of those individual concerns are. But that's just part of what I hear. [LB685]

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SENATOR PRICE: Thank you, Senator Schilz. [LB685]

SENATOR AVERY: Senator Sullivan has a question. [LB685]

SENATOR SULLIVAN: Thank you, Senator Avery. And thank you, Senator Schilz. Okay, I just want to make sure that I understand this correctly. What you're trying to do with your legislation is you're identifying what the makeup of the committee should be and also identifying more factors that this committee, as well as the county board, need to determine in terms of...or are used in determining what kinds of grants they give money to. [LB685]

SENATOR SCHILZ: Right, and I think it's important to understand that each county that's out there is different. [LB685]

SENATOR SULLIVAN: Okay. [LB685]

SENATOR SCHILZ: And so each process and each...each process that we talk about from county to county could be different depending on the attractions that they have and what they spend that money on. So I think it's incumbent on the counties to make sure that they come up with a process that fits for their county that is sustainable and that can happen time after time after time; for one sense because if the county is the one that is sitting here deciding where they should expend those dollars, we need to make sure that those dollars being spent and where they're being spent are defensible. [LB685]

SENATOR SULLIVAN: So when you said that... [LB685]

SENATOR SCHILZ: Because it does go out in a granting process, and if somebody would come up and have a very similar idea on what to spend the money on and they would get some of the money, and another group would come in with basically the same thing and they would not. At this point I think we need to make sure that there's a process in place to make sure that that can't happen. [LB685]

SENATOR SULLIVAN: So when you say that the system right now is antiquated, are you basically saying that there's just too much open-endedness, not enough direction? [LB685]

SENATOR SCHILZ: Well, I think...not necessarily. I think that how you need to look at that is that when this started it was pretty simple to...I mean, and I'm not even sure when this came into being, somebody else can answer that question. There's a much simpler day, you know, hotel rooms are there you did the things there. But nowadays, when we talk about tourism and what that means, when we talk about, okay, what does

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put a head in the bed, so to speak, okay? Is that something you can spend money on today and maybe not see results for a year or so because you're building up to it and doing something to get there, say on the...say if you're using one or the other funds to do that? We want to make sure that we have enough of a long-range view as well as a short-range view so that we can do some of those things to attract people over time consistently, again and again and again. And that's some of the problems that we see here is that maybe we don't have enough...maybe some of these groups...and some of these organizations are doing a fine job. And so we don't want to change that. As long as they have a defensible process in place and they have people on the board that understand tourism, I think that's fine. But I think some folks could benefit from the direction that this bill will provide, yes. [LB685]

SENATOR SULLIVAN: Okay. Thank you. [LB685]

SENATOR AVERY: Any other questions? Senator Schumacher. [LB685]

SENATOR SCHUMACHER: Thank you, Senator Avery. I noticed that there's a delineation in how the board is made up between a...principally between a city of the metropolitan class, since there's only one of those, I guess that means Omaha, and the rest of the world. Why the delineation between the two? Why is some organizations in Omaha treated with kind of almost special status here? [LB685]

SENATOR SCHILZ: Well, and I will tell you this, that there are many times in the Legislature where because of the makeup and the differences in communities from smaller to larger, there are needs...there are different needs in different communities. And so seeing that, just like I said when we look at this process and how it goes, there's different situations and different size of communities and I think that's why you see that delineation there. And we see it time and time again in legislation that comes forward where cities of different classes are sectioned out and given different parameters. [LB685]

SENATOR SCHUMACHER: Okay. Thank you. [LB685]

SENATOR AVERY: Senator Pahls. [LB685]

SENATOR PAHLS: Thank you, Mr. Chairman. Senator, you know after listening to you, I think that bill we passed out of Banking for your tourism, I'm going to have to ask for a revote on that. (Laughter) No, no. [LB685]

SENATOR SCHILZ: Thank you, I appreciate the vote to support. [LB685]

SENATOR PAHLS: I don't mean to muddy the water, but you want these dollars to be spent where people think they're going to be spent on tourism? [LB685]

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SENATOR SCHILZ: Right. Correct. [LB685]

SENATOR PAHLS: So now I'm going to throw something else out, and like I said, I don't mean to muddy the waters, there are times, I am Chair of Banking, Commerce and Insurance, and we had a Department of Insurance and a Department of Banking we raid their funds and those funds come from insurance agents and all that, even though a lot of their money does go into the General Fund, but we're not afraid to go in there and rob those, so I'm saying is I'll support this concept if you will support not hitting...some that are under my domain. [LB685]

SENATOR SCHILZ: Well, we can certainly discuss that. [LB685]

SENATOR PAHLS: Okay, thank you, thank you. [LB685]

SENATOR AVERY: Trading votes at the hearing. [LB685]

SENATOR PAHLS: We're not trading votes, just asking if... [LB685]

SENATOR SCHILZ: Discussing issues, yes. [LB685]

SENATOR AVERY: Let me ask you about this provision where the projects would promote events that draw at least 50 percent of its attendance from people who live at least 60 miles away. How would you determine that? [LB685]

SENATOR SCHILZ: You know, that's a good question, and I would defer that to the folks that are coming behind me. I think one...that is a good question. And I think, as I was talking to folks before, I think that as you spend these dollars, there should be some way to go back and take a look at how you're spending those dollars and whether or not those dollars are actually doing what you want them to. And so I think that at times it may be the right thing to do is to take a little bit of this money and when you have a project that has received money from this, put out a survey. Ask the questions; find out from the hotels whether they're staying there or not; and then you know to go back and refine your system to help spend your money better as you go down the road. [LB685]

SENATOR AVERY: Thank you. I don't see any more questions. Thank you. Are you going to stay around to close? [LB685]

SENATOR SCHILZ: Thank you, Senator. Yeah, I'll stick around. Thank you. [LB685]

SENATOR AVERY: Proponent testimony. Welcome, sir. [LB685]

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JEFF BOEKA: (Exhibit 2) Thank you, Mr. Chair. Members of the committee, my name is Jeff Boeka, that's J-e-f B-o-e-k-a, I represent the Nebraska Hotel and Motel Association testifying on LB685. Chairman Avery and members of the Government, Military and Veterans Affairs Committee, I appear before you on behalf of the Nebraska Hotel and Motel Association in support of LB685. I also currently serve on the state of Nebraska's Tourism Advisory Committee, as well as on the Convention and Visitors Bureau Advisory Committee of Lincoln County. I'd like to thank Senator Schilz for introducing the bill which creates a much-needed benchmark and accountability system for tourism spending in Nebraska. Beginning in 1980, the state of Nebraska adopted legislation requiring hotels and motels to collect taxes from room occupants. These taxes began with a 1 percent tax for State Tourism Promotion Fund and a 2 percent tax for the local County Visitor Promotion Fund. Over the years, an additional 2 percent tax was added for the County Visitor Improvement Fund. It is the County Visitor Promotion and Improvement Fund that LB685 addresses. Another bill, LB684 is already advanced by the Banking Committee sets additional criteria for the 1 percent state tourism tax dollars. The hotel and motel industry collects over \$30.4 million annually in room taxes. In 2010, the 1 percent state tourism tax raised \$3.8 million and 2 percent Visitor Promotion Fund raised \$7.2 million, and the 2 percent Visitor Improvement Fund raised \$6.6 million. And the difference there being some counties only collect 1 percent for the improvement fund rather than the 2 percent. In addition, Nebraska cities also levy occupation taxes on hotel and motel rooms for a total of \$12.28 million. The state of Nebraska keeps a 3 percent collection fee of \$416,000 for collecting the county room taxes. Current law states that the proceeds of the County Visitors Improvement Fund shall be used to improve the visitor attractions and facilities in the county. The County Visitors Promotion Fund shall be used to generally promote, encourage and attract visitors to the county and to promote the use of travel and tourism facilities. These funds by current law and in LB685 remain under the control of the county. If enacted, LB685 would give clarity and transparency in spending these funds by the county. The bill better defines the criteria for the use of the funds and outlines various factors to consider when the counties grant these funds. It provides the grants from these funds shall be used as was originally outlined in the law: to encourage visitors to stay in the area, to increase attendance at an event, activity or attraction; and promote the county as a tourist destination. The bill also enhances the current visitors committee by outline that travel, tourism, marketing, and industry professionals shall be on the committee which would advise the county on making grants and expenditures. We believe that the enhancements and the more clear definitions contained in LB685 will greatly magnify the effect these tax dollars will have on bringing more tourists and travelers to Nebraska and to our local communities. Thank you for allowing me to testify. If you have any questions, I'd be glad to answer those. [LB685]

SENATOR AVERY: Thank you, sir. Questions? Senator Pahls. [LB685]

SENATOR PAHLS: Thank you, Mr. Chairman. Was it your organization that provided

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this big pack of information in our mailboxes this morning? No, no, about this thick?  
[LB685]

JEFF BOEKA: I don't believe so. [LB685]

SENATOR PAHLS: Okay, okay. Again I'm going to...I'm trying to piece in some logic here. You want these dollars to be captured and only spent in the area of tourism basically. How's that different than right now we have people who want to raid the environmental fund that we have out there for certain projects, but now we have another group of senators who want to come in there and move that over? Do you see the potential of...if you have some money sitting out here that I may, as a senator, say, hey, that sounds good in tourism, but we have a need in another place. Would that upset you? [LB685]

JEFF BOEKA: Definitely. [LB685]

SENATOR PAHLS: Okay. I'm trying to see...because what we're doing now is we're starting to raid different funds because as a senator I may have this and you know, you just hope that you have enough support for tourism that's...okay, thank you. [LB685]

JEFF BOEKA: Um-hum, you bet. [LB685]

SENATOR AVERY: Senator Sullivan. [LB685]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you for your testimony. Just trying to get a handle on...in your experience and capacity with the Hotel and Motel Association, I presume you work with a lot of people who manage and oversee these funds all across the state. [LB685]

JEFF BOEKA: Sure. [LB685]

SENATOR SULLIVAN: So where have been some of the problems? Disagreements between the county board and how they've directed the funds to be used? Does the committee feel that the county board is out of step and doesn't understand...I mean, where's the weak link in all of this? [LB685]

JEFF BOEKA: I can speak from my experience in Lincoln County, North Platte. [LB685]

SENATOR SULLIVAN: Right. [LB685]

JEFF BOEKA: Our county commissioners work very well with the CVB, one of them sits in on all of our meetings. We take a very close look...our committee is made up of five members; two of which are from the hotel industry, and so we definitely look at the

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tourists, and another one is from a tourist attraction, we definitely look at the return on investment from each of those grant applications. And so our county, there is no issue with that. They work well with the visitors committee. We all look to improve the tourism for Lincoln County. However, it is kind of an open-ended thing right now with the different counties, how they manage it, how they oversee it. I don't know that there is a lot of controversy between county supervisors or commissioners versus the visitors committee. I just...I know it's a lot of open-ended interpretation on a visitors committee on who's making up those committees. [LB685]

SENATOR SULLIVAN: That's what I'm trying to understand. I mean if...I assume that this has come about because there have been some disagreements, am I correct? [LB685]

JEFF BOEKA: Yes, not...and again, not with my experience, but I believe Senator Schilz stated in his area in Keith County that they've had some issues and I think there's a few other counties throughout the state, although I don't have specific knowledge of those. [LB685]

SENATOR SULLIVAN: Okay. Thank you. [LB685]

SENATOR AVERY: Any more questions? Senator Price. [LB685]

SENATOR PRICE: Thank you, Chairman Avery. Just real quick, sir, and thank you for your testimony, do the visitor convention groups, do they...do they...or committees, do they have like a statewide meeting where they get together. I mean, we've seen so many times like with NACO, there's so many organizations that we have an opportunity to visit with so they could air out and figure out how it's being done different. Because Senator Schilz said, you know, there's a difference in a county with a metropolitan class city versus other ones that don't have that, so we already called out that there's a difference, but do they get together as an entity and does your association encourage that or sit on a board with that? [LB685]

JEFF BOEKA: There is an organization, Nebraska Association of Convention Visitors Bureau, those are the directors in each county that get together, they have an organization. However, the different advisory members that are on those committees, locally, do not get together statewide. [LB685]

SENATOR PRICE: All right, thank you. [LB685]

SENATOR AVERY: Any more questions? I don't see any. Thank you, Mr. Boeka. [LB685]

JEFF BOEKA: Thank you. [LB685]

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SENATOR AVERY: Any other proponent testimony? Welcome. [LB685]

SUSAN MADSEN: (Exhibit 3) Thank you. Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Susan Madsen, S-u-s-a-n M-a-d-s-e-n. I'm here today to testify on behalf of the Metropolitan Hotel Association, MHA, in support of LB685 and AM31. Thank you for allowing me this opportunity to speak with you today. As background, I am the general manager of the Embassy Suites Hotel, downtown Omaha in the Old Market and have worked in the hospitality industry for over 30 years. Additionally, I serve as the president of the Metropolitan Hospitality Association which is a coalition of hospitality and tourism related entities from the metro-Omaha area. On behalf of the hotel industry, I would like to thank Senator Schilz for his commitment to improving tourism, not only for Keith County, but statewide. Like Senator Schilz, the MHA believes tourism can be an even stronger economic driver for Nebraska's economy. It is for this reason that hotels and their developers, like Embassy Suites owner, John Q. Hammons, he has invested millions of dollars into communities like Omaha, Lincoln, La Vista and others. The success of our profession is predicated on the strength of our community's tourism industry, which is why we strongly support legislation that will make us more competitive and more efficient. We have concerns about the current process surrounding the utilization of lodging tax dollars for tourism, including the lack of coordination and input between industry experts and the governing body of the county. We must break down the turf battles and professional silos that now exist between entities that deal with our lodging tax dollars. Once this happens, we trust the process will have improved accountability and transparency, better planning and an increased ability to respond to the changing dynamics of the tourism industry. In the end, we believe a better revenue return can be gained for our community and state. We think it is important to point out progress in tourism development has taken place across the state, but even more is needed to market Nebraska as a popular destination. Despite the growing number and scope of attractions: wineries, museums, festivals, zoos, outfitters; Nebraska consistently ranks near the bottom nationally in state dollars invested in tourism. It is for this reason that the tourism funds we earn must be used efficiently and effectively with the advice of our industry experts who work in the business every day. We're here today to ask for your help to begin a crucial first step so we can achieve our true potential as a statewide tourism destination. We believe LB685 and AM31 will help do this. And although this bill is but one piece of a much larger discussion and plan, we encourage you to support this proposal. Again, thank you for the opportunity to speak with you today. I'd be happy to answer any questions you may have. [LB685]

SENATOR AVERY: Thank you very much. Questions from the committee? Senator Schumacher. [LB685]

SENATOR SCHUMACHER: Thank you, Senator Avery. You mentioned two things

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which kind of caught my attention. One, that you have concerns about the utilization of dollars under the present system; and then, you want something to break down the barriers with the governing body. I would infer from that there must be problems with how the county board in Douglas County is using the present money and that there must be barriers that you guys can't communicate with them. Can you explain the situation because I think we're getting close to what Senator Karpisek detected in an earlier situation, you know, what's going on here? Why is this a big deal? [LB685]

SUSAN MADSEN: Sure. In my opinion we...you know, I represent the hotel industry, the MHA, we would like to see some transparency in the process. We can find the grant online, the grant application where folks can apply for this money to improve their attraction or to promote tourism. However, we can't find who is on the committee; who has applied for these grants. We do have access to who has been given the grant money. So I wouldn't say it's a conflict, but it is certainly not transparent how this money is being allocated. [LB685]

SENATOR SCHUMACHER: Well, aren't these applications all public records and anybody can go into the, I assume, the county board office or the county clerk and say, I'd like to see the applications on these? [LB685]

SUSAN MADSEN: I'm not sure if you can do that. [LB685]

SENATOR SCHUMACHER: Have you guys made any effort to open a line of communication with the county board about these complaints? [LB685]

SUSAN MADSEN: Yes. [LB685]

SENATOR SCHUMACHER: And the result has been? [LB685]

SUSAN MADSEN: Well, my understanding is there's lots of phone calls going around threatening these attractions that they're going to lose their funding and I think that's a key piece for this legislation to pass. We're not trying to take their funding away, but I think...we're just trying to use that money to promote tourism and make it a destination rather than maybe some of the projects that the money has gone to. [LB685]

SENATOR SCHUMACHER: Can you give us some examples of expenditures or grants made by the county board where they have made expenditures, used this tax money in a way that's inconsistent with the promotion of tourism? [LB685]

SUSAN MADSEN: I have a list if you'd like...I can make copies of the list if you would like that. [LB685]

SENATOR SCHUMACHER: And that would be a list of what you think they've done

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wrong? [LB685]

SUSAN MADSEN: It's a list...it's a comprehensive list of all of the over \$2 million that these grants have been paid out. Am I saying that money shouldn't have been paid to them, no. We'd just like to see some more involvement from the hotels to promote tourism better to drive more people into our state and our counties which would increase the fund and revenue for all of us. [LB685]

SENATOR SCHUMACHER: So then is this kind of an effort to substitute the judgment of this committee for that of the county board? [LB685]

SUSAN MADSEN: No, the committee...well, I don't know who is on the committee, so I...you know, we would like some...to be involved with that and I'm not sure who is on the committee that makes these recommendations to the Douglas County Board in my county. So that's what we would like to know. [LB685]

SENATOR SCHUMACHER: Have you asked the county board to tell you who is on the committee so you get...I mean is this an artificial silo here? [LB685]

SUSAN MADSEN: Well, we've requested that information, who's on the committee, from the Hotel/Motel Association and they said they would send it to us. [LB685]

SENATOR SCHUMACHER: Of the things on that list there, I mean, are there any boondoggles, things that were just dumb things to do that you guys wouldn't have done? [LB685]

SUSAN MADSEN: Some of it, as the motel association, we've questioned. Now, we don't know what they spent the money for, we don't know what the project was, so I could say, for example, Millard South Wrestling Club got \$90,000. Now, I don't know what that was to improve their...it's not an attraction in my mind...our mind, but \$90,000 is a significant amount of money for that and we'd just like to see some more transparency. [LB685]

SENATOR SCHUMACHER: How's this bill going to fix that? The particular part of this bill that addresses metropolitan areas, how is all this in this going to be okay if we pass this? [LB685]

SUSAN MADSEN: It will bring different people to the table. It will bring...it's specific about, you know, to---from, I don't have it exactly in front of me, but from the hotel administration or hotel professionals, certain size hotels could have a small hotel representative and then a larger hotel representative. [LB685]

SENATOR SCHUMACHER: I don't have any further questions. [LB685]

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SENATOR AVERY: Any other questions? Senator Price. [LB685]

SENATOR PRICE: Thank you, Chairman Avery. And you thank you very much, Ms. Madsen, for your testimony today. I was understanding when you don't, you don't want to call out anybody's attraction or anything like that. [LB685]

SUSAN MADSEN: No, I don't. [LB685]

SENATOR PRICE: I appreciate you being gentle in that arena. But the question I have are two part. You mentioned with the silos and everything that's out there, and we've talked about, you said, who's on the board, not really knowing; is it my understanding that it would be, perhaps better, if that board had representation from larger entities, like you said, larger entities and smaller entities, because the question I really have is, have you received any of these grant dollars? [LB685]

SUSAN MADSEN: No, I have not, no. [LB685]

SENATOR PRICE: Okay, so you haven't received any, but your understanding is you don't really know the makeup of the board and the hoteliers that are on the board whether or not they represent...make a good cross-representation of all those within Douglas County and perhaps elsewhere? [LB685]

SUSAN MADSEN: Sure. Well, it should be a board, a committee of tourism professionals is what it should be in my opinion. [LB685]

SENATOR PRICE: All right. Thank you. [LB685]

SUSAN MADSEN: You're welcome. [LB685]

SENATOR AVERY: Senator Pahls. [LB685]

SENATOR PAHLS: Thank you, Mr. Chairman. A couple of questions, I am sort of intrigued because I happen to be friends with a couple of the county commissioners in Douglas County so I'm going to ask them the question why it appears...now, and somebody else may answer it, there is somewhat of a...this group that makes these decisions is somewhat of a secretive-type group? If you can't get information, if you can't find out who the...and you may not...and somebody else in the audience may...(inaudible) these 12 people are on it, but you're looking for more of an openness is what I'm saying? [LB685]

SUSAN MADSEN: Sure, absolutely. [LB685]

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SENATOR PAHLS: And you're saying, right now, you cannot get even some of the basic knowledge, other than the grants? [LB685]

SUSAN MADSEN: Sure, right. We'd like to know that the folks that are deciding who gets this grant money, they're tourism professionals, they understand our business, they want to grow tourism for our state. Grow Nebraska as a destination, that's our goal, that's our livelihood. [LB685]

SENATOR PAHLS: And you don't see how Millard South Wrestling could be involved in that? [LB685]

SUSAN MADSEN: They certainly could. I'd just like to know how. [LB685]

SENATOR PAHLS: And I have no relationship with the Millard...and I'll probably ask that question, so. [LB685]

SUSAN MADSEN: Sure, sure. [LB685]

SENATOR PAHLS: To me that seems a little bit odd. And I'm not trying to put you on the spot, that's not my intent. [LB685]

SUSAN MADSEN: Sure, sure. [LB685]

SENATOR PAHLS: I'm hoping somebody else out there may know whoever is on this committee. [LB685]

SUSAN MADSEN: Well, I'm sure they do, I'm sure. And there's lot of things on this list that absolutely could promote tourism in our counties and our state and they're good things; we're on the right track. We just need to take it to the next level and have a more strategic approach to tourism and it's, you know, it's so important to our state and to our business--tax dollars. [LB685]

SENATOR PAHLS: Thank you, thank you. [LB685]

SENATOR AVERY: It seems to me that if we're spending tax dollars here that the process should already be open to the public and the documents are public record and you should have access to them. You're suggesting that maybe that is not the case and we need to open it up more. [LB685]

SUSAN MADSEN: We requested some information recently and we'll see what we get, yes. [LB685]

SENATOR AVERY: But you're not...hopefully you're going to get... [LB685]

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SUSAN MADSEN: I'm hopeful. [LB685]

SENATOR AVERY: ...the full documentation and full access. [LB685]

SUSAN MADSEN: Well, you know, I'm not sure it's a good idea to look back. I think we need to look forward and moving forward, put the right people on the committee that makes recommendations to the county board that really focuses on the language of the legislation to drive tourism for our state and improve facilities that our visitors come to see. Okay. [LB685]

SENATOR AVERY: Well, I know these are tough questions, but the reason we are asking them is because we need to first of all find out if there's something broken that we need to fix and before we start trying to fix it. [LB685]

SUSAN MADSEN: Sure, I think it could be improved, absolutely. [LB685]

SENATOR AVERY: Okay, all right. Senator Pahls. [LB685]

SENATOR PAHLS: Thank you, Chairman. And this is just to give you an opportunity to...here's an interesting thing, I totally against what...not in the same wavelength as yours, but I'm going to show you how sometimes transparency isn't there. Because we have Antelope Valley in Lincoln and we have the Riverside Walk down in Omaha and that came out of tobacco money. [LB685]

SUSAN MADSEN: Um-hum. Sure, sure. [LB685]

SENATOR PAHLS: Just trying to show you, I can see how money can be moved around unless we're on top of it. [LB685]

SUSAN MADSEN: Yep. [LB685]

SENATOR PAHLS: It can happen. I see why you're going in this direction. Thank you. [LB685]

SUSAN MADSEN: You're welcome. [LB685]

SENATOR AVERY: That was interesting. I didn't know tobacco money was in Antelope Valley. (Laughter) I don't see any more questions. Thank you, Ms. Madsen. [LB685]

SUSAN MADSEN: Thank you, Senator Avery. Thank you, committee. [LB685]

SENATOR AVERY: Any other proponent testimony? How many other people wish to

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testify on this issue? Okay. Welcome. [LB685]

BRENDA KETCHAM: Thank you. Mr. Chairman, members of the committee, my name is Brenda Ketcham and that's B-r-e-n-d-a K-e-t-c-h-a-m. I'm here today representing the Ogallala/Keith County Chamber of Commerce and testifying in support of LB685. Thank you for allowing me the opportunity to be here today. I just have a few short messages to share with you. First of all, tourism is changing in rural and urban Nebraska and we need to seize the opportunity to grow this dynamic industry by investing in new communication technologies and better ways of reaching out to our potential visitors. The current structure involving lodging tax dollars and how decisions are made needs to be updated. In Keith County, as an example of many rural counties, there is more competition for the lodging tax dollar. It is important that we update our criteria and our guidelines and help ensure that we have the right people at the table helping to make the decisions. In other words, we need people with specific knowledge and investment in the tourism sector to participate in the decision-making process over how those tax dollars are being spent. Having a wide base of representation on the committee will provide for a better, more focused, and yet diverse range of knowledge on the board. We realize that some counties may experience a learning curve in meeting the criteria and avoiding conflict issues, but these can be addressed locally. As you deal with budget issues, we see tourism as an industry that can help Nebraska grow out of its budget problems. It is an industry that can do well in both rural and urban Nebraska. Nebraska offers many unique experiences that people will pay for. We just need to get the word out there. In Keith County alone, the tourism industry represents over 6 percent of the revenue generated in our county. That's why it's vitally important that we make the best use of these funds. The language concerning use of funds seems restrictive to some and expansive to others, but this is a matter of interpretation. Ultimately, it requires that the spending be done with the ultimate goal of increasing tourism and its related commerce within a county. That's an excellent requirement, but I think most every committee can agree on. We're truly excited about the opportunities we see, and in our view, the best is yet to come. Thank you for allowing me the opportunity and come out and see us in Keith County. [LB685]

SENATOR AVERY: I was out there this past summer. [LB685]

BRENDA KETCHAM: Good for you. You were one of the million. [LB685]

SENATOR AVERY: Senator Price has a question. [LB685]

SENATOR PRICE: Thank you, Chairman Avery. Thank you for coming to testify. I know it is quite a haul, and particularly with the weather and I did enjoy my summer visit out there. [LB685]

BRENDA KETCHAM: Excellent. [LB685]

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SENATOR PRICE: My question to you is, obviously, you can count the number of people who come to your fine county and stay in our area. And how is it that you accomplish counting the people who came and the people who stayed and used a pillow? [LB685]

BRENDA KETCHAM: Well, that's interesting because for us, we have to do a lot of conjecture, especially at the lake. And we...because the lake has such a wide open camping policy, it's really hard to account for that. We work closely with our hoteliers to find out what specific events that may have gotten a grant, what that may have driven, and we survey and question people quite thoroughly in that. But it is a very difficult process and we work closely with the Game and Parks at the lake to determine the number of people that are in the area which may or may not determine heads on beds. [LB685]

SENATOR PRICE: Well, I appreciate hearing that because it lifts my spirits to know that somebody has a business process to capture information and hopefully we'll hear further testimony from other people that says they can do this and other counties can replicate it. So I appreciate very much hearing that, thank you. [LB685]

BRENDA KETCHAM: Thank you. [LB685]

SENATOR AVERY: Senator Pahls. [LB685]

SENATOR PAHLS: Thank you, Chairman. I have a question. Let's say that I go visit your county, is there any way of you...do you tabulate that somehow? I mean, do you do a survey? I'm just curious, how do you know where I'm from? [LB685]

BRENDA KETCHAM: That's where we have to rely on our Game and Parks system for quite a bit of that; we capture quite a lot of information as you come into the state parks and they do some counting and surveying around the lake in the summer. But we don't have a great process yet. We're working toward it. And as we work on these grants for events and celebrations that are put on in town, we are trying to capture more of that information as they get registrations and their vendor registration and things like that, we try and capture that information. [LB685]

SENATOR PAHLS: Somehow there must be, because if tourism is the third largest industry in the state, you would think that. Now this question again may be directed to somebody out in the audience, I'm trying to search it. I get this packet of information this morning and I'm trying to figure it out and it has all to deal with the stuff like this. And what I was intrigued by, I think they're trying to let the senators know that this is how we're spending money. And one of the magazines I read was Oprah's. There's something about the state of Nebraska and the Sandhills and the Jeep, I mean, it's well

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done. That's totally out of your domain. That must be at the state level then, that type of? [LB685]

BRENDA KETCHAM: More than likely it's at the state level if it's not regional in perspective. If it doesn't specifically say, come to Lake McConaughy or something, then it's not something we as a visitors committee would have assigned out. But we do take some of those promotional dollars and use them in things like magazines and different things to draw people to our county. [LB685]

SENATOR PAHLS: Okay. Well probably it would help a lot if you could get Oprah to visit you. [LB685]

BRENDA KETCHAM: Absolutely. [LB685]

SENATOR PAHLS: It would make it a change maker. Thank you. [LB685]

SENATOR AVERY: Senator Sullivan. [LB685]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Ms. Ketcham. Now you're part of the Keith County visitors committee? [LB685]

BRENDA KETCHAM: No, I am the executive director of the Chamber of Commerce; and as the Chamber of Commerce we serve as the largest contractor to the visitors committee. We are contracted to provide visitor services. So we are the visitor center in town and we are contracted to represent the community at sport shows and things like that. [LB685]

SENATOR SULLIVAN: Okay. So who is on the visitors committee? [LB685]

BRENDA KETCHAM: That's an interesting question. We have one hotelier who is on the committee. We have one representative of the Game and Parks who works at the lake. We have a retired veterinarian. We have someone who is involved in insurance and real estate. And we did have one person who worked for the railroad and who just recently stepped down from the committee. [LB685]

SENATOR SULLIVAN: Okay. And is it accurate to say that, perhaps, you've taken issue with some of the grant projects that this committee has decided are worthy of funding? [LB685]

BRENDA KETCHAM: Actually not in the grant process. [LB685]

SENATOR SULLIVAN: Okay. [LB685]

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BRENDA KETCHAM: We have struggled with our visitor committee as far as trying to help them understand some of the intricacies of the tourism industry, especially as it goes forward into a new age. And as the tourism professionals in our community, we feel like we bring a certain amount of knowledge and awareness of the tourism sector to that group. But we are not considered a voting member on the committee which puts us, you know, occasionally at odds with them. We always work through it, but it does become a burdensome process when we have to back up and come at things differently sometimes. [LB685]

SENATOR SULLIVAN: And probably to the best of your knowledge, do you have any idea what the rhyme or reason was as far as...because it's the county board who names the members of that visitors committee, is that correct? [LB685]

BRENDA KETCHAM: Yes, that's true. [LB685]

SENATOR SULLIVAN: So do you know what...again, rhyme or reason that they used to make their selection? [LB685]

BRENDA KETCHAM: In our county, I think it oftentimes is the warm body who is willing to fill the seat. And I think that's a sad fact in many rural counties is that you're looking for bodies to fill the seats. And that's not always in the best interests of the tourism industry. [LB685]

SENATOR SULLIVAN: And from what you just told me, as far as the current membership, there isn't anybody even remotely close to the industry in tourism that's a member of that committee, is that right? [LB685]

BRENDA KETCHAM: Well, I would tell you that about half of our committee does have a very direct link to our tourism industry, but the other half, probably not. But they all have the best intentions and they all want to see the community do well. But sometimes the understanding of tourism just isn't there. [LB685]

SENATOR SULLIVAN: What kind of dollars do you, on an annual basis, are they granting out? [LB685]

BRENDA KETCHAM: So we...we're very fortunate in Keith County because we do have a heavy tourism sector, all told we spend about \$250,000 every year; half of that for promotion and half of that for the improvement sector...or the improvement fund. And so every year, generally speaking, there's about \$125,000 that goes into promotional efforts and \$125,000 that's set aside for improvements. [LB685]

SENATOR SULLIVAN: Thank you. [LB685]

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BRENDA KETCHAM: Um-hum. [LB685]

SENATOR AVERY: Any other questions? Senator Schumacher. [LB685]

SENATOR SCHUMACHER: Thank you, Senator Avery. I'm struggling, too, a little bit to define what is broken and how this fixes it. Now you indicated that sometimes the county board fills these positions with any warm body that wants to apply, yet your group feels underrepresented. Have you been denied a seat on the board? [LB685]

BRENDA KETCHAM: As I understand in my discussions with the board that it would be seen as a conflict of interest for us to have a seat on the board because we're also a contractor. That puts us into a Catch-22 because we're also the ones with the knowledge of tourism who can bring that knowledge to the table. And so, just for example, we went through a six-month process to negotiate out our contract with them in order to provide them with visitor services which turned into a prolonged process and ultimately ended right back where we were, but it took us a long time to get there. And part of that was just trying to overcome some issues. And ultimately we did and we're moving forward and we've got some great things ahead of us. But as we look back and see where these difficulties came from, we're trying to put some things in place that are repeatable from county to county to county so we can make sure that we don't have these problems again. [LB685]

SENATOR SCHUMACHER: How does this bill fix that conflict of interest? [LB685]

BRENDA KETCHAM: By better clarifying who should serve on that committee and specifically requesting that some tourism industry professionals are serving on these committees and providing their expertise to the discussions. Also by creating a system that is clear in the way that it's being applied across the entire state, because every county seems to have its own little quirks and we want to make sure this process is repeatable. [LB685]

SENATOR SCHUMACHER: So under...if we pass this, will your organization have a seat, or is it kind of reserved in here that you'll have a seat on that board? [LB685]

BRENDA KETCHAM: Not clearly. I think that it would give us the ability to have a better voice on there. And my hope is that at least from...maybe someone from our board of directors would be allowed to sit on the board and participate in those discussions even if it wasn't a staff person because we're directly involved with the contract. So I think that it would give us clearance to participate in that board in a voting capacity. [LB685]

SENATOR SCHUMACHER: Have you gone to the Keith County Board and said, hey, you know, we got little rough edges here, let's see if we can work it out so we can all make a killing in Keith County? [LB685]

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BRENDA KETCHAM: Yeah, we've worked closely with our county board and they're very supportive. [LB685]

SENATOR SCHUMACHER: Thank you. [LB685]

SENATOR AVERY: Any more questions from the committee? I don't see any. Thank you, Ms. Ketcham. [LB685]

BRENDA KETCHAM: Thank you. [LB685]

SENATOR AVERY: Any other proponent testimony? All right, we'll move to opponent testimony. Welcome, Mr. Kelley. [LB685]

SEAN KELLEY: (Exhibit 4) Thank you. Good afternoon, Chairman Avery, and members of the Government, Military, and Veterans Affairs Committee, my name is Sean Kelley, S-e-a-n K-e-l-l-e-y and I appear before you today on behalf of the Douglas County Board of Commissioners in opposition to LB685. I did have some prepared testimony ready, but based on proponent testimony, I think I'm going to deviate a little bit from that. If I may, just indulge you in the process in Douglas County. There is a deadline for grant applicants. I have provided that in your packet; I believe it is the second stapled copy. With that there is a lot of criteria you have to fill out which some of that criteria that Douglas County requires is already included in Senator Schilz's bill. So some of the duplicative criteria I don't think the board of commissioners would have much of a problem with that. If you are a repeat recipient, you have to do a self-reported audit of all the funds you received to show where they went, how they were spent to make sure it is transparent and spent as it was intended to. The second packet shows where the money is going to. I think it is a very impressive array of recipients of the grants. You have everybody from arts to music to festivals to sports to national events, so on and so forth. To some of Ms. Madsen's comments and the Millard South question, while I did have the opportunity to look in that with a couple of clicks of the mouse, and they received \$90,000 last year to which Douglas County received 2,500 participants which over 90 percent of them were from outside of Douglas County. The events were held at the Civic Auditorium which is in downtown Omaha, one of which was in the middle of January, 2011. Now to bring in people from 13 states for wrestling tournament in downtown Omaha in January to me is promoting tourism and getting people outside of Douglas County into the county and spending dollars. As for the VPC as to its transparency, it is a matter of public record and a request with the Douglas County Clerk I am sure you can find out who exactly is on that board; two of the seven are members of the hotel industry. I'd also like to thank Senator Schilz throughout this process, he's been very kind and courteous of our concerns and taking the time out to meet with us. I think that's all I have and I will try to answer any questions if you have them. [LB685]

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SENATOR AVERY: Thank you, Mr. Kelley. Senator Price. [LB685]

SENATOR PRICE: Thank you very much, Chairman. Thank you very much for testifying today and I appreciate our conversations and information. [LB685]

SEAN KELLEY: You're welcome. Absolutely. [LB685]

SENATOR PRICE: A couple of quick questions and I'll try to keep them concise. We've seen numerous times about people coming into the county for an event; what I don't see is how those translate to pillow nights. And some of the information I see, you know, tens of thousands of people come in, obviously for the big ones, we understand that those are hotel nights. [LB685]

SEAN KELLEY: Right. [LB685]

SENATOR PRICE: But if I have 7,000 people who come into Douglas County or Keith County, I don't know if those people went home at night or whatever, so we need to find a way to translate those into pillows, I think, because that's what we're allowing that tax to be raised for. So can you illuminate why that disconnect, why that doesn't exist? [LB685]

SEAN KELLEY: It may very well exist. I apologize and I'll give you the answer; it is my understanding that they do a follow up survey. And with the application, I'm fairly certain that the VPC would know for the duration of the event and where the participants come from. I think who, you could probably tell from the application the likelihood of having actual pillow nights. [LB685]

SENATOR PRICE: Okay great, because that's a great segue, it's all about pillow nights here. [LB685]

SEAN KELLEY: Right. [LB685]

SENATOR PRICE: I mean, well I should say, as we had one conversation...I think 77 percent of all the dollars should result in pillow nights and we just...I don't have the information to see that it's doing that and I don't see a mechanism for that to happen, so it's somewhat problematic. I mean, because I'm wondering when the board gets a recommendation from the committee, does that recommendation stand pat, or does that recommendation get modified at all? So let's say you're going to have the wrestling tournament that came into Millard and say, yep, that's a go. Or do they massage it and say, well you asked for \$100,000, but we're going to give you \$75,000. I mean, do they massage those requests at the board level or are they just, you made it, and we're yes or no? [LB685]

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SEAN KELLEY: And that's a good question, Senator Price. My understanding...I've never attended the actual public hearing for the Douglas County Board when they either deny or approve the request of the VPC. I would think that they'd look at it closely. It is a public hearing and it is not my understanding that it is just a rubber stamp. I assume it is similar to, as Mr. Eagan testified on Senator Coash's bill, that they do have some disagreement, but the majority of the time I would think they would sign off on these. [LB685]

SENATOR PRICE: Yeah, I think they probably do. I just appreciate...I understand...I didn't want to put you on the spot as having been to all their meetings (inaudible). [LB685]

SEAN KELLEY: No, no. [LB685]

SENATOR PRICE: But I would appreciate that. I would look forward to seeing something that would help us resolve the visitors to pillows so I appreciate that. [LB685]

SEAN KELLEY: I would be happy to work on that information. [LB685]

SENATOR PRICE: Thank you. [LB685]

SEAN KELLEY: You're welcome. [LB685]

SENATOR AVERY: Senator Brasch, you're next. [LB685]

SENATOR BRASCH: Thank you, Chairman. And thank you, Mr. Kelley. I'm curious, backing to Senator Price's question, when there is an event or promotion, isn't there a way to look at like over a 3-day period, hotel capacities that they have X-amount of rooms and they were full or look at vacancies, would that be pillow nights? Is that what you're trying to...like sometimes hotels are sold out. I mean, you could do hotel, you know, a 10-mile radius of filled to capacity or vacancy... [LB685]

SEAN KELLEY: Per dates. [LB685]

SENATOR BRASCH: ...per dates, you know, if that would be a statistic that would help promotions and evaluate, you know, how many people are staying versus how many tickets sold at the gate. But then there are people who want extra pillows, Senator Price. (Laughter) Kidding. But I'm just thinking how to bring that to, you know, those numbers together if you can look at those. [LB685]

SEAN KELLEY: Thank you for that. I think that is a good idea and I'll bring that back to the VPC and the board. [LB685]

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SENATOR BRASCH: I have no other questions. [LB685]

SENATOR AVERY: Senator Sullivan has a question. [LB685]

SENATOR SULLIVAN: Thank you. Were you done? Okay. Thank you, Senator Avery. Thank you, Mr. Kelley. So what is it that you don't like about this bill? [LB685]

SEAN KELLEY: The Douglas County Board has opposed the bill officially altogether. It is my estimation...because most of the criteria that Senator Schilz wants to be encompassed, in my view of reading the application, I think a lot of that is already being done. So I don't know if they would have a big opposition to that portion. However, they are very comfortable with their committee. They have two members of the hotel industry on a 7-person board. It is staggered 4-year terms; so every two years you have to reapply. Those applications are readily available on-line and their preference is to have at large members, because they think it has worked well in the past and the dollars increase year after year. [LB685]

SENATOR SULLIVAN: How big is the VPC... [LB685]

SEAN KELLEY: The membership or the fund? [LB685]

SENATOR SULLIVAN: ...as far as how many members? [LB685]

SEAN KELLEY: Seven members. [LB685]

SENATOR SULLIVAN: Okay. And they are representative of what and who? [LB685]

SEAN KELLEY: Five are at-large, two are from the hotel. [LB685]

SENATOR SULLIVAN: You said two are...okay. Of those five though, that are at-large, what do they represent? [LB685]

SEAN KELLEY: They are at-large, so whoever applies, the board looks at their applications and they appoint the most qualified person in their minds. [LB685]

SENATOR SULLIVAN: Okay, but can you give me an idea of the current membership and what they represent, do you have any idea? [LB685]

SEAN KELLEY: I don't. I would be happy to give you the membership and who they are and what they do. Okay. [LB685]

SENATOR SULLIVAN: Thank you. [LB685]

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SENATOR AVERY: Senator Schumacher. [LB685]

SENATOR SCHUMACHER: Thank you, Senator Avery. Assuming we pass this or advance this bill and it passes, how does life change and what is fixed in Douglas County or what is broken if you look at it from the other way? [LB685]

SEAN KELLEY: Well, from the board's perspective, they don't see it as broken. So if it was...so if there's more industry on this board, I think the county's position would be there's more self-interest on the board and foresees more conflicts. So I think advancing this bill in their estimation is damaging the current process. [LB685]

SENATOR SCHUMACHER: Has the...we heard some testimony that you can't get information; it's not a transparent process; is there a difficulty with information flow from the board or from the existing administration mechanism to the folks that may have a stake in this or want to promote tourism? [LB685]

SEAN KELLEY: Not to my knowledge. And it is a public record. So as difficult as it is to receive public records, it would be the only obstacle in getting documentation. [LB685]

SENATOR SCHUMACHER: I don't have any further questions. [LB685]

SENATOR AVERY: Senator Price. [LB685]

SENATOR PRICE: Thank you, Chairman Avery. Thank you for indulging me, sir. Mr. Kelley, just one quick question, as we look at the numbers, are all funds that are generated expended? So in other words, if they generate a million dollars in the fund, all million dollars in each fiscal year, are they all expended or is there...because I think earlier we heard from Senator Pahls about a concern of, well, let's say you generate \$1.2 million, we expended...and we got a little growing fund out there somewhere in the county, so is it a dollar for dollar...a dollar raised, a dollar granted? [LB685]

SEAN KELLEY: I can't answer that. I'd be happy to get you the answer. [LB685]

SENATOR PRICE: All right, (inaudible) maybe call it legislation that you have to get rid of it each year, however within a period of time, I'm not sure, just wondered about that. [LB685]

SEAN KELLEY: I think they may for...I think they're pretty conservative and don't spend every dollar because they don't have it at the time. It's a forecast for the annual allocation of the grants. So I would think there's maybe a little surplus here, Senator, but I will get you the exact answer. [LB685]

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SENATOR PRICE: Just a carry over that they (inaudible). [LB685]

SEAN KELLEY: Yes, that's my understanding. [LB685]

SENATOR PRICE: Thank you. [LB685]

SENATOR AVERY: Senator Karpisek. [LB685]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Mr. Kelley. We're getting...we're kind of beating around the bush here. Is it maybe your contention that there's going to be a little self-fulfilling if they get on there and they'll give the grants to themselves? Is that... [LB685]

SEAN KELLEY: Yes. [LB685]

SENATOR KARPISEK: Okay. [LB685]

SEAN KELLEY: As amended one...the largest tourist attraction in the county would be part of the board. That would be the zoo in Douglas County and they are a big recipient now so I don't know if we want them recommending funds for themselves. [LB685]

SENATOR KARPISEK: And I think you talked about MECA a little bit too. [LB685]

SEAN KELLEY: Yes, they were in the bill as written, as amended, I think it's taken out and it's just (inaudible) so. [LB685]

SENATOR KARPISEK: So...thank you. Thank you, Senator. [LB685]

SENATOR AVERY: I don't see any more questions. Mr. Kelley, thank you for your testimony. [LB685]

SEAN KELLEY: Thank you for your time. [LB685]

SENATOR AVERY: Any other opponent testimony? Anyone wish to testify in opposition? All right we'll move to neutral testimony. Welcome, sir. [LB685]

TONY MOODY: (Exhibit 5) Thank you. Thank you very much, Chairman Avery. Members of the Government, Military, and Veterans Affairs Committee, my name is Tony Moody, T-o-n-y M-o-o-d-y, and I'm the general manager of the Embassy Suites, Courtyard by Marriott and La Vista Conference Center all located in La Vista, Nebraska, in good ol' Sarpy County. Thank you for allowing me this opportunity; and Senators, thank you for the vision and commitment to tourism. I am here today to testify in a neutral capacity on LB685 and AM31. Although I'm extremely supportive of the changes

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made by this bill, I do not feel that this legislation goes far enough. Additionally, I would like to take this opportunity to respond to a few points of the opposition today. I think we can't continue to do business the same old way we've always done it, and expect greater and greater results. I think it's time to move forward. I think it's time to do things differently and take a more business approach to how these funds are spent. As a background, I share that I'm a Nebraskan by choice. In January, 2001, I landed in Omaha to look at taking the GM position of the downtown Embassy Suites for Mr. John Q. Hammons. I arrived from sunny San Antonio, like I said in January. When I got off the plane and slid in the taxi cab from the airport to the Embassy Suites downtown, I kind of felt like I had landed in Detroit on a bad day. There were rusted out petroleum tanks, there was a big hole, they said it might be a convention center. It was...walked around in the Old Market, I think it was probably about -10 degrees and half of the Old Market old buildings were boarded up. Things have changed. Things have changed a lot and all for the better. Flash forward ten years and after operating the downtown Embassy Suites Hotel for seven years, watching the construction and the success of the Qwest Center Convention Center and Arena and now the recent completion and opening of our Sarpy County facilities, I share with you that my wife and I love it here. My wife, along with our two children have made Omaha our home. I have a son that's a junior at UNO and a daughter that's in grad school at UNO. As an avid hunter with the love of fishing, golf, concerts and Cabela's, Nebraska has it all and more for me. So my support of LB685 to move both Omaha and the rest of the state to grow its tourism industry is motivated by both personal and professional reasons alike. Nebraska has some of the most committed and generous citizens that I have ever met and certainly this unique amount of generosity and vision cannot be taken for granted. Omaha skyline has literally been transformed over the last decade which is a testament to the strong public/private partnership that the community leaders and policymakers have forged. It is also important to recognize the vision your colleague, Senator Brad Ashford, displayed along the way in a very critical commitment made by the Legislature to keep communities like Omaha on the national radar. We have great momentum, not just in Omaha, but all across Nebraska. The accomplishments on a statewide level are in no small part attributed to you, Chairman Avery, and the support of the Legislature. Nebraska's Legislature and administration recognized that it needed a strong partner in helping us recruit the 2010 Special Olympics to Nebraska which would not have been possible without the \$1 million appropriation you made. Lincoln shattered our expectations with their commitment and volunteerism, as did Omaha. I had the honor of chairing the board of directors that brought the Special Olympics to USA 2010 National Games to Lincoln and Omaha area. I think it's important to point out that there were three or four business and civic leaders in Omaha that originated this. They were happy to see it spread from Omaha to Lincoln and I believe at last count the economic impact was just shy of \$40 million to the state of Nebraska. We continue to see the benefit of this event as Nebraska is recognized as a real player on the national circuit for hospitality, vision and community support. We're in the tourism business together as Nebraskans, not as just cities. I share these examples of success to drive home my

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belief that although this is an exciting time for our state, the road has not been easy and as some before me have said, tourism has changed. Nebraska has incredible opportunity, real structural change that is paired with a strategic plan as needed to bring us in line with our national competitors. Tourism is big business. LB685 is a step in the right direction, but it needs to go one step further. I would ask that this committee consider an amendment that places the decisions of how lodging tax dollars are allocated with the visitor committee. This group of individuals truly understands the business of tourism and the potential it has to grow revenue and promote economic development. Bluntly, and with all due respect, tourism is a business, one with a capability of becoming an important resource of revenue for our state. Government does not run like a business, nor is it the right entity to allocate tourism grants. I contend that this is a time that we recognize this, and more importantly, seize the opportunity before us to complete transparency and good business decisions. As a person running a very successful business in La Vista, I feel fortunate to have a strong working relationship with the governing body of Sarpy County. In fact, I am chairman of the county's visitor committee. Yet, even though Sarpy County includes the hotel community and other tourism experts, I believe that to continue growing our metropolitan tourism engine, we need to operate outside of our comfort zones, which in this case may be county lines. Redefining the visitor committee and providing grant criteria for the lodging tax grant funds will benefit Sarpy County, it will benefit Douglas County, and it will benefit Keith County, it will benefit all of Nebraska. I greatly appreciate this committee's time today. I ask for your support of LB685, AM31 and that you consider an amendment. I'll be happy to answer any questions you might have of me. [LB685]

SENATOR AVERY: Thank you, Mr. Moody. And welcome to Nebraska; you've been here ten years now. [LB685]

TONY MOODY: I've been here ten years; it's a world record for a hotel GM. [LB685]

SENATOR AVERY: You plan to stay. And you plan to stay. [LB685]

TONY MOODY: Yes, sir, I do. [LB685]

SENATOR AVERY: Good. If we were to take your amendment, help me understand how this would affect the grant process and the outcomes, because that's ultimately what we're after. The outcome is what we're trying to change. [LB685]

TONY MOODY: Yes, Senator. It would establish a set...it would establish set positions that will need to be on that board. That committee will be made up of, as you've heard other people testify before me, business leaders that know our industry or know their community well and know how to attract tourism. Sometimes it's with the forethought that maybe somebody that's been getting that money for the last 20 years, maybe we

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need to cut that back and we start...we need to start doing things that develop newer things. It's a committee that would be put together of business and tourism professionals that would make business decisions. It would not be left in the political side of county commissioners making a decision that may be based on what's good for them at the time. [LB685]

SENATOR AVERY: I have often made the same distinction that you're making about that government is not a business and government could probably never run as a business because business is a commanding compliance culture. People in business...CEOs give orders, people comply. In politics we bargain, we compromise, and we accommodate and that's the nature of what we do. Do you see the culture of politics leading to cozy relationships with current grantees that maybe you can't change because it might be politically unpopular, it's that kind of thing, and that...you could short-circuit a lot of these things; if you could cut funding to one group and increase funding somewhere else if you had the business model? [LB685]

TONY MOODY: Yes, Senator, I agree with you 100 percent. [LB685]

SENATOR AVERY: Oh, nobody every says that to me. (Laughter) Thank you. No more questions. (Laughter) Senator Price. [LB685]

SENATOR PRICE: Thank you for your testimony, sir. And I do appreciate the facility in Sarpy County. [LB685]

TONY MOODY: Thank you, Senator. [LB685]

SENATOR PRICE: But let me ask you, in the seven years that you're up in Douglas County, did you ever apply for or were you ever a part of their process there? [LB685]

TONY MOODY: I personally, no, sir. And there's a reason behind that. [LB685]

SENATOR PRICE: Oh, well, I don't want to ask if you don't want to volunteer. But can you talk at all about, perhaps, the hoteliers that are on their committee right now at all? I mean, are they small, independent, are they large, do they make a good cross-representation of what they have, do you know? [LB685]

TONY MOODY: From what I understand, and again I'm in a different county now, but from my past and from what I understand right now, one represents a very small hotel. None of the major hoteliers have ever been represented on it in the ten years that I've been here. And the second hotelier used to have a hotel; or be involved in the hotel business in some shape, form or fashion. That's just what I've heard and again that's secondhand information and about three years old. [LB685]

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SENATOR PRICE: Thank you very much. [LB685]

TONY MOODY: But I also wonder why there's five at-large and when there's...Omaha is the tourism destination it has become in the last ten years why there's not more representation. It's real easy to excuse yourself from a vote if it happens to affect you personally. [LB685]

SENATOR PRICE: Thank you. [LB685]

TONY MOODY: You're welcome. [LB685]

SENATOR AVERY: Any more questions from the committee? Thank you. [LB685]

TONY MOODY: Thank you for your time today. And thank you for what you do for the state. [LB685]

SENATOR AVERY: Any other testimony in a neutral testimony. Mr. Kerry...Mr. Eagan, I'm sorry. [LB685]

KERRY EAGAN: Good afternoon, Senator Avery and members...that's close enough...members of the committee. I'm here entirely in a neutral process. The Lancaster County Board has not taken a position for or against LB685. I want to point out one thing which may be an unintended consequence of the language with regard to the committee composition. LB685 would dictate that on the Visitor's Promotion Committee, which is what we call it, that if we have seven members one representative would have to be a member of the Convention and Visitors Bureau and another member would have to be a member of the local chamber of commerce. For our promotion aspects of visitor attraction, the Lancaster County Board contracts with the Lincoln Chamber of Commerce. We give them approximately \$1.2 million a year to do all the promotion. I mean we recognize that they are the experts, they're the ones that know; they're the ones that have all the connections. We give them a lot of money. If this bill passes in its present form, that entity essentially will have two members on the advisory committee that advises the county board on how to spend money on contracts. It's a built-in conflict of interest. I don't know if it's technically subject to the Accountability and Disclosure Committee, because I don't know if these committee members are actually government officials. If they were government officials, they would have to recuse themselves, not take part in any of the discussions, make any recommendation with regard to \$1.2 million of our money in this area, entirely for promotion. So I think it's an unintended consequence, but given our present contractual relationship, if we're mandated to put a member from the Convention and Visitor Bureau, which is a nonprofit entity under the control of our chamber of commerce, and a member of the chamber of commerce, we're essentially putting two members on an advisory committee which advises us how to spend money on a contract that we

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already have with the local chamber of commerce. So that's, I guess, entirely a legal concern that I would have. But I think it would build in a tremendous conflict of interest that would probably prevent them from engaging in a lot of the conversation, but they're intended to serve. I'd be happy to answer any questions. [LB685]

SENATOR AVERY: Thank you for pointing that out. We can probably fix that with...the excellent legal counsel we have. [LB685]

KERRY EAGAN: Yeah. In listening to the previous testimony, too, our Visitors Promotion Committee is advisory to the county board. Everything that they have is a public record, unless there is some exception, I'm not aware of any. It's also subject to the open meetings laws because it's advisory to the board, their meetings must be prior notice, agendas, given to the media, if they want, everything has to be done in public, there has to be minutes approved at the next meeting, entirely a public process. If there's problems getting that information, then there is something wrong with the system. It couldn't be any more public than the way it's written into the law. When you're subject to the open meetings law and the public records law, it's all public. [LB685]

SENATOR AVERY: Can I conclude that Lancaster does it right? [LB685]

KERRY EAGAN: We try to. We've been criticized in the past too. We tried to take that into consideration. In our committee we try to get a cross-section of the experts in the industry. We have seven members and your legal counsel helped us amend that bill a while back to increase it from five to seven. I think it turned out to be a very good bill in doing that. Two of the members have to be from the hotel industry or three and no more than three; that's intended to balance out the interests between the hotel industry, which is the heads and beds or the pillows, and the tourist attractions which have to be nonprofit or governmental entities which have a lot to gain from the increase in visitors. So there's a lot of interest that go into this and it's not just the hotels. In fact, hotels by definition are excluded as a tourist attraction. They benefit from the business, but indeed they're carrying the load. They're the ones paying the 2 percent tax, or the 4 percent tax if you have both funds. So we try to get...we have three hotels on our committee; we always try to have a large hotel, a medium hotel, and now we have three, I think we kind of have a medium and a small hotel, so get a good cross-section of that. We'd like to get someone from one of the major attractions. In our case, the zoo which pales in comparison to the Henry Doorley Zoo, but the Lincoln Children's Zoo is a very fine zoo. And we look for somebody maybe from the restaurant association or some of the other tourist-related industries. We also have ex officio members, a member of the university, Michelle Waite, from the university is a nonvoting member. We have a city council member who is a nonvoting member and a county board member who is a nonvoting member because we don't want the county board member giving advise to the county board in how to spend the money. So we try to get the experts onto the committee and let them run the show, and in fact, with the

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promotion...with the Chamber of Commerce Convention Visitors Bureau we consider them to be the experts. And they keep extensive data also on where the guests are coming from in the hotels; how many rooms that they have accounted for with this money; and they've got some very good statistics in the area. It's hard to gather all the time, but they do a pretty good job of that. [LB685]

SENATOR AVERY: Thank you. Thank you for your testimony. Senator Sullivan has a question. [LB685]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you very much for that helpful information. Regarding the terms of the membership of the committee, do they...is it revolving, do you put new members on and still have that same kind of representation? [LB685]

KERRY EAGAN: Yes, we do. We have a set of bylaws that I think restrict it to two consecutive terms, then you can no longer serve. So they're four year terms, I believe. I'd have to check; I did not bring them with me. [LB685]

SENATOR SULLIVAN: No, that's fine. [LB685]

KERRY EAGAN: But we have several members going off now, but they're restricted to two terms so that we can keep the fresh flow of ideas coming into the committee. [LB685]

SENATOR SULLIVAN: Thank you. [LB685]

SENATOR AVERY: Senator Schumacher has a question. [LB685]

SENATOR SCHUMACHER: Thank you, Senator Avery. It sounds like at least in Lancaster County the thing is working pretty decent. If we pass this, do we screw you up in any way? [LB685]

KERRY EAGAN: I'm just testifying in a neutral position. I'm concerned about mandating two members of an organization with which we have the major contract for promotion. I think that creates a built-in conflict of interest, because that committee advises us on spending the money or contracting with the chamber of commerce so that would be my concern, entirely in a neutral position. [LB685]

SENATOR SCHUMACHER: So as long as committee counsel works her magic and gets rid of that conflict, then you guys are cool with this? [LB685]

KERRY EAGAN: Yes, yes. Well, we have no position. We have not taken a position for or against it, quite frankly, the criteria set forth are exactly what we try to look for in the

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committee and making grants either through the improvement fund or promotion in general, those are exactly the factors you need to be looking at. [LB685]

SENATOR SCHUMACHER: Thank you. [LB685]

SENATOR AVERY: You've been helpful, thank you for your testimony. [LB685]

KERRY EAGAN: Thank you. [LB685]

SENATOR AVERY: Any other neutral testimony? All right, Senator Schilz, you're still here, yes, there you are, you were hidden behind. [LB685]

SENATOR SCHILZ: Thank you, Senator Avery. And I won't take up a whole lot of time just to clear up a couple of points. And I think that as we look at stuff, to get to Senator Pahls's question about, you know, you asked about people going in and raiding funds and things like that, you specifically brought up certain situation that's going on right now, and I think that it's extremely important that as we have these funds that we take care of these funds so that nobody out there thinks that they may not being used correctly, because that's where you run into the biggest problems of having somebody saying, well, they aren't using them the way I think they need to be using them and so I'm going to go take them to use them for somebody else. So that's...I mean, that's a big impetus of why I brought this is to do that. And then to talk about, you know, if we're talking about the integrity of the decisions that are made, everybody can have an opinion on whether any of these things where the money goes is worthwhile or not. So I think it's important to have people that understand what this is and understand the industry and understand how it works so that when you say, well, this is our committee that is making the recommendations, we need to remember that, this is a committee of people that understand. It gives you some integrity, it gives you some...what do they call it, gravitas, when you start to talk about where these should go. And I think it would make it easier for the county to defend what they're doing. I know in my county the last time that there were board appointments to be made, there was no outreach to the community to say, hey, is anybody else interested in serving on this. No, what happened was, they just re-upped everybody and off you go, even though there were people that were interested in applying and running for that position. Now they may not have got in there, but as a society, the way we do things, is that people should have the opportunity to put their names in and be given full consideration for that. And I know that was a problem there. We mentioned, and I'm taking this again from my own county, one of the members that was on the visitors committee actually moved out of the community to a different community almost six months into his term and continued as a board member on that committee for those entire six months. He would make the trip from where he was to come back to Keith County to sit on that board. And I'm, you know, as I look at it, I think it should be local folks making those decisions on how that goes. I think that Mr. Eagan may have a point there, that's an easy fix. You change "and" to "or" and

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we can fix that conflict. I will say this, you know, hoteliers are on there right now; they are getting a direct benefit from this. I understand what he is saying about the conflict if you're contracting with them, but I think we can fix that pretty simply with some words and some wordsmithing. So with that, I will just close by saying that I think...that I think it's always important that when you are dealing with dollars that are going out to do things like this where you can have many opinions on what is the best way to spend them, I think it's always best to have people in those positions that are making the decisions that actually understand and can defend; and when I say understand, have an intimate knowledge and a working relationship within the industry that they're making the decisions on and that's why I brought the bill today. And with that I thank you and I would hope that we can move this forward to General File. [LB685]

SENATOR AVERY: Thank you. We have some more questions for you. [LB685]

SENATOR SCHILZ: Sure. [LB685]

SENATOR SULLIVAN: Thank you, Senator Avery. Senator Schilz, can you explain what the intention behind your amendment? [LB685]

SENATOR SCHILZ: Behind the amendment? Let me get the amendment to make sure that I understand. Basically, what I think that does is that is moving to make sure that we have the people on there that have that expertise in what we're talking about and to make sure that those decisions that are made come into the realm that we're talking about. And I don't have the amendment right in front of me to take a look at it. I can get you a better answer to that when I do. [LB685]

SENATOR AVERY: It has language that clarifies what kind of projects that can be funded. [LB685]

SENATOR SCHILZ: Oh, the process. Okay, thank you. [LB685]

SENATOR AVERY: And also the changes membership on the... [LB685]

SENATOR SCHILZ: Thank you. Thank you. Okay, yeah, and this is...basically this becomes the bill, I mean, it's quite honestly it's about a process, it's about a business process that we're talking about. It's about making that decision every single time to help improve and bolster those decisions that are made so that the opinions of some can't be used to throw wrenches into the workings of this committee as you go forward. And then as the representation, I think we've talked about it all day, that representation needs to be there because they are the experts and that's why...as we've gone through, and you know how this is, when you're working with legislation you get language and then folks come along and tell you the better way to do it and you adjust the language and you continue to do that sometimes clear through until the end. So it's just changing

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the wording to make sure that we captured everybody's concerns as we move forward. [LB685]

SENATOR SULLIVAN: Thank you. [LB685]

SENATOR AVERY: Any more questions? Thank you. [LB685]

SENATOR SCHILZ: Thank you. [LB685]

SENATOR AVERY: That ends the hearing on LB685. Thank you for participating in that debate. We'll now move to LB523 and invite Senator Pahls to the table. Welcome, Senator Pahls. [LB685]

SENATOR PAHLS: Good afternoon, Senator Avery, members of the committee. My name is Rich Pahls, P-a-h-l-s, and I represent District 31, the Millard of Omaha. The Secretary of State brought this bill to me. I introduced it because of the controversies that have occurred across the state when petitions are used in our political process. It's a relatively simple bill. The bill requires that a petition circulator wear a badge with a number that will identify the circulator. If a complaint comes in to the Secretary of State or the election commissioners, they can contact the petition sponsor or the actual circulator and quickly solve the issue. The identification badge does not include the name of the circulator. The Secretary of State has indicated that courts have not allowed that sort of regulation of the petition process. To get more in-depth on some of the questions, I see we have Secretary of State and his staff here. For those of you who want more belts and suspenders, you may want to look at the color, size, and location of this badge if you so...because, Senator Sullivan, you're giving me that pensive look. And I know if you were a petitioner, your badge would be really small while mine would be really large (laugh). No, I'm just having some fun right now. I will entertain any questions. [LB523]

SENATOR AVERY: Thank you. Questions from the committee? Are you worried at all about the constitutionality of this? [LB523]

SENATOR PAHLS: No, since the names are not on. If we had requested that the name be on the badge, then the past rulings have been in disfavor of that. [LB523]

SENATOR AVERY: But you could have on the badge "paid circulator." [LB523]

SENATOR PAHLS: I don't...to be honest with you, I don't know that. You could ask the Secretary of State and ask if he wants it. But I think they are looking for a number. Let's say that you have number...and I'm just going to throw out a number, number 7 on you, Avery, and you were with a petition and I had an issue with you. I said, well, I don't know who you are so I dealt with... [LB523]

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SENATOR AVERY: Number 7. [LB523]

SENATOR PAHLS: Number 7. And then the sponsor, only the sponsor would have your name. And so then the Secretary of State could contact him or her or whatever. [LB523]

SENATOR AVERY: I'm assuming that you could read circulator number 7... [LB523]

SENATOR PAHLS: Yeah. [LB523]

SENATOR AVERY: ...paid or volunteer. [LB523]

SENATOR PAHLS: I don't know about that. That may be a question...that wasn't...I don't think that's in the bill that would say... [LB523]

SENATOR AVERY: No, but I'm thinking we might want to amend that into it (laugh). [LB523]

SENATOR PAHLS: Well, I would (inaudible). [LB523]

SENATOR AVERY: But I believe that would be constitutional based upon the Colorado decision or wasn't it Colorado? [LB523]

SENATOR PAHLS: Yeah, yeah, I think (inaudible). [LB523]

SENATOR AVERY: Buckley decision. Senator Schumacher. [LB523]

SENATOR SCHUMACHER: Thank you, Senator Avery. Senator Pahls, this is directed at petition circulators having the little number license plate number that they carry around. [LB523]

SENATOR PAHLS: Yes. [LB523]

SENATOR SCHUMACHER: Now in recent years we've seen the war on the street develop in 2006 in which we had petition circulators and petition blockers. If it's a good idea for the circulator to have to wear a nameplate, shouldn't the blocker, the paid blocker have to wear a nameplate too? [LB523]

SENATOR PAHLS: Well, I have to be honest with you. I see some logic in that. If I am the petition...you know, wanting your signature and I have somebody over here, if they...I don't know. You may have to ask the Secretary of State. I don't know how they would go about getting that information. But I'm sure if it's an organized blocker, but if it's just because I happen to be against the idea and doing it on my own, it may be a

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little more difficult to control that. [LB523]

SENATOR SCHUMACHER: Okay. Thank you, Senator Pahls. [LB523]

SENATOR AVERY: Any other questions? Okay. We'll go to proponent testimony. I think Mr. Hedrick beat you, Mr. Secretary. Welcome, sir. [LB523]

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. I am for bill 523. The question about constitutionality of this bill I think it would be constitutional. As a voter, I have to be qualified, and I think the person I have to ask me to sign a petition should be qualified also. I would like to know that whether the person is voluntary or paid. I would like that qualification on the certificate--free speech against paid speech. This is a political (inaudible). There's no penalty for violating this law. This is a political question of powers, whether the person who can ask to see if that person is qualified are politicians. The other person opponent who is running for office should be able to verify who is campaigning against him. This is a time sensitive because after the votes there's no...you're not even...it doesn't even matter. I ran for office myself. You think that I'm a...don't trust politicians? I don't. My pet peeve: politicians sell out for payments. The person they are getting bills for make millions and they don't get a thing. Michigan Governor has proved that point for the last week or two. He was talking to this rich donor and we know they're not...this is a problem of the unions is only one of what he is trying to do. He's also trying to sell off infrastructure. That would be like you or somebody in this Legislature trying to sell off Norris' Power Company. We have a great social program here on our power. [LB523]

SENATOR AVERY: Does this relate to the issue of ID badge for circulators? [LB523]

RICHARD HEDRICK: Yes. I agree with that. [LB523]

SENATOR AVERY: Yeah. How is that...your example of the Michigan governor relate to the ID badge for petition circulators? [LB523]

RICHARD HEDRICK: Okay. I think I made my point. [LB523]

SENATOR AVERY: Okay. I was just trying to steer you back to the bill itself. [LB523]

RICHARD HEDRICK: Yeah, okay. I'm finished. [LB523]

SENATOR AVERY: I wasn't trying to be disrespectful. [LB523]

RICHARD HEDRICK: We need something in case of (inaudible) the person that's being running against this person is either paying or volunteer has a disadvantage because the other person is being paid, he's got a lot more money. And so we should even the

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field out. [LB523]

SENATOR AVERY: Thank you, Mr. Hedrick. We might have questions so just a minute. Any questions from the committee? I don't see any. Thank you for your testimony. Any more proponent testimony? Welcome, Mr. Secretary. [LB523]

JOHN GALE: (Exhibit 1) Good afternoon, Mr. Chairman, members of the Government, Military and Veterans Affairs Committee. I'm John Gale, J-o-h-n G-a-l-e, Secretary of State and Chief Election Officer for the state of Nebraska. I'm here to testify in strong support of Senator Pahls's LB523 for a number of reasons which are more fully spelled out in my letter of testimony which is being circulated. I won't read that to you. I'll leave that for your review, but I'll make a few points. As Secretary of State Chief Election Officer for ten years, this is one area that we have found is a very rough and tumble area of election law. And it's very vital, very important, very significant to Nebraska since we are a Unicameral. And it's good to have a second voice of the people and some consider it the second house of the people. So we're very, very sensitive of that and aware of that. But over that ten years, the issue of petition circulation has become more and more obvious as a process that has too much anonymity. And as Chief Election Officer, one thing that we try very hard for in our democratic process is to have transparency and accountability. In this particularly unique area, transparency is not possible, but accountability is. And I say that because the case of Colorado Secretary of State v. American Constitutional Law Foundation from 1999, a decision of the U.S. Supreme Court said that you cannot chill the petition process by identifying by name and address, making visible the name and address of the circulators as they are attempting to confront citizens to gain their signatures. The court's concern was by identifying them so prominently at that point of emotional contact or person of contact, such that the public can track them down by name and address and harass their family, harass them that it will chill the petition process and people aren't willing to serve then as circulators. So they said you cannot require a name badge. So that part of the law is very clear, but that decision is one that we've been following, researching closely and watching what's happening in Nebraska. And I think the lack of civility particularly in the case that Senator Schumacher has talked about where now we have blockers as well as circulators, and the citizens who are being confronted it's certainly an opportunity for freedom of expression for the circulators and those citizens to meet and sort out their purpose. But we've had so many complaints over the years from citizens who aren't complaining about the petition process. They're complaining about the behavior and conduct of the circulators. And the circulators are so anonymous there's no way that they're able to report precisely to us who it was engaged in this conduct or how to track them. We've known all these years that we cannot maintain a list in our office provided to us by the sponsors of the circulation project because it would be subject, of course, to public information disclosure. So even if we tried to treat it as confidential if we had it filed with us...if you said circulators have to register with us, it would not work. But if the names of those circulators are identified with the number on their badge and held by the

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sponsor of the circulators so it's private information and then we have a complaint, we, the Attorney General, law enforcement officers, have somebody to go to and say circulator 311 has had several complaints because they've been extremely abrupt or they've been extremely rude, they've been confrontational, such as the situation several years ago when a woman refused to sign a petition. And the circulator followed her all the way from the store out into the parking lot calling her names all the way out to her car. She couldn't identify the individual because there's no way to know other than to say he wore a brown shirt and had a brown hat, and so we've never been able to trace that kind of conduct. We want to bring a higher level of civility and accountability into the process. Now some of those kinds of complaints are complaints about conduct, and then that allows the circulator operator to call that circulator and say this conduct is out of bounds and we want it to cease. So you have a little more level of accountability between the circulator owner who wants public trust and confidence in what's going on, doesn't want news stories about outrageous behavior and conduct. There was a story not too many years ago about a petition circulator who was using a wheel of fortune. You may remember that, but was in a parking lot and offering people if they would sign the petition they could spin the wheel and have an opportunity to win a gift, to win a prize, which is absolutely a criminal conduct. That is not misconduct; that is criminal conduct. And by the time the police were called and got there, nobody could identify the individual other than to say they're such and such a race or approximately so tall and approximately so old. Well, in a parking lot area in a business district with people coming and going, you're not...nobody was able to track that down. So you could have criminal conduct. You could have a circulator who steals a purse from somebody and runs off. How are you going to know? The public needs to trust the people. There must be a moment of trust and confidence when that person approaches them. And if they've got a name badge that's clearly visible to the prospective signer, then there's a level of accountability. The circulator knows they can be identified by their business operator who is conducting the petition circulation. So we think it will add a level of civility, add a level of accountability. And if there's criminal conduct, it will add to a very prompt and swift enforcement of the laws. And we think that that is a win-win situation. It promotes confidence in the public. They know this person is not probably a scam artist because they are identifiable. And it gives more accountability to the circulator and makes the operator feel more confident that his petition is going to be handled properly. So for these reasons, we are supportive of LB523. [LB523]

SENATOR AVERY: Let me ask you the first question if you don't mind. What would be your position if we were to amend this bill to allow inclusion of the designation paid circulator or volunteer circulator on that ID? [LB523]

JOHN GALE: Well, first it's redundant because that is on the petition as I believe it's in red on the petition that I am a paid circulator so the information is there. And if the individual behaves properly according to the law, their job is to read the object statement or allow the citizen to read the object statement and right there is the red

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language that says they're a paid circulator. So I think that would be redundant. That's not maybe as valuable. I'm not...I don't recall that being addressed in the Colorado Secretary of State case. That particular issue I think they did not address that. They identified it, didn't address it. But I think that's worth consideration. It certainly wasn't something that we were seeking. But if that enhances the public confidence in the process of who is talking to them, it may be valuable. [LB523]

SENATOR AVERY: Okay. Senator Price. [LB523]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Mr. Secretary. My...at first blush, I like the idea, okay, but a question comes to mind when we're talking about these heated political things that are highly charged, what is the process? I have a circulator who has a number and someone places a complaint. By the mere fact of having some degree of certainty of who it is, I'm wondering about false reporting to get to the chase. I'm worried that someone sits there say circulator 115 did the following things. So walk me through briefly the process that you go to differentiate that that individual did or did not do something or could have...I would just have people call in, these blockers just call in complaints and make it almost nearly impossible that you're going to be holding up the process. So could you walk me briefly through the process of how a complaint would be handled. [LB523]

JOHN GALE: Well, obviously, if the complaint appeared to be a violation of the law, we'd turn it immediately over and call the local law enforcement authorities and let them proceed to seek disclosure of the information from the manager or the operator of the circulation business to secure the name of that individual and conduct an investigation. You and I both know that there are a considerable number of criminal complaints that don't result in anything because once it's investigated it doesn't amount to a criminal complaint. Obviously, if it's not something that appears to us to be a criminal complaint when we get the call, but it is an issue of extreme rudeness, maybe verbal abuse, we'll, obviously, call the operator of the circulation company and say, badge 311 is getting some complaints about behavior and misconduct and we want you to know about it. We would leave that up to them. We're not going to hold the hand of the circulators about their behavior. We have found in the past several cycles that we actually have to issue by press release standards of conduct and behavior so the public knows that to expect from circulators when they're approached and to know it's coming, it's going to happen. And if they don't find that level of behavior they can say, sorry, don't talk to me. [LB523]

SENATOR PRICE: Okay, thank you. [LB523]

JOHN GALE: Thank you. [LB523]

SENATOR AVERY: Senator Janssen. [LB523]

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SENATOR JANSSEN: Thank you, Chairman Avery. Secretary of State, I'm kind of with Senator Price here. At first blush it sounds good, to steal his words, but a lot of times when you're talking about these petitions it's not...we're talking usually about divisive, usually it's something divisive so these petitioners also come under attack from the general public. And they have no idea who they are. If it's somebody comes and say I don't like your petition and I think you are this, this and this and they follow that petitioner around for, basically, the intent to make sure that they're not getting signatures on that petition because they oppose that idea, they're not asked to show any sort of identification. And so we're giving a solution to one side that we're not giving to the other side of identification here. So I don't know that this bill would do anything on...I don't know. [LB523]

JOHN GALE: Well, your issue about blockers and that was raised with Senator Schumacher, too, we don't have any contact with them. They're outside the parameters of election law. The circulators are. The sponsors have to come to us with their petition and show us the petition, the language, and it goes to the Bill Drafter and the Attorney General and so there's a real process to that. And they're the ones that have to go out and hire people. Blockers can be just random citizens who are angry about the matter. They may be an organized organization that generates people to go out and observe the petitioners and the petitioners' behavior. I'm sure there have been instances of some hollering and shouting between the two. That's probably an exchange of ideas that isn't going to rise to the level of assault or battery by verbal exchange of views. The person we're concerned about is the citizen and that the conduct toward them is a civil, civil conduct. And if you have a woman with two children and she's trying to get into the grocery store and she's stopped, if there's an accountability there and the circulator knows they have to behave or they can be identified, the chance of an exchange improves. It's better. And the petition circulator should actually like that because if they're trying to gain more signatures, they need a moment of confidence immediately when the citizen (inaudible). A woman with two kids or a young woman approached by a male, most people don't talk to strangers. There's really a moment of disconnect, of concern, of alarm when a stranger walks up and brusquely says, can I have a minute of your time? I want to show you something. I want you to sign this. There are a lot of circulators who do not read the object statement and you as the Legislature have required that for a long number of years and they don't. Why? Because nobody can identify them. And all they have to say is, will you sign this and put it on the ballot? A lot of people to get them out of their hair and move along say, sure. That is against the law. If they have a stack, if they are circulating...and I remember going up to Omaha to observe the process of circulation and I encountered a 14-year-old boy, not even old enough to shave, who was carrying a clipboard with four or five petition all on it and he asked me if I would sign them. I said, well, what is it about? He couldn't explain what it was about. He said, well, would you just sign these so we can put them on the ballot? Well, who are you working with? Well, I'm working with my dad. My dad is here and my brothers and sisters are here. We're all trying to help my dad. And they were being paid

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by the signature then so it was kind of a family business. But today that 14-year-old would be in violation of the law. Well, what if I would go up and observe that today with the law that says you have to be the age of 18 and the young man wasn't willing to tell me his name, wasn't willing to tell me where his dad was? By the time I called the police, they'd be gone and they'd head off in the family van. So all I'm saying is this is a sacred process. This is a process that the public deserves to be a civil process, and this will add to the civility of it, add to the public confidence of it. The public will know what to expect and they'll know how to make people accountable. Sure we will get complaints. We know we'll get...we get complaints already. We just don't know what to do with them. At least if we get complaints, can turn them over to the businessman. He can talk to the circulators and get that side of the story. And if it's simply blockers trying to cause trouble, then they'll work it out. But at least there's a process, a procedure. I won't call it due process of law, but at least there's a due process of accountability with this system. So we think the time has come for it, it's a good bill, and we do support it. [LB523]

SENATOR JANSSEN: So accountable, you think...I guess I'm looking for a very short answer this time, is a...do you think this makes...this does make the process by showing this identification makes the process more accountable? Is that...? [LB523]

JOHN GALE: Yes, correct. [LB523]

SENATOR JANSSEN: But the issue of blocker, though, the only issue I have, and like I said, again, first blush makes sense. But with the blockers, it seems like we're giving a right to...it's not always the mother with two children. Sometimes it's the very angry man that's way against you that is attacking this petition person that's out there trying to...that they believe in deeply, get this petition and this person is calling them all kinds of names. Say that's you, not that you would ever do that, but I don't know who you are. You don't have an ID on, but I do and we have an exchange. Well, you don't think it rises to a level maybe I do, but I don't know who you are. You go away and I have to identify you. You can say, yeah, it was badge 315; that guy was mean to me. And because I have this moniker, I'm more subject to be investigated because I have a number. And we will side with this other person just because it's easier to find me. I'm 315. You're, you know, Caucasian male, certain age, and I think we're just kind of...the referee is not playing fair in that scenario. And that's...but I do agree it makes it more accountable though. If I showed an ID, it makes it more accountable. [LB523]

JOHN GALE: Yeah, on the one side it certainly makes it more accountable. And you don't always have blockers. It's just been in a few very emotional situations or dramatic situations where blockers have appeared. And it's certainly not every circulator or every blocker who creates any kind of a problem. I think there was testimony here when you had the on-line petition signature bill that was being discussed that one of the strong supporters of the petition procedure said, most of the circulators are good people. But there's always a percentage of them who aren't and that's the percentage we're trying to

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reach. Same is probably true of blockers. What's going to happen, of course, is I think if that's the purpose of blockers, probably make it so dramatic a situation that citizens walk off. They don't want to be involved in the middle of it. I don't know...obviously if the confrontation is too heated, you could call the local police department. And most circulators are going to have a cell phone and they can do that so they have a way to break it up if they need, if they think it's extreme. [LB523]

SENATOR JANSSEN: Thank you, Mr. Secretary. [LB523]

JOHN GALE: Thank you, Senator. [LB523]

SENATOR AVERY: The courts have ruled that name identification is unconstitutional. It's an unjustified restriction on First Amendment speech rights. [LB523]

JOHN GALE: Correct. [LB523]

SENATOR AVERY: Is it the line that separates name identification from number identification pretty thin? Because ultimately you can find out who that person is. [LB523]

JOHN GALE: Well, that's probably the gap. There...I don't think it's close under the Secretary of State of Colorado v. American Constitutional Law Foundation case. They don't even address the issue of wearing a badge number. They're focused on the disclosure of the name. So I think there's a wide gap between the two. I don't think you even come close to the constitutional issue by wearing a badge number. Where you get into trouble is, and this was one of the things that we had considered over a period of years, was how can we require circulators to register with our office or register with any other public office? Ah, (inaudible) but that's a close constitutional issue because those names could be revealed. A newspaper can come, make a public disclosure request, and boom, there the names are out in the public. So we don't think that would work. But this idea of the circulated badge where the businessman, the private business maintains that list connected with the badge number assigned to them we think works. [LB523]

SENATOR AVERY: And what's the enforcement mechanism? If I organize a petition drive and Mr. Bernbeck is here, he's probably going to testify, and let's say I'm Mr. Bernbeck and I'm supposed to maintain this list of ID numbers and match them up with names and I don't do it. [LB523]

JOHN GALE: Well, probably that would result in a question to the Attorney General as to whether or not the petition is being conducted according to law and regardless of the outcome of their circulation it can be placed on the ballot. I think it... [LB523]

SENATOR AVERY: So it could jeopardize the success or failure. [LB523]

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JOHN GALE: I think it jeopardizes the petition. [LB523]

SENATOR AVERY: Senator Schumacher. [LB523]

SENATOR SCHUMACHER: Thank you, Senator Avery. Mr. Secretary, several questions. When did the process of paid blockers really emerge in the petition process? What year, do you recall? [LB523]

JOHN GALE: I suspect there have always been individual, maverick individuals who have protested against a different one but... [LB523]

SENATOR SCHUMACHER: I'm talking about paid blockers (inaudible). [LB523]

JOHN GALE: To my knowledge, to my knowledge...and I don't know if they were paid or not, but to my knowledge where it's become extremely visible in the media it has probably been in the last four to six years. [LB523]

SENATOR SCHUMACHER: 2006 specifically. [LB523]

JOHN GALE: I would say specifically that was probably the most visible. [LB523]

SENATOR SCHUMACHER: And that was when government-based organizations such as League of Municipalities and some of the counties decided to oppose, I think, it was the spending limit or a taxing limit petition. [LB523]

JOHN GALE: I think that one was called stop overspending, as I remember, at least that was the... [LB523]

SENATOR SCHUMACHER: That's exactly right. Now when you have that kind of thing, the circulator you're proposing wears his license plate I assume on the front or does he have to have it on the back too? [LB523]

JOHN GALE: No. It just has to be visible to the prospective signer. [LB523]

SENATOR SCHUMACHER: Okay. [LB523]

JOHN GALE: And I would say that means it has to be on their front chest or a hat or something visible to the person they're approaching. [LB523]

SENATOR SCHUMACHER: Okay. Then why shouldn't the blocker have to register too? If they're on the paid political campaign, why shouldn't...and they're going to be out there confronting the petition circulator, why shouldn't they have to wear a number too?

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[LB523]

JOHN GALE: I don't know how it could be enforced, Senator. With the petition circulators, there's a business that's promoting sponsored petition and we know who they are. With blockers, we don't have a clue. You can certainly pass a law. You're entitled as the Legislature if you want to make that provision and say that any blocker has to have a name badge as well. But I don't think you have to have a number on a blocker. If you want to say they got to put their name and address, I don't know if that's a constitutional issue or not. I'm not concerned, I guess, about the blockers because I don't have any jurisdiction over them or who they might be or how they conduct themselves. [LB523]

SENATOR SCHUMACHER: But we're talking about a process. We're talking about somebody being harassed on the street. And the ugliness started in 2006. [LB523]

JOHN GALE: And the question is? [LB523]

SENATOR SCHUMACHER: The question is if that's when the problem really started in any significance, then why don't we address what started the problem? [LB523]

JOHN GALE: Well, as I told you, some of the earlier examples of the wheel of fortune or the person...that was before 2006. That was back in two thousand... [LB523]

SENATOR SCHUMACHER: Let's talk about the wheel of fortune. That was filmed on television, wasn't it? The identity of the wheel of fortune spinner was no mystery. [LB523]

JOHN GALE: Well, if I understand your question, whoever this circulator was that was conducting this particular project was certainly not identified. [LB523]

SENATOR SCHUMACHER: As I understand it, there was an investigation, Mr. Secretary, and there was no requirement that one sign the petition in order to spin the wheel. [LB523]

JOHN GALE: Well, then we have a difference of opinion on that. [LB523]

SENATOR SCHUMACHER: The...if people in the political process are afraid of people coming up to them and approaching them, should we require paid campaign workers that go door to door for a candidate also to wear a license number? [LB523]

JOHN GALE: Well, Senator, I'm simply addressing LB523. I'm not attempting to address any broader issues because this is what we've researched. This is what we understand and this is what we're suggesting. It may well be that you want a resolution that would

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allow a further review of the broader subject. [LB523]

SENATOR SCHUMACHER: In a successful petition drive, what is the number of signatures generally turned in to your office? [LB523]

JOHN GALE: Well, the percentage that's required in a constitutional is somewhere in the range of 115,000. For statutory, it's less than that; something in the range of, I want to say, 75,000 to 80,000. [LB523]

SENATOR SCHUMACHER: And in a successful drive there's always an overage so the number of signatures turned in is more than that. I mean... [LB523]

JOHN GALE: Generally. [LB523]

SENATOR SCHUMACHER: Okay. And how many calls up to 2006 did you get in your office complaining of terrible behavior on the part of petition drive? Let's take the one in 2002 and 2004. [LB523]

JOHN GALE: I don't have those numbers with me. [LB523]

SENATOR SCHUMACHER: It was a very, very tiny percentage. [LB523]

JOHN GALE: I would say if you included our office and the county election officials and the law enforcement phone calls we don't have all of those. We just have it anecdotally. But there were enough to get all of our attention. [LB523]

SENATOR SCHUMACHER: And you don't have any numbers. [LB523]

JOHN GALE: I do not. [LB523]

SENATOR SCHUMACHER: Okay. And the...in fact it is possible to identify a petition circulator if they are out of line, is it not? Because the petition form bearing the signature of the person who is "claimingly" given a hard time also contains the name of the petition circulator. [LB523]

JOHN GALE: A citizen isn't aware of that until they make the decision that they're going to sign it and read it and pay attention to it. By that point they've overcome whatever hostility or difficulty they're encountering with that circulator. So if a circulator is simply abrupt or offensive or rude, they're not going to have that petition documented in front of them to identify who they are. [LB523]

SENATOR SCHUMACHER: And it's...so even though we could identify somebody by signature as to somebody who signed the petition, you're saying, well, there's

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somebody that they could not...ran into a rude circulator so we're going to turn them in. [LB523]

JOHN GALE: It's rude enough that they make a phone call, and that doesn't happen on a regular basis in general elections. [LB523]

SENATOR SCHUMACHER: It isn't a rude enough situation where they would make a phone call, smaller number of situations. [LB523]

JOHN GALE: That's my recollection, Senator, is that in terms of phone calls about primary or general elections, the number of phone calls we get protesting the conduct of people who have come to the door or called on the phone is relatively small compared to the number of complaints we get for...on petition circulators. [LB523]

SENATOR SCHUMACHER: Now when somebody is sitting around the kitchen table circulating, do you have to wear your license plate then too? Or you just have to wear your license plate when you're out on the street? [LB523]

JOHN GALE: Senator, that is not addressed in the bill. Obviously the bill is addressing the importance of wearing the number when they are visible to a prospective signer, and I suspect that's not around the dinner table. [LB523]

SENATOR SCHUMACHER: So how do we know when you're supposed to wear your license plate and when you're not? [LB523]

JOHN GALE: I think that is going to be up to the company that's conducting the petition circulation and how important they think it is that they wear that badge whenever they're carrying a petition. If they're not carrying the petition, it seems irrelevant and ridiculous to wear their circulator badge if they're not conducting their collection of signatures. [LB523]

SENATOR SCHUMACHER: But I mean collecting the signature around...on your church table or at a bazaar, around your family table, you got to wear this thing then? [LB523]

JOHN GALE: I think it doesn't even come close to requiring that, Senator. [LB523]

SENATOR SCHUMACHER: I don't have any further questions. [LB523]

SENATOR AVERY: Any other questions from the committee? I don't see any. Thank you, Mr. Secretary. [LB523]

JOHN GALE: Thank you, Mr. Chairman. Thank you. [LB523]

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SENATOR AVERY: Any other proponent testimony? Okay, we'll move to opponents. Welcome, sir. [LB523]

KENT BERNBECK: (Exhibit 2) Hello. My name is Kent Bernbeck, K-e-n-t B-e-r-n-b-e-c-k. I appreciate the opportunity to testify in front of the Government Committee. You guys certainly know how to clear a room (laugh). Bring in a petition bill and everybody leaves. I know you're not obligated to, but I'm going to ask this anyway. Of the committee and of the people in the room, who has circulated a petition? [LB523]

SENATOR AVERY: You don't get to ask questions of us. I'm sorry. [LB523]

KENT BERNBECK: Okay, I'll ask it rhetorically. Who in the room has circulated a petition, actually circulated on someone's doorstep or a street corner? [LB523]

SENATOR AVERY: That's not a rhetorical question, Mr. Bernbeck, if you're asking for a response. [LB523]

KENT BERNBECK: Okay. I'll refrain from my second question about who organized a petition drive in this room. [LB523]

SENATOR AVERY: Do not ask questions of the committee or the audience. [LB523]

KENT BERNBECK: Okay. I'll go straight to my testimony then. I do appreciate the cue. This bill, and I guess I've been around long enough to see the Deputy Secretary of State bring forward a number of these bills over the last 20 years, even when he was legal counsel for the Government Committee many, many years ago. This is no different. This is simply an effort to hinder, restrict, impede the process. You know, I can see where this comes from. I mean, obviously, with the testimony from the Secretary of State, you know, we want to know who's doing it wrong so there can be some kind of accountability. But I do ask, I mean, you know, democracy is not pretty and it's not neat and especially the petition process, a lot of times people are offended. That's not my fault. It's not my fault that someone doesn't want to engage in a political matter for that day. That is not my fault. But what I see in this bill is that, you know, for a paid campaign with no volunteers whatsoever, you might be able to, when you ascertain their 1099 form to be able to pay them, you probably could issue them a badge. Logistically that may be possible. But what I'm asking about is every volunteer campaign or every campaign out there that has a volunteer element, which will be every campaign, when a volunteer gets a petition or several petitions from the sponsor or the campaign organizer, what does he or she do with those petitions? What is the distribution process of volunteer petition forms? I don't believe the Legislature can regulate the distribution process of volunteer petition forms. I don't think that the Legislature can say, well, you can give one to so and so, but you can't give three. You can do this, but you can't do

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that. Well, what happens when that zealous or just passionate volunteer takes three or four petitions with them? They're probably going to take one to their card club, they're going to take one to their church, and they're probably going to take one to their family member and say get some signatures. Okay, the signatures at that point when they're sitting around their coffee table, when they're sitting around the card table or at the church gathering, prior to them receiving their registration number, because in a sense this is what this is, is a registration number, are those signatures going to be counted as valid because they didn't have, as Senator Schumacher said, their license plate on yet? I mean we got to ask ourselves that. Are we hurting the volunteer petition process even more by trying to advance a bill that helps make this a--what was the--a civil conduct bill I think the Secretary of State was alluding to, in a civil conduct bill that he himself says he doesn't care about the blockers in that process? I mean what about the civility of the blockers or that interaction between the blockers and that petition signer? What happened to the civility there? Doesn't he care about that also? So I mean I guess the point I'm getting, and I'm trying to make several here because I've got so many, that this bill does nothing more than impede the process and it especially hurts the volunteer part of the process. I'll go down to one other item, number 5 in my testimony. The section on page 2, line 15, what other information are we going to allow the Deputy Secretary of State to ask for on this name badge? In the back side or the second page of my testimony I included page 14 of the Buckley decision, and I even underlined where it does refer to the name. They're talking about the personal name. But I just want to draw attention that the entire U.S. Supreme Court looked at this issue of badges and what effect the badges had on the circulator in that interaction of freedom of speech. And I see I do have to finish up here. The... [LB523]

SENATOR AVERY: No, you're supposed to be finished when the red comes on (laugh). [LB523]

KENT BERNBECK: I got to be finished, okay. [LB523]

SENATOR AVERY: Yes. [LB523]

KENT BERNBECK: Well, with that I will end it. It is important to read these decisions because ultimately someone like me will probably challenge it and use these decisions. And it will just simply cost the state a lot of money to pay someone like Dave Domina. Thank you. [LB523]

SENATOR AVERY: I would note that sentence you underline here in the Buckley case reads the "notarized submission," which is the signatures. They have to be notarized, includes the name of the circulator and the address, right, contact information. This is available to law enforcers. And the court ruled then that it "renders less needful the State's provision for personal names on identification badges." [LB523]

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KENT BERNBECK: Exactly. Based on what the Supreme Court is saying, as I read it, I'm not a lawyer, is that the badge itself, by it having a name on it, it's offensive. But what they're saying is that the badge itself is not needed. The information is already there. It's redundant. That's what the Supreme Court is saying. They're saying that the name is offensive, but they're also saying the badge itself is redundant and not needed. [LB523]

SENATOR AVERY: But it...that still begs the question of how do you link up the behavior of the circulator to the petition itself, I mean if you don't have any way to connect that to law enforcement? [LB523]

KENT BERNBECK: Are we regulating behavior, Senator Avery? [LB523]

SENATOR AVERY: Well, you have to be able to enforce the law, right? [LB523]

KENT BERNBECK: Call the cop. Everybody has got a cell phone. I mean if the circulator is saying he saw somebody that's 14 years old circulating a petition, why didn't he just get on his cell phone and quietly call the cops and wait for the cops to show up and then approach the circulator? You know, I find it a little bit disingenuous that all of a sudden, you know, only the circulator can call the cops when they're being, you know, attacked or abused. You know, we call the cops when someone breaks the law. [LB523]

SENATOR AVERY: So if I'm in a supermarket parking lot and I'm in a hurry and I am abused by a circulator and I call the police, I'm going to be pinned down there waiting 30 minutes for the police to show up. I don't have time for that and I'm probably not going to do it. [LB523]

KENT BERNBECK: Then you probably weren't that offended. [LB523]

SENATOR AVERY: But if I had the ID number, I could jot that down real quick and I could report it later. [LB523]

KENT BERNBECK: You and every opponent has that ID number. And just like some of the senators on the committee said, I mean, how many complaints are blockers going to call in on a given circulator until it rises to the point where there's an investigation where those names then are public? I mean this bill is nothing more than a circulator registration bill. That's why at the very top of my testimony I called it a circulator registration bill. [LB523]

SENATOR AVERY: Yeah, I see it. Questions from the committee? Senator Janssen. [LB523]

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Government, Military and Veterans Affairs Committee  
March 09, 2011

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SENATOR JANSSEN: Thank you, Chairman Avery. Thanks for showing up. Do you think in this case and is it uncommon--you've circulated many petitions as we talked about before, you've talked about before anyway--is it uncommon for you to go to a group and say it's on taxation or whatever, say you go to the Tea Party and it's about taxation, you go there and I have these petitions. I have 20 petitions and you talk to like-minded individuals and they say, you know what? I want to send this petition out. I want to help. Have you seen that happen? [LB523]

KENT BERNBECK: I give them a handful. [LB523]

SENATOR JANSSEN: And then this... [LB523]

KENT BERNBECK: I mean literally as I was organizing petitions, they were mostly relied on volunteer circulators. I would literally give out as many as I could afford to print. [LB523]

SENATOR JANSSEN: So this would, in your opinion, and I think I'm asking what you're going to answer, it would definitely impede the whole process. [LB523]

KENT BERNBECK: Oh, without a doubt. It would kill a volunteer effort because that volunteer at that point doesn't know when he or she can then go circulate the petition. Did they violate a law at that point because they have their spouse sign it before they got their license plate? I mean, you know, we really got to look at this, I mean, because...I mean, just like many of the innocuous bills that come out this office, you know, we really do have to look at how it affects those group of people that everybody seems to be so fond of, the volunteers. And this bill tramples the volunteers. [LB523]

SENATOR JANSSEN: See that it gets kind of a...your opinion, is it targeted at maybe paid circulators from others? Those are always kind of the evil empire, if you will, you know, these paid circulators from another state trying to impose out-of-state ideas on us as opposed to a group of citizens that want to get a citizens' initiative that's truly a citizen's initiative? [LB523]

KENT BERNBECK: Well, a paid circulator doesn't want to put his or her will on you. The sponsor, the person putting up the money does. [LB523]

SENATOR JANSSEN: Right. [LB523]

KENT BERNBECK: That circulator is no different than Walt Radcliffe or Bill Mueller. And speaking of, when do they get their license plates? [LB523]

SENATOR JANSSEN: So we're almost...we're always worried about voter turnout. A lot of times with bills we put forward we're worried that, well, we're going to have lower

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voter turnout. In this case you would anticipate lower, I guess, petition signer turnout because fewer... [LB523]

KENT BERNBECK: What I see is, if I can continue, the decrease in the number of voices carrying my message and that is what Meyer v. Grant and also Buckley v. American Constitutional Law Foundation found unconstitutional. That's why I referred to this as akin to a voter registration bill is because it decreases the number of voices carrying my message. That is why some future court will find this unconstitutional just like they did in Bernbeck v. Moore, just like they will in Bernbeck v. Gale, Citizens v. Gale, I mean, you know, there's a long list. [LB523]

SENATOR JANSSEN: Okay, thank you. Thank you for the clarification. [LB523]

SENATOR AVERY: Any other questions from the committee? Thank you, Mr. Bernbeck. [LB523]

KENT BERNBECK: Thank you. [LB523]

SENATOR AVERY: Any more opponent testimony? Any neutral testimony? Senator Pahls, you're next in the queue. [LB523]

SENATOR PAHLS: Yeah. I'll make this very short. I know there appears to be issues on both sides on this. To me, this may, put it this way, may bring a level of professionalism into petition drives. That's all I have to say. Thank you. [LB523]

SENATOR AVERY: (Exhibit 3) Thank you. More questions? All right. Thank you, Senator Pahls. That ends the hearing on LB523 and the hearings...oh, I do have a letter to read into the record before I close this hearing, a letter of opposition from the ACLU from Amy Miller, the executive...no, Laurel Marsh, the executive director. That does end the hearing on LB523 and we will stay around for an Exec Session. [LB523]