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Government, Military and Veterans Affairs Committee
January 25, 2012

[LB736 LB759 LB878]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, January 25, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB759, LB736, and LB878. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Charlie Janssen; Russ Karpisek; Rich Pahls; Les Seiler; Kate Sullivan; and Norm Wallman. Senators absent: None.

SENATOR AVERY: Good afternoon, folks. Welcome to the Government, Military and Veterans Affairs Committee. My name is Bill Avery, Chair of the committee, and I represent District 28 here in central Lincoln. We have three bills that we will hear today. They are posted outside the door and we will hear them in the order that they are posted. Before we get started, let me introduce the members of the committee starting with my good friend Senator Rich Pahls over here on the end, from Millard; soon to join us will be Senator Les Seiler from Hastings, a new member of the Legislature and a new member of this committee; and soon also to join us will be Charlie Janssen from Fremont. Seated next to him is our Vice Chair, Senator Scott Price from Bellevue. To my immediate right is Christy Abraham, the legal counsel. And on time today, my good friend Russ Karpisek from Wilber. And seated next to him, soon to arrive, will be Kate...no, Kate, I believe, is going to be absent today. She had a...

SHERRY SHAFFER: She'll just be late today.

SENATOR AVERY: She's going to be late, okay. But she is from Cedar Rapids and she'll be joining us in a few moments. Senator Norm Wallman--down here to my left--from Cortland, and the committee clerk, Sherry Shaffer. We have some forms for you to fill out. If you plan to testify, we ask that you fill out this form, print the information clearly. And when you come to the table to testify, please state your name clearly and spell it for the record so that we can have accurate records and know who you are. If you do not wish to testify but you would like to be recorded for or against any of these bills, you can fill out this form. Both of these forms are available at the entrance to the room, each of those, both west and east. Introducers will be given an opportunity to make the initial statements, then we go to proponents, followed by opponents and neutral testimony. Closing remarks are reserved for introducing senators only. Please, if you have a device that makes noise--cell phones, pagers, computers, whatever--please put them on silent or turn them off. If you have a prepared statement that you would like for us to possess, you can give them to the clerk and she'll have them distributed by our page, Catherine Larsen, from Omaha. If you have material you'd like for us to see, supporting documents for your testimony, we'll need 12 copies. Anything you give us, we need 12 copies. If you don't have them, the page will get them for you. Okay. I will now turn the chair over to Vice Chair Price because I'm the first one up.

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SENATOR PRICE: Welcome to your committee, Senator Avery.

SENATOR AVERY: Thank you. Thank you, Senator Price. My name is Bill Avery, B-i-l-l A-v-e-r-y, representing District 28. I bring to you today LB759. It includes two provisions relating to petition circulators. The first provision removes the requirement that persons who circulate petitions in this state...and replaces it...it removes the requirement that persons who circulate petitions in this state be a resident of the state or an elector of the state and it replaces it with a requirement that the circulator should be...the circulator be 18 years old or older. The provision requiring circulators to be residents of the state, which is part of the definition of elector, was recently held to be unconstitutional. In 2011, there were two court cases that challenge the provision requiring circulators to be residents of the state of Nebraska. The court held in both cases that residency requirements for petition circulators are unconstitutional based upon First Amendment infringement. The court upheld the requirement that circulators be 18 years of age or older, and that requirement is included in the bill. In court cases, the state defended the residency requirements. The state argued it is difficult to prosecute circulators who have violated the law if they're not residents because they leave the state, cannot be found. The court held there were less restrictive alternatives to residency requirements to meet this goal, and we may not agree with that decision but, of course, the court ruling is controlling. The second provision of the bill is meant to meet that goal. LB759 requires the sponsor of principal...or principal circulator of a petition to provide each circulator with an identification that will contain a unique number specific to that petition circulator. The identification will not contain the name or other personal identification or information of the circulator. The sponsor of the principal circulator will maintain records of the name and address--this is a central file--with the name and address of each circulator, along with a number assigned to each circulator, so that it will be possible to identify the person not by name or any other personal information, but by taking that number and matching it with the central file. The sponsor will only make these records available for purposes of investigation upon the request of the Secretary of State or a request from the Attorney General or law enforcement. What this provision hopes to accomplish is to allow citizens who sign petitions to easily identify a circulator by their badge. You won't be able to identify them by name but you'll be able to match that against the central file. If a petition circulator is not following the law, a citizen will be able easily to identify the circulator by their badge number. If the circulator is abusive or in any other way engaging in misconduct, that can be reported to the sponsor of that petition. The badge requirements and the residency requirement are attempts to do similar things to prevent fraud in the petition process by assuring that petition circulators can be brought into the subpoena jurisdiction of Nebraska. And I would point out that the U.S. Supreme Court held in Buckley v. American Constitutional Law Foundation that a Colorado statute requiring initiative petition circulators to wear identification badges bearing the circulator's name violated the First Amendment, but the court expressed no opinion on the constitutionality of the additional requirements that the badge disclose whether the circulator is paid or volunteered, and if paid, by whom. So in other words, the U.S.

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Supreme Court left open the issue of numbered ID badges as a means of identifying the circulators and I think that this bill is, therefore, constitutional. You will, however, hear from the ACLU a contrary point of view. I have a letter that they provided me in advance of their testimony. I would also point out and congratulate my colleague, Senator Pahls, for introducing a similar bill to this in 2011 that is currently in this committee. This bill differs from his in that it takes into account the recent ruling about residency requirements. So with that, I will take any questions you might have. [LB759]

SENATOR PRICE: Thank you, Senator Avery. In reading the notes we have with us about the Buckley decision... [LB759]

SENATOR AVERY: Uh-huh. [LB759]

SENATOR PRICE: ...and the Supreme Court on leaving the, I guess for a lack of a better word, being silent on the badges, when I looked for specificity there I see that those badges did not identify people, they identified whether the person was a paid or unpaid, and nowhere in this snippet do we see that those badges also identified the circulator. Do you know whether those badges in the Buckley case identified in any way, shape, or form the individuals? [LB759]

SENATOR AVERY: I think they had names. [LB759]

SENATOR PRICE: Okay. Well, that would be... [LB759]

SENATOR AVERY: And so that was...that was... [LB759]

SENATOR PRICE: ...that would be important to get in the record because... [LB759]

SENATOR AVERY: Yeah, and that was ruled unconstitutional, but the court was silent on other information that was on the badge, which I think leaves open the question of whether or not we could put a number on it and let that be the identifier. [LB759]

SENATOR PRICE: So it's your position that the court wasn't...found the unconstitutionality being based on their names and not on a form of identification. [LB759]

SENATOR AVERY: I think the court was saying that you cannot identify the person with personal information that allows me, on the spot, to know who you are,... [LB759]

SENATOR PRICE: Okay. [LB759]

SENATOR AVERY: ...that that is a restriction of First Amendment speech rights. But if I can...if you can take it a step away and I can take a number that's on your badge, I can

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match that number later with a master file and if I have any complaints, legitimate or otherwise, I can file them with the sponsor or with the appropriate enforcement officers and they will be able to then follow the chain of identification to you and you could be held accountable for misconduct in the petition process. [LB759]

SENATOR PRICE: Right. I do remember that from the Pahls bill and the testimony we heard, the final point being there...I want to make sure I understand here. By the court being silent that means it's okay, or the court being silent means this is what we weren't listening to, so that wasn't the subject matter of the question before them, so they didn't answer to it? [LB759]

SENATOR AVERY: Good question. My understanding is that the courts will sometimes remain silent on an issue because it's not contested, it's not a part of the specific case before them. Sometimes the court will be silent because they don't see that the issue is particularly judicable... [LB759]

SENATOR PRICE: Right. [LB759]

SENATOR AVERY: ...or not in dispute, and I think that it's possible the court will sometimes be silent when they think that the issue is probably okay and, therefore, it does not require an opinion or a statement by the court. [LB759]

SENATOR PRICE: Great. Thank you very much. Are there any questions from...Senator Janssen. [LB759]

SENATOR JANSSEN: Thank you, Senator Avery. Who would pay for these IDs and who would distribute these IDs? [LB759]

SENATOR AVERY: The sponsors of the petition drives. [LB759]

SENATOR JANSSEN: The sponsors. [LB759]

SENATOR AVERY: Yeah. [LB759]

SENATOR JANSSEN: The sponsors would issue? [LB759]

SENATOR AVERY: They would have to provide their circulators with a badge and they have to maintain the files. [LB759]

SENATOR JANSSEN: And who would that be bounced off of then? So if you sign the petition then and... [LB759]

SENATOR AVERY: Well, I've never organized a petition drive. We have people here

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who have a lot of experience in it and I'm sure they didn't come here just to listen to us. But I think they have things to say but...and that might be a good question to ask them. But I believe the way it would work is that if I were organizing a petition drive, I will go out and recruit petition circulators and then it would be my obligation to provide them with an identification badge with a number on it, and that I would have to match against a central file where the number matched the person, and you'd be able to hold them accountable if they were in fact suspected of or engaging in some kind of misconduct. The person that is being asked to sign the petition could say: I see that you're wearing badge number 23. And then they could then contact law enforcement or even try to contact perhaps the sponsor of the petition, say who is badge number 23. And if you've got a legitimate complaint, then the law enforcement would have some means of actually holding people accountable. And if you don't have that, you don't have badges, you don't have identification numbers, you can't match it against an individual, you don't have any real way to hold people accountable. [LB759]

SENATOR JANSSEN: Do you know what it costs if I wanted to run a petition drive? Does it cost money for me to actually get those petitions? I mean I know it could cost money... [LB759]

SENATOR AVERY: Yeah. [LB759]

SENATOR JANSSEN: ...to get your name out there and whatnot, but on the base... [LB759]

SENATOR AVERY: You mean printing up the actual petition papers and...? [LB759]

SENATOR JANSSEN: And I don't know this, I'm asking, and maybe somebody behind you knows if you don't, but if I want to...take gambling--I think that was one that people did a petition drive for. Would they have to pay to get those petitions? Do they have to pay the state? [LB759]

SENATOR AVERY: Yeah, there is a cost involved. You have to have multiple copies of the petition forms and you have to have the petition language clearly identified at the top and you have to read it to them. There are all kinds of rules that are I think mostly very valid rules to maintain the integrity of the process. [LB759]

SENATOR JANSSEN: So my... [LB759]

SENATOR AVERY: And I want to say here that I have no interest in trying to end the petition process in this state. I have no interest in restricting it. I have an interest in making sure that the integrity of the process is protected. [LB759]

SENATOR JANSSEN: I...we do share that. We have different means of sharing that...

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[LB759]

SENATOR AVERY: Yeah. [LB759]

SENATOR JANSSEN: ...but we both do agree to that. I'm just...I am curious though if there is actually...if I'm a very low income or can't afford it and I want to exercise my right as a citizen to go out and run a petition drive, do I have to pay money or will the state or the local subdivision give me enough ballots that I need to get signed that have the language on them? Would they pay for that for me? [LB759]

SENATOR AVERY: I don't think so, but you might want to ask Mr. Bernbeck, who is here and he does know. [LB759]

SENATOR JANSSEN: Yeah. I figured he'll probably address that when he gets up here. [LB759]

SENATOR AVERY: Yeah, I'm not sure about that. [LB759]

SENATOR JANSSEN: All right, thank you. [LB759]

SENATOR PRICE: Are there other questions? Senator Karpisek. [LB759]

SENATOR KARPISEK: Thank you, Senator Price. Senator Avery, would the badge say anything about who they're...who they're with or who they're...what they're trying to do, for say casino gambling? I'm just wondering. Or would it have to be turned in to the Secretary of State prior? Because if you have 10 different groups trying to get on the ballot and they all start with number 1, you could have 10 number 10s? [LB759]

SENATOR AVERY: I would think that you'd want to have on the badge the petition, particularly if you have multiple petitions going. This is casino petition number whatever, because they always are given numbers or names, and then you'd have circulator number 43. [LB759]

SENATOR KARPISEK: Because I can just see if you don't... [LB759]

SENATOR AVERY: Yeah. [LB759]

SENATOR KARPISEK: ...then, well, that wasn't my number 10,... [LB759]

SENATOR AVERY: Then it would be worthless. [LB759]

SENATOR KARPISEK: ...it was the other guy's number 10. [LB759]

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SENATOR AVERY: Yeah. [LB759]

SENATOR KARPISEK: All right. Thank you, Senator Avery. Thank you, Senator Price. [LB759]

SENATOR PRICE: And to follow up on that line of thought...so I was reading through the bill, I didn't see where there is a remedy or some type of action when they switch badges. I mean I remember even in the military at times people switched their nametags even by accident, then they run out of door or something, people switching shifts. So what would happen, how do you foresee the integrity of that badge being met when...if they switch badges amongst each other? [LB759]

SENATOR AVERY: Well, that would be something that would have to be sorted out by law enforcement. I mean if someone had your number and you had somebody else's number and that somebody else was turned in for a violation of the law, they'd come looking for you. [LB759]

SENATOR PRICE: Right, but we don't have to prescribe anything in this. [LB759]

SENATOR AVERY: To deal with that? No, it would...that would be... [LB759]

SENATOR PRICE: Like we would do if you got the wrong ID for a minor to get into a bar. [LB759]

SENATOR AVERY: ...that would be a law enforcement problem. They'd have to figure that out. [LB759]

SENATOR PRICE: Okay. And then finally and real quick is do you...so we have a petition going on and the badges have been issued and then more people want to volunteer to help out a petition drive. You know, it gets closer to the vote so you pick up steam or whatever. Do you foresee that this could have an impact on the immediacy of exercising political free speech? In other words, I have to wait, I have to file for this badge, I have to wait for it to get printed up before I can go out, so now I don't have the immediacy. We've talked about that. [LB759]

SENATOR AVERY: A well-organized petition drive would have a basketful of numbered badges, appropriately labeled, and if they run out they'd make sure they get more prepared. And I suspect that a well-organized drive would probably have a number in excess of what they would actually need. [LB759]

SENATOR PRICE: But I mean in a statewide, so if my basket is in Lincoln and I'm picking someone in Scottsbluff or Nebraska City or South Sioux City--I'm not trying to be cantankerous--I just want to understand about the impact to the immediacy of exercising

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your political free speech. I can't get to the bucket to get the badge but I want to help. I can't...I'm breaking the law if I'm not wearing a badge. I can't get the badge. [LB759]

SENATOR AVERY: Well, I think what you would do is you'd have sequence 1 through 45 would be in Scottsbluff and sequence 46 through 82... [LB759]

SENATOR PRICE: So you'd prestage them. [LB759]

SENATOR AVERY: Yeah, that's what would make sense. [LB759]

SENATOR PRICE: Okay. [LB759]

SENATOR AVERY: I mean people who do petition drives are usually pretty well organized, especially the successful ones, and they're not likely to be tripped up by something like that. [LB759]

SENATOR PRICE: Okay. Thank you so much. Any...Senator Janssen. [LB759]

SENATOR JANSSEN: Thank you. Senator Avery, that brought up another point talking about you should know...basically, if you have a grievance you should know who it is, so they should wear a number or a badge or an ID badge. Similarly though, if I go to vote, shouldn't the poll worker have an ID on them or something in case they want to...they do something improper or whatnot? Shouldn't we, if we're going to require the ballot people to do this, certainly if we're going to have somebody go to the polls, they should have to...talking about a poll worker here, they should have something that says Bill Avery or I'm number 15 poll worker. Is that something maybe we could amend into the bill? [LB759]

SENATOR AVERY: I don't know that we have...if poll workers actually have any discretionary authority to interpret law. I mean all they do is process voter records, I think, and make sure that you get the sticker if you want it, make sure you sign in, make sure that your signature matches with your address and that kind of thing. I've never... [LB759]

SENATOR JANSSEN: Sounds real similar to...sounds almost identical to the petition drive. I mean they have to verify that these, you know, that Bill Avery from 123... [LB759]

SENATOR AVERY: Yeah. Well, it... [LB759]

SENATOR JANSSEN: And I think that's a pretty big duty. [LB759]

SENATOR AVERY: My experience and your...probably your experience, too, is that the

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same people have been at my polling place for the past 25 years. [LB759]

SENATOR JANSSEN: I get that argument. [LB759]

SENATOR AVERY: I know them. They know me. I can't imagine a circumstance where they would be breaking the law. [LB759]

SENATOR JANSSEN: I can't imagine a circumstance where every poll worker in Omaha knows every person that shows up either, so that's... [LB759]

SENATOR AVERY: Well, maybe not. [LB759]

SENATOR JANSSEN: ...your...that's a little bit of a unique system for a senator from a district to show up, that's been at the same place than somebody new that moved into your district, which happens quite often in this district. So maybe I'm a student and I live in this area and I show up and all of a sudden I'm getting some guff from one of the poll workers and I have no idea who that poll worker is and they could have switched out through the day so... [LB759]

SENATOR AVERY: More often what you're going to find in circumstances like that is somebody campaigning too close to the polling place, putting yard signs up too close and violating the law like that. That wouldn't involve the poll worker. That would involve campaigns and the people who conduct that activity. But you wouldn't want to put an ID badge on them, would you? [LB759]

SENATOR JANSSEN: Well, as a public policy, if it's good public policy to put it on the person with the petition, I think it's good public policy to also have that poll worker have it so that...I want to know. If they're rude to me or if they deny me a ballot, deny me my right to vote for some particular reason, I'd like to know that voter number 123--or poll worker--didn't let me do this. Or if I was campaigning far enough away and some poll worker came up to me, I'd like to know who it is. I think... [LB759]

SENATOR AVERY: I haven't even thought about that. We can discuss it in Exec Session if you want to. But that's a whole different issue from the other ID issue that you are interested in, right? [LB759]

SENATOR JANSSEN: Well, I think if identification is good for...I mean we're making it tougher to get petitions on, which Nebraska is already extremely tough. It's one of the toughest states to get a petition drive and we're trying to put more barriers and I think we're blocking people from their constitutional rights and I think we're... [LB759]

SENATOR AVERY: You may remember--I don't know if you were here, maybe you weren't yet--but my first year in the Legislature I tried to loosen up the number of

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signatures that were needed to change a law or to put a law on the books, lower that, but I...and I tried to increase and make more difficult the amending of the constitution. I think that we amend our constitution too easily and oftentimes it's willy-nilly, constitutional amendments coming here and there. And I wanted to...the constitution is a pretty special thing and I wanted to restrict that but loosen it up at the bottom end for laws and things of that sort. Didn't pass. [LB759]

SENATOR JANSSEN: Well, I don't...maybe that was even our first year. [LB759]

SENATOR PRICE: We were here. It was. [LB759]

SENATOR JANSSEN: Yeah, I think that was our class's first year here so I do recall that. I recall though, and when Mr. Bernbeck gets up... [LB759]

SENATOR AVERY: Well, maybe I made that foolish attempt more than once, see? [LB759]

SENATOR JANSSEN: Well, I think the constitution is already pretty...it's a pretty high level. I'm not certain if we don't have the...I think it's 7 percent, and somebody will come behind us, but 7 percent of all the registered voters, not just the voters that showed up. But I'm sure there will be clarification. I think it's already pretty high and I think that's what probably scuttled that. [LB759]

SENATOR AVERY: It is pretty high, but I wanted it to be higher because I thought that there were too many constitutional amendments being put out there and that the constitution is...it's a sacred document that ought not to be so easily amended and... [LB759]

SENATOR JANSSEN: How many even passed, do you recall, that were out there? [LB759]

SENATOR AVERY: Oh, I had those numbers at one time but don't have them at my fingertips. [LB759]

SENATOR JANSSEN: I don't think it's substantial. I don't think it changes a whole lot. Thank you. We'll talk plenty about this aside. [LB759]

SENATOR AVERY: Yeah. Sure. [LB759]

SENATOR PRICE: Any further questions? Seeing none,... [LB759]

SENATOR AVERY: Before I... [LB759]

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SENATOR PRICE: Oh yes, sir. [LB759]

SENATOR AVERY: ...and I just want to thank Senator Pahls because we talked with him before we introduced this bill to make sure he was okay with it, since he had a similar bill still in committee, and I presume that means he's going to support this. Thank you. [LB759]

SENATOR PRICE: Thank you. We'll move now to proponents for the bill. And while you're coming up, I'm going to read into the record a letter from ACLU Nebraska in opposition to LB759. (Exhibit 1) Welcome, Mr. Erickson. [LB759]

NEAL ERICKSON: Thank you, Senator Price, members of the committee. For the record, my name is Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n, here on behalf of Secretary of State John Gale, in support of LB759. I think I'd like to thank Senator Avery and also Senator Pahls for introducing portions of this. I think Senator Avery has done a very good job in summarizing legislation. You've been through some before. There are some things in there that I think might answer some of these questions that you have raised so far. I think the first question that, Senator Price, you raised was regarding the opinion, what it said, why it wasn't addressed. Here's a quote, and I can provide a copy of this decision. "The injury to speech is heightened for the petition circulator because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest." Then it goes on, "For this very reason, the name badge requirement does not qualify for inclusion among (the) 'more limited election process identification requirements.'" So in the Buckley v. American Con. law decision, they specifically focused on the name aspect of the badge. The paid or nonpaid was also on the badge; it was not raised as an issue in the court case so it was not addressed at that time. Senator Karpisek asked about duplicate signatures and this was something that was raised by the opposition last year--and kind of indirectly--where they were talking about language in the bill, and it's on the last page of the bill, "other information as determined by the Secretary of State." What we envisioned was assigning each sponsor a prefix, whether it be just a numeric or alpha prefix or something else, and that enables to not only identify who has that record but it also allows circulators to carry multiple petitions. They only have to have one badge. As long as we have some record, we know who to go to and say this person has been doing something, whether it be criminal, whether it be in bad taste, whatever; just inform the sponsor, one of your circulators may not be doing their job appropriately, offending people, etcetera. The court in American Con. law talked about, well, we have the affidavit on there so we can always find out after the fact, and that's true if you sign the petition. You can say: I signed this petition and the circulator who took it did something wrong. We can locate that petition on that. But what we also have problems with is circulators who are dealing with people that don't sign the petition, and if they're not signing the petition, they're not going to be able to identify who that circulator was. They have no...unless they're able to take a look at it, maybe memorize a couple names on it,

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we might be able to track it that way. But we've had a number of situations where we've heard complaints about circulators following people in the parking lot after they refused to sign a petition, berating them, etcetera, and we have no way of addressing that whatsoever. There's just no way to identify them. In some situations, it could theoretically rise to a criminal act. You know, if they would go after screaming and yelling at them, put them in fear, technically that's assault. But without any kind of identification, it becomes very difficult to track down. One case that I think got a lot of attention was back in 2006 with the so-called "Wheel of Fortune," where at...if I remember correctly, it was outside the College World Series they were allegedly...if you signed the petition, you got to spin the wheel and you got a prize. We received affidavits from people saying, yes, we identified this person, but the description was, you know, male, Caucasian, average height, average build, 30 to 45. And State Patrol did look into that but had no way of identifying who that person was. So even with somebody who didn't want to sign a petition, the badge provides a level of identity at least that can be tracked down if necessary. Or, if it's just something that may not rise to a criminal level, the sponsor can be informed that that person who is working for them and carrying their petition is maybe not behaving as they would like to see them so. Senator Janssen, I think you asked about poll workers. I think there's a distinction here with that. With poll workers, you're talking about five people, and their names and addresses are recorded in the election commissioner's office. So if you had a complaint against a poll worker, it's much easier to identify 1 of those 5 people than it would be, say, in a petition circulator situation where you're talking hundreds or even 1,000 people that might be circulating that petition. So now actually, surprisingly, the names and addresses of poll workers are not public record until after the election. So you couldn't call up and ask, you know, who that poll worker was, but you could file a complaint against them and they could figure that out because it's only one of five. My red light is on, but if you... [LB759]

SENATOR PRICE: Well, thank you, Mr. Erickson. And because you were answering a question, that was a good way to go. Are there questions from the committee? Senator Karpisek. [LB759]

SENATOR KARPISEK: Thank you, Senator Price. Thank you, Mr. Erickson. What about the blockers, because I know that's going to come up? Do the blockers need to have identification too? Now I know that's harder if I just decide one day I want to go out and block, but if it's an organized blocker. [LB759]

NEAL ERICKSON: An organized effort, right. This bill certainly doesn't address that and, to be honest with you, we don't have any real way to regulate them at this point. The initiative and referendum process is something, you know, when people ask about petitions, I try and explain to them there's two kinds of petitions. Well, we have a right to petition our government. Well, that right to petition can take a variety of forms. It can be just a list of names and addresses. It could be a letter, could be a phone call. But there's a certain category of petitioning your government that we give legal effect to and the

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initiative and referendum process is one of those. And because it is something that if certain things happen--you collect enough signatures, the language is appropriate, etcetera--something happens, it goes on the ballot. Other types of petitions aren't binding like that. So there are some regulations that go on with the petition process because it is a legal process. Now, the blockers are something that's relatively new. We really haven't seen them in great numbers since 2006 or up until 2006. And we did have problems with the interaction between the circulators and the blockers, and Secretary Gale basically put out something: Look, you know, let's start acting civilly to each other. This is not a case maybe necessarily where you have to have rules that say you have to be 10 feet away from each other. On the other hand, if that kind of activity continues, that may be something we have to say. But I think the blockers are still a little bit new but there may be something down the road, whether it's requiring--if it's an organized effort--requiring them to file with Accountability and Disclosure if they're expending funds, and maybe something, some kind of badge may be appropriate at that point as well. [LB759]

SENATOR KARPISEK: Very good. Thank you, Mr. Erickson. Thank you, Senator Price. [LB759]

SENATOR PRICE: Are there other questions? Senator Pahls. [LB759]

SENATOR PAHLS: Yeah. Okay, let's say that I happen to be the person with the petition, and you're the blocker and you are harassing me. I mean by my taking a...most of us have cell phones that take pictures. Would that be of any value or is that just... [LB759]

NEAL ERICKSON: Oh, I think it certainly would be of value, particularly in a situation if it was a criminal act because that does give law enforcement something to at least hang their hat on. Now I'm not saying they're going to be successful in all circumstances. It may...it would be, oh, a bit of evidence that I think would be helpful. I don't think it would be determinative by itself. You know, attaching a name to a face sometimes is a little bit difficult, particularly if the blocker or a circulator were not residents. You know, there's not going to be a DMV photo, for example, or something they could match it against. [LB759]

SENATOR PAHLS: Thank you. [LB759]

SENATOR PRICE: Thank you. A quick follow-up from a question I had asked Senator Avery and that would be...and you'd already mentioned earlier on that there could be hundreds or thousands of circulators. [LB759]

NEAL ERICKSON: Certainly. [LB759]

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SENATOR PRICE: Okay. What about the immediacy of my ability to exercise my free speech? [LB759]

NEAL ERICKSON: Oh. Well, in terms of a circulator, the circulator has to get the petition from someplace. Now the way the process works is we provide a copy--and this will go also to the cost aspect of it--we provide a camera-ready copy. We actually now also provide it digitally because a lot of printers use it that way. And the sponsor is responsible for making the petitions from there. Now, how they choose to distribute them is kind of their business. This I think would put a little bit of a burden on them in terms of, yeah, they're going to have to take a...have a little bit more control over who they're issuing these to and who their circulators are, and I'm not sure that's inappropriate. They're the ones who are the chief sponsors of this petition and if the people that are acting as their agents in gathering these signatures are acting inappropriately, they should at least have some ability to say, you know, knock it off, we don't want to you doing this, you're hurting our cause, whatever. And so in terms of the immediacy, at the time they get the petitions, they can get the badge at the same time. [LB759]

SENATOR PRICE: Great. And then finally, because I know I've signed these sheets before and read the statements and talked to the people but I can't remember, does the petition sheet that I sign actually have a unique numerical or alphanumeric identifier? [LB759]

NEAL ERICKSON: At the time of circulation, no. Once again, these are printed by...well, I should correct that. I have seen some sponsors that do put a number on there for their internal processes because they will photocopy and keep records of them, etcetera. We don't attach an official number to them until they're actually submitted, and then we do put a number on them and that is in order to track how many signatures were valid, how many were invalid. If you ever have signatures in question, you know exactly it's on petition, you know, 12107, line 14, so... [LB759]

SENATOR PRICE: Great, because I didn't know if that's the way to approach it, but I appreciate... [LB759]

NEAL ERICKSON: Yeah, there's--in the upper right-hand corner--a little box that says for Secretary of State only. That's where we put our number. I have seen sponsors that attach numbers in other places and we don't have a problem with that as long as they stay out of our box. [LB759]

SENATOR PRICE: I believe Senator Pahls has a question for you. [LB759]

SENATOR PAHLS: I have one more question, maybe just for curiosity. Are you familiar with how Wisconsin or Ohio run theirs? Because apparently they've had two very

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successful petition drives dealing with some major issues, like recall. I mean, are you familiar how they operate? [LB759]

NEAL ERICKSON: Uh-huh, yeah. Yeah, Wisconsin right now is going...they've gone through a number of recalls on some state senators. They have the ability to recall state senators. In addition, they have the ability to recall the governor and they just recently had signatures submitted for that. Theirs, they do not have initiative and referendum, however, and so they're fighting a few battles right now over how they verify, things like that. I'll be honest with you, some of the questions that are raised, we've dealt with before, you know, as...on terms of how you verify, how do you treat the "Mickey Mouse" names and things like that. So actually in Wisconsin I'd probably call a little bit newer process just simply because it hasn't happened that often, whereas here it's a little more regular. [LB759]

SENATOR PAHLS: Okay. Thank you. [LB759]

SENATOR PRICE: Senator Janssen has a question. [LB759]

SENATOR JANSSEN: Thank you. Thanks for showing up, Deputy Erickson. The cost...thank you for answering my question. The cost of petition you said that you would give to, if I came in or whatever, you would give it to me. Would you have to give me if I needed 100 copies of that? [LB759]

NEAL ERICKSON: No, they are responsible to print them themselves. Typically, a petition will be, oh, between 10,000 and 15,000 pages for, say, a constitutional amendment, so there are going to be some costs. There are going to be postage costs, even in terms of filing it, there's going to be travel costs down to file it with us or postage costs to mail it to us, and things like that. There will be some costs. It cannot be done for free,... [LB759]

SENATOR JANSSEN: Okay. [LB759]

NEAL ERICKSON: ...it just simply can't. [LB759]

SENATOR JANSSEN: Did I hear you say, though, then that you would...would you...your office then issue these ID cards? [LB759]

NEAL ERICKSON: No. The way we envision is having the sponsor do it. We're not having...the state or government is not going to maintain these files at all. We're just saying, sponsors, you take care of your own people. Now, should there be a problem, you know, we can contact you, and you can deal--if it's not criminal--you can deal with it as you see fit. But if it is criminal, we also put the ability for law enforcement to request those records and obtain them. [LB759]

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SENATOR JANSSEN: That's...one thing you said kind of drew my interest. You had made mention that the Wheel of Fortune game, somebody was...somebody was harassing or whatnot and the police, I think you said, didn't follow up because they had no idea who it was. [LB759]

NEAL ERICKSON: Yeah. [LB759]

SENATOR JANSSEN: Are you insinuating then that police don't follow up unless people have an ID on them to follow? Because I've been harassed at a carnival before. I've been harassed at... [LB759]

NEAL ERICKSON: Right. Right. [LB759]

SENATOR JANSSEN: People that aren't, I mean, really employees, are selling beads or whatever at the College World Series. [LB759]

NEAL ERICKSON: Right. In the Wheel of Fortune situation, was a case by the time the law enforcement arrived, and I believe it was the State Patrol, I don't even know if the Wheel of Fortune was even present then, but certainly the person that was conducting it was not present and the person the complaint had been filed against was not present at that point in time. [LB759]

SENATOR JANSSEN: Which could be the same thing to the person at a carnival or the person... [LB759]

NEAL ERICKSON: Sure, sure. [LB759]

SENATOR JANSSEN: So really that's a law enforcement issue that really is not...I mean, so you're saying if you put an ID on everybody it would be easier for law enforcement to do their job. [LB759]

NEAL ERICKSON: That's true. [LB759]

SENATOR JANSSEN: Okay. [LB759]

NEAL ERICKSON: That is true. [LB759]

SENATOR PRICE: I apologize. I do have one question. These things keep coming up and popping up to the surface. Would these records being kept by the circulator, because it's a public purpose, be considered public records? [LB759]

NEAL ERICKSON: No, I mean it's a private entity. The sponsor is a private entity. They

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have no obligation to provide information they...unless required by law, that they hold. [LB759]

SENATOR PRICE: So there would be no way that someone could do a freedom of information request on a successful petition to see who worked it? [LB759]

NEAL ERICKSON: Oh, no. And that is specifically why this proposal at least suggested keeping that with the sponsor, because if we were to do it I think, number one, it would raise some constitutional issues. But second of all, it may be subject to a Freedom of Information Act request. [LB759]

SENATOR PRICE: Thank you. Thank you for clarifying. If there's no other questions, thank you very much, Mr. Erickson. [LB759]

NEAL ERICKSON: Thank you. [LB759]

SENATOR PRICE: Are there any other proponents on LB759? Proponents? Seeing none, opponents? Are there any opponents to LB759? Welcome, Mr. Bernbeck. [LB759]

KENT BERNBECK: Thank you. Members of the committee, thank you very much. My name is Kent Bernbeck, K-e-n-t B-e-r-n-b-e-c-k, and I do appreciate the opportunity to testify on this, although I did kind of think it was *deja vu*, because I thought we did this last year and so, therefore, I'm probably sending my testimony from last year, if that's all right. You know, I guess I'm trying to think where to start with this. Maybe one of the first questions is...I see this bill doesn't have a penalty provision. And I can't ask a question, which I know that, but if...when a person doesn't abide by the law, what happens? Are those signatures invalidated? Are they...I mean what happens? I mean is this just one of them things that we throw out there to hope everybody follows it? And if they don't, we kind of shrug our shoulders like, well, I guess that group didn't do it. And the reason I say that is because there's a petition going on right now--not the one I filed this morning--but a lady from Burwell is trying to lower the signature threshold and she's an admirable lady for what she's doing. Her mode of petition distribution is what we call the Johnny Appleseed approach where any time anybody shows any interest in the topic at all, she will give a petition to them and say please get your husband, your wife, your neighbor, whatever. And...but what she does, she gives them four or five in the hopes that when she gives them to somebody, they may give them to two or three people, and then maybe a couple of those people will call back in for more. So if we had a law that would stop that practice or intimidate that practice because of laws passed and you don't follow the law, you obviously think that you're breaking the law, so you're intimidated into following this practice. And it will slow down the distribution of petitions, which ultimately...all these court decisions that are ever decided by the U.S. Supreme Court and the district courts leading up to that, does it reduce the size...or does it

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reduce the number of voices I have to carry my message? And I would claim that this would do that. In fact, I very much thought about not even testifying today, just kind of maybe let this bill go to give me something to do next year, like I really need to do that. I do want to bring up...I made some notes, but you all remember the discussion on requiring...the law requiring circulators to be residents of the state and then the ban on payment per signature. Well, you know, they're kind of tied but they're kind of not. One was found unconstitutional; one still is on the books. And I can't ask this question but I'll put it out there rhetorically: Do you know how much that costs the taxpayers to challenge that law? The ACLU charged \$200...unless I got my numbers wrong, \$295,000 for their services. My attorney, Mr. Domina, very modestly charged \$45,000. Ultimately, I think the ACLU negotiated down to \$250,000 for their services. Now, this isn't...so we got almost \$300,000 that the state will pay out to these attorneys because a senator, whether it be Senator Avery or Senator Schimek, said I believe it's constitutional. That was a \$300,000 statement she made. Now, the taxpayers don't know this yet but they will. I mean, not that they're going to rise up or anything over that, but I hope you guys know that--\$300,000 for that discussion we had a couple years ago. That's embarrassing in the tight times we're all in. You know, so you know, like I said, I thought about not even testifying, just kind of let this one go and then instead of me hiring Mr. Domina, next time I'll go to the ACLU and hire them just so it costs the state that much more money, just to make the point. Now I'm done. I mean you guys kind of knew what I was going to say anyway, but if you had any specific questions about petition, I mean I'm wide open to that. [LB759]

SENATOR PRICE: Thank you, Mr. Bernbeck. Are there questions? I will just have one that you touched on then. You're saying that there would be a burden of cost to the Appleseed type of person, so not...we know there's a cost inherent with running a petition but that this might be an impediment to buying an identification card that's prescribed by law. [LB759]

KENT BERNBECK: Just to give you kind of an example similar to that, the red lettering that was required--and I think Mr. Erickson pushed that a number of years back--it was required on all printing of all petitions. You can't just do it black and white for the minimum cost. You have to add a color. Well, anybody who's ever done large-scale printing, in the case of this many petitions to make the ballot, it's about \$1,000 for the red color as opposed to black and white, \$1,000 for that one thing. I don't think that lady in Burwell can afford it. I don't have one of her petitions, but she stamps hers manually; thousands of petitions she stamps because you guys--not each of you--collectively made her do that. And it's not that big of an issue to challenge in federal court, so it remains on the books. Now, whether or not that...I mean, that's just not that big of an issue, but it's the cost thing. So these badges, what's being required is that if I were to choose to follow the law, since there's no penalty provision, I would have to literally slow everything down, make sure that each and every person got one, had to report back. If they didn't report back, I'm not going to send them a pack and send them a badge. How

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do I know? Do you realize that when I get my petition back here in 7 or 10 days, because I have to wait, I will be doing at least the first of a 10,000-piece mailing with two petitions in it each and circulator instructions? I'll be playing Johnny Appleseed on a very large scale. So, you know, pass this bill if you want. It gives me something to do next year. [LB759]

SENATOR PRICE: Thank you. Any other questions? Senator Janssen. [LB759]

SENATOR JANSSEN: Yeah. Thank you, Mr. Bernbeck. I actually meant to ask this to Deputy Director Erickson but I'll throw it out to you. Do you know the actual number of precedent to...for petition signers to get a constitutional amendment put on? Is it...I was thrown out a number of 7 percent and I don't know if that's... [LB759]

KENT BERNBECK: It's 10 percent. It takes 10 percent of the total number of registered voters. And to give you a little bit of an example--I know that's kind of getting off the subject a little bit, but you asked--that's 10 percent of registered voters, which is about...there's like 1.13 million people are registered voters, so that translates to 113,000 valid signatures, not counting all the ones who said they were registered or not. Under the old terminology of votes cast for governor, percentage of...at 10 percent, it would have been 48,000 this year. Now, that is kind of low. Usually, it's about 60,000. Heineman won with a big landslide, so fewer people actually cast a vote for him. Usually it's around...it used to be around 60,000. And if you guys will notice, and I know Frank Daley...I don't know if the Secretary of State's Office will vouch for this. There have been a drought of petitions in the last 18 years since this Supreme Court decision, a drought. I mean we can all think of a couple. I think the tax lid made it because there was a wealthy antitax guy in the state, Ward Connerly put his issue of affirmative action on the ballot, but Lord knows Ward can afford it. I mean there's a couple others. I mean I think the teachers actually...or not the teachers but rural school teachers actually got enough signatures but then the Legislature came back and undid that, so there's been a drought of petitions. And you know I guess maybe that's...might be a good thing for many of you. You know, there are some in this building, I should say that, that would think that, but that's not the way it was supposed to be. [LB759]

SENATOR JANSSEN: Do you know how that stacks up with other states? [LB759]

KENT BERNBECK: Oh, without a doubt, we are the toughest state when it comes to signatures in relation to population. Without a doubt, we're over the top. I've had recent meetings with very large petition company owners in California and they all just kind of shake their head at us here in Nebraska. They're like, man, you guys got it tough; you guys got the ban on pay per signature, which is, you know, anyway. So yeah, it's a tough gig in Nebraska to do a petition. [LB759]

SENATOR JANSSEN: Thank you. [LB759]

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SENATOR PRICE: Senator Karpisek. [LB759]

SENATOR KARPISEK: Thank you, Senator Price. Mr. Bernbeck. [LB759]

KENT BERNBECK: Good seeing you. [LB759]

SENATOR KARPISEK: Good to see you. Do all states have a petition process? [LB759]

KENT BERNBECK: Twenty-six have the right to initiative referendum, and I might be wrong by one or two on that. There are some states, like Wisconsin we talked about, that can do recall only, whereas in Nebraska we can't do recall for senators and the Governor. But for the initiative and referendum or parts thereof, there's 26 states. [LB759]

SENATOR KARPISEK: So we're the toughest out of them. [LB759]

KENT BERNBECK: Oh, without a doubt, yeah. [LB759]

SENATOR KARPISEK: Okay, but not as tough as the ones who won't even let them. [LB759]

KENT BERNBECK: Well, I mean you can still petition in these other states, like for candidacy, third party, things like that, and some of those states have some tough rules, too. But none have the combination of high signature threshold--which is just a killer for any grass roots, which is kind of what this was all supposed to be about--and then to the other restrictions, like the ban on paper signature and some of the other things we've mentioned, yeah, it's tough. [LB759]

SENATOR KARPISEK: And then you talked about you're sending out the 10,000... [LB759]

KENT BERNBECK: At least. That will be the first of many. [LB759]

SENATOR KARPISEK: ...pieces. And you said that there's instructions for collectors. [LB759]

KENT BERNBECK: Yeah. [LB759]

SENATOR KARPISEK: When you talked about the lady that gives it to somebody, they may give it to somebody,... [LB759]

KENT BERNBECK: Sure. [LB759]

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SENATOR KARPISEK: ...how do you make sure that they do it right, that they read?
[LB759]

KENT BERNBECK: There's instructions on it. I mean you can go to the Secretary of State's Web site. I mean you know this is supposed to be the people thing and that's not necessarily...and people make mistakes. This is kind of funny. I was actually circulating...this lady from Burwell, I was circulating her petition up in my office and there's three gals there and as I was talking...but I was in their presence, just yapping on and so they all signed it. And the first one signed; where it comes to the part where it says city or town, she wrote city. Well, sure enough, the next two ladies--and they're all bright--they signed city after that, so it invalidated all three of them. So I need 113,003 now. (Laugh) So that's why I'm saying it's incredibly tough, and the things that you guys have thrown at us--and I don't mean individually--is tough. [LB759]

SENATOR KARPISEK: And I think that you hit it right on the head for me anyway. The grass-roots people really have a hard time, and it's these big money guys that come in that have soured myself anyway. [LB759]

KENT BERNBECK: Well, your opinion...I mean, I'll give you that. [LB759]

SENATOR KARPISEK: Yeah. Yeah, and I do agree that that's where...that it's tough for the grass-roots people. You know, I was involved a little bit in the State Fair move and the small schools issue and I know that both of these were very tough because of what was put in, because of some of the things that have happened into other ones, so.
[LB759]

KENT BERNBECK: Well, I appreciate that understanding. I do. [LB759]

SENATOR KARPISEK: Thank you, Mr. Bernbeck. Thank you, Senator Price. [LB759]

SENATOR PRICE: Thank you, Senator. Are there any other questions? Seeing none, thank you, Mr. Bernbeck, for testifying. [LB759]

KENT BERNBECK: Thank you. [LB759]

SENATOR PRICE: Are there any other opponents to LB759? Opponents? I see someone standing but not opponent. All right. Seeing no other opponents, would anybody like to testify in the neutral? Seeing none, Senator Avery, would you like to close? [LB759]

SENATOR AVERY: Just wanted to address a few things that Mr. Bernbeck mentioned. He did correctly point out there are no penalties in this specific legislation. But if a

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petition drive has other violations, the judge could take into account this violation...if these violations occurred, could take that into account in the total consideration of evidence in the case. If the committee wants to make this a misdemeanor, we can discuss that later. Also, with respect to red lettering, the courts actually have upheld that as meeting a constitutional standard, so that was an incorrect statement. Also relating...with respect to the statement that there has been a drought in petitions because we have the toughest laws in the land, that's...we might have tough laws--I think they are fair laws--but it has not had a depressive effect on petitions. We've had term limit petitions, we've had defense of marriage petitions, we've had casino petitions, we had a spending lid petition going back to about 2000. That seems to me to be anything but a drought. And a lot of those have been successful. Also, the comment about a person who puts city instead of township or something, those petitions are counted if they have a correct zip code. I mean, the rules are not so strict in this state as to make it impossible for a petition drive to be successful. I think what we've done is we have put in reasonable rules and regulations to have a petition process that is accountable and it has integrity. I believe that this bill that we're proposing here today is certainly within that realm of responsible legislation that would improve the process. I do not think that this is unduly burdensome on petitioners. And I don't...I'm not trying to criticize Mr. Bernbeck. I've known him a long time. We are friendly even though we disagree on a lot of these issues. I just wanted to correct some things that were said that were not entirely correct. [LB759]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions? Senator Pahls. [LB759]

SENATOR PAHLS: To be honest with you, I do appreciate the tenacity of the people who are opposing some of the ideas that you or I have put forth--and I do. I think that's part of why we're probably the country that we are. The issue is the cost factor. If we put out laws that causes people to go to court, what is your feeling on the cost? [LB759]

SENATOR AVERY: Well,... [LB759]

SENATOR PAHLS: Is that part of the process, the pushback? [LB759]

SENATOR AVERY: You know, actually almost everything we do in this Legislature is potentially judiciable and if we allow ourselves to be restricted by the prospect that something might wind up in the courts, might incur a cost to the state, we'd be tying our hands unnecessarily, and I think it would not be good for public policy and for the citizens of this state. Now, should we engage in what we have substantial reason to believe might be constitutional when we do it? No, I don't think we should do that. But I can remember many debates in this Legislature where somebody didn't like a proposal and so they said that's unconstitutional, thinking that's all we have to do is say it's unconstitutional and everybody will back down. Nothing is unconstitutional that we do

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until it is decided in a court. Everything we do is constitutional until otherwise determined by the appropriate judicial body. And I don't like to see the state incur costs, but sometimes we have to do that in order to get it right. [LB759]

SENATOR PAHLS: Let me ask you this then, because it's somewhat implied that we are frivolous sometimes on some of the ideas that we bring forth. Do you believe as a state legislator, on a bill that is controversial--not dealing with this topic--passes very easily, is it easy to get 49 votes? Is it easy to get 25 votes on some of the bills that are controversial? [LB759]

SENATOR AVERY: Well, we just last year passed a bill out of this committee, LB449. It was an election bill that got amended on the floor and the amendment is blatantly unconstitutional, and I said so at the time, pointing to an Eighth Circuit Court of Appeals case that said it was unconstitutional. We passed it anyway. It's never been challenged in court but it might be and we will lose, in my opinion. And it had to do with the amendment that says if you were a party...a member of a party on January 1, you cannot petition onto the ballot in the general election in November. And I think there was a specific reason why that amendment was brought. It passed, but the Eighth Circuit Court made it very clear that if you are going to restrict access to the ballot, you must have a compelling state interest and no compelling state interest was ever stated in floor debate, despite three times being questioned, the question being raised, and it was never answered. That can be challenged and we will lose. Now, we do that sometimes because of the either lack of attention of what we're talking about or the rush to get to a vote or I think sometimes--we're all guilty of this--we're busy doing other things and all of a sudden you get a call of the house and you've got to go vote and you're thinking: What are we voting on? [LB759]

SENATOR PAHLS: Okay, thank you. [LB759]

SENATOR AVERY: That's the nature of the process. [LB759]

SENATOR PRICE: Thank you, Senator Pahls. Senator Janssen. [LB759]

SENATOR JANSSEN: Thank you, Senator Price. Senator Avery, actually Senator Karpisek kind of got to my bane with this whole bill. Is...what we're doing, in part--a small part--is restricting and making it more difficult to petition the government, and we're already one of the toughest states to do that in. And to me, and all the...all the ones you made...Mr. Bernbeck talked about the drought and you referenced several successful ones, but all those had money behind them. They weren't grass roots. They weren't the Johnny Appleseed and Domini wasn't either. It was all...there was a lot of outside interest, every one that you mentioned, a lot of money behind them. And I don't know... [LB759]

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SENATOR AVERY: And all were constitutional amendments. And I made that case back in '07, that the reason this outside money comes in is because these are constitutional amendments, people from the outside trying to tell us how we ought to write our constitution to serve their interests, not ours. [LB759]

SENATOR JANSSEN: But at the same time, we're disallowing our own citizenry a true and fair opportunity to redress their government, their state government. So the Johnny Appleseed, the Burwell example, that's almost impossible if somebody has a legitimate inside state interest. And I don't know how we deal with that, but that's the bane of this. [LB759]

SENATOR AVERY: Well, I don't want to make it unduly difficult. I think that we have a responsibility to the citizens of the state and to the process to make it as accountable as we can make it and to...and maintain the integrity of the process. I don't think that this...I don't think that this is an undue restriction, frankly. I think it adds an element of accountability that we don't now have. [LB759]

SENATOR JANSSEN: Well, I'll quote you on that, that last thing that you said, but I just... [LB759]

SENATOR AVERY: Or you're going to vote this out on the floor then, right? [LB759]

SENATOR JANSSEN: Maybe. It just goes back to the whole grass-roots thing. That really, really bugs me that we can't do it. And I trust the voters of Nebraska, I truly do. I'd like to know who they are with a photo ID but that's a whole different topic, but I trust the judgment, I trust the judgment. So if we do lower it and even...you mentioned some successful petition drives that come to this state and they spend a lot of money--good for our economy, great--and they go in front of the voters and they fail. Gambling, for instance. [LB759]

SENATOR AVERY: Yeah, and spending lid. [LB759]

SENATOR JANSSEN: But right or wrong, it failed. So now...but in reaction to that, we made it more difficult for our own citizens to put something on the ballot to let the fellow citizens vote on. I think it makes perfect sense to turn it back to 10 percent of the voters. But it's too late for bill introduction, so maybe we can amend that on to yours if we get that... [LB759]

SENATOR AVERY: Well actually, you would have liked my bill in '07 then, because it did lower the threshold to 5 percent for referenda and raised, I believe, the constitutional amendment though up to 15 percent. [LB759]

SENATOR JANSSEN: I'm fine with half of that. Thank you. [LB759]

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SENATOR PRICE: Any further questions? Seeing none, that will close up the hearing on LB759 and I'll return control of committee back to Senator Avery. [LB759]

SENATOR AVERY: Thank you, Senator Price. All right, we'll move now to LB736 and invite Senator Paul Schumacher to come forward and rejoin his old committee. Welcome back. [LB736]

SENATOR SCHUMACHER: Thank you, Senator Avery,... [LB736]

SENATOR AVERY: We miss you. [LB736]

SENATOR SCHUMACHER: ...members of the committee. It's good to be back. This is kind of my first home in the Legislature and I can say it was very enjoyable. Today, I want to start talking about a story that Everett Dirksen used to tell about how you cook a frog. And you take the frog and you put him in some nice, cool water and he feels all kind of comfortable and it's no big deal that he's wet. And then you turn the heat up and very gradually over time, the water gets warmer and warmer and warmer and pretty soon you end up with frog legs. Well, the frog we're talking about today is a provision of our constitution. And our constitution says, "All votes shall be by ballot or other means authorized by the Legislature, whereby the vote and the secrecy of the elector's vote will be preserved." That is pretty fundamental to our system. It'd make us all very uncomfortable if we felt our vote would be revealed. Even the Republican Party says, gee, we should have this kind of secrecy in union elections. Secret votes are important. You wouldn't want to vote against your banker if your banker was running for mayor and could possibly find out how you voted if you didn't vote for him. Likewise, you wouldn't want to vote against your rich uncle if you were in line to inherit something and he was running for dog catcher and you voted against him. It is a core principle. And even if the parties counting the ballots are 100 percent straight and wouldn't breach their confidentiality a bit, there is always the lingering thought that they or somebody working with them might. And that might either deter you from voting or you from voting your free conscience in the privacy of that ballot box. Now, the tale that I'm going to tell here basically retraces a little history of how we got from the constitution mandating a secret ballot to where we are today, where your ballot can be identified and you have nothing you can do about it. I'll trace through the history, but the bottom line is that the Legislature over time has authorized small counties--the kind of counties where everybody knows everybody, everybody's related to everybody, and everybody can whisper in everybody's ear--small counties to decide, you know, golly gee whiz, this business of polling places and hiring election workers and having them ADA accessible is just too darned expensive. So the Legislature said: You know what? If you want to and if you do the right things, you can conduct a mail-only election in your county--and some counties are considering that. One of the counties considering that is Stanton County, and I'll elaborate on it a little bit later. But basically, it's becoming real that

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counties that are small are saying it's just too darn much expense to do elections the old way and let's just mail them out a ballot. Well, what does that look like when they mail them out a ballot? There's an envelope addressed to Joe Voter--talk about ID problems. Anyway, it goes out in the mail and inside there is another envelope and a bunch of ballots. And you mark off your ballots and you stuff them back into the envelope that has your identifying information on it so they can tell whose envelope is coming back in and who voted and who didn't. Well, golly gee whiz, what happens when that envelope gets back? Used to be they tore open the envelope, they wrote down that Joe's ballot came back, entered it into an election book or record of some kind, and there was another envelope and that got pitched into a pile and eventually worked. Nobody knew how you voted. Well now, there is no inside envelope. Your stuff is pulled out and the ballot is right there. You didn't vote a straight party ballot? Hey, guess what? Somebody might have seen that. If you voted for or against a proposition that was controversial, somebody might have seen that. Now, the election folks--and their integrity is not being questioned here--the election folks said oh no, we'd never do that. We're so darn busy opening envelopes and flinging ballots around, we never look. We won't peek. And certainly if we did, we wouldn't tell Uncle Joe that you voted against him. Well, maybe after a little beer or something in the afternoon in the bar we might mention it, but he'd never remember it anyway. The point of it is, that's where we're at now. And let me trace through, briefly, the history of how we got here. Prior to 1999, Nebraska's Election Act reflected a preference for polling place voting, with provisions for mail-in absentee ballots by voters who met statutorily-allowed reasons for why they couldn't get to the election place on voting day. We all remember that; that's the old absentee business. Over time, after 1999, the Election Act was amended to expand the mail-in voting as a means to improve voter turnout and reduce the cost of elections to counties. Some of the newly-enacted mail-in voting provisions allowed counties to mandate mail-in voting only under certain circumstances for certain special election-type things. At the same time mail-in voting was expanding, seemingly unrelated legislation was enacted, the intent of which was also to reduce county election cost, eliminating the requirements that county election officials provide secrecy envelopes to mail-in voters in addition to return envelopes for their ballots. In addition, the Election Act was amended to allow voters to cast provisional ballots if eligibility was questioned. Those ballots were not directly put in the ballot box, but they were set aside pending voter verification. Prior to 1999, the election officials of the county were required to provide absentee ballot voters with the secrecy envelope and a return envelope to use to return their ballots by mail. The purpose of the secrecy envelope was to preserve the right to a secret ballot and was a plain, unmarked envelope in which the voter placed his or her ballot. The return envelope was marked with the voter identification information and a return address. The secrecy envelope was inserted into the return envelope and mailed back to the appropriate election official. Election officials removed the secrecy envelope without opening it and verified the voter eligibility information that was on the return envelope. Secrecy envelopes were opened separately, after which ballots were counted. In 1999, secrecy envelopes eliminated the need for absentee ballot or...the secrecy envelopes

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were eliminated in absentee ballot voters situations and the Legislature eliminated the requirement that they be provided with a secrecy envelope--again, the intent to reduce the cost to the counties. Proponents stated elimination would not compromise the right to a secret ballot because the county clerks and election commissioners really don't care. In addition to eliminating the secrecy envelope for absentee ballot voters, the Legislature eliminated the list of reasons enumerated in the statutes that voters had to meet in order to vote absentee. We began to move toward mail-in elections. In 2005, county clerks were given authority to designate certain special elections as mail-in only and authorize mail-in-only precincts for all elections in counties with population under 7,000. In an effort to increase voter turnout, the Legislature allowed county clerks to decide if special elections should be conducted by mail rather than at polling places if it involved just issues and not candidates. The Legislature also changed the phrase "absentee voting" to "early voting" to reflect the fact that early voting is done for reasons other than absence from a home on election day and hoped the change in terminology would improve voter turnout. Two-thousand and five also saw the Help America Vote Act and the Legislature authorized mail-in voting in any or all precincts in counties with a population under 7,000, upon approval of Secretary of State. The federal act required polling places to be equipped with certain equipment and be ADA accessible, and small counties with small budgets contended that they simply couldn't afford to purchase and maintain the required equipment or find ADA-compliant polling places in their small counties. Supporters claimed mail-in voting only would address a handful of precincts and would only apply in a handful of sparsely-populated counties, that qualifying counties would not ask for mail-in voting for all precincts, and it was akin to absentee early voting and not a big deal. And the mail-in authorization was patterned after mail-in special elections in which they required to...that voters be provided with secrecy envelopes. Secrecy envelopes were eliminated from mail-in special elections and mail-in-only precincts in 2008. In 2008, the Legislature eliminated secrecy envelopes altogether by eliminating the requirements of a secrecy envelope for mail-in special elections and mail-in-only precincts. County clerks successfully argued that mail-in ballot requirements should be the same for early voting as they...because the election workers got confused about mailings that had to have secrecy envelopes and those that did not. Concerns were raised, eliminating the use of secrecy envelopes in light of the 2006 legislation authorizing the sparsely-populated counties to designate some precincts as--or all precincts--as mail-in only. Supporters of eliminating secrecy envelopes argued that the right to a secret ballot would not be compromised because county clerks don't have the time to associate a ballot with a voter because they're just too busy opening and sorting envelopes and ballots. Finally, the Legislature expanded mail-in-only precincts to counties with a population under 10,000 and early voting did not seem very different from any mail-in...seemed very different from mail-in-only precincts. Voters choosing early...where they had a choice between going to a polling place or mailing in, they had a personal choice and could weigh their convenience against secrecy. But once the step is taken by a county to say you're mail-in only and your only option is to mail it in and there's no polling place to go to, you have to use this

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mechanism. Basically, it's a fundamental thing that I'd wanted to call to the attention of the committee. The constituents from Stanton County were getting very uneasy. In fact, to kind of highlight the nature of local politics, suddenly today, the people who were the noisiest about it aren't here because they don't want to offend anybody. And that's the problem we face. The committee needs to review and consider how sacred is that secret ballot? And if it is, the baloney about it's too expensive, it's too much work when we've already done this to save money and save work, it needs to be taken into account. It's just a very important issue that I think is deserving of the attention of this committee and I would take any questions. [LB736]

SENATOR AVERY: Thank you, Senator Schumacher. Questions from the committee? Senator Wallman. [LB736]

SENATOR WALLMAN: Thank you, Chairman Avery. Thanks for bringing this up. I've always had tremendous trouble with this business. Now, two districts, you know, are going to have school bond elections by mail-in only, and already one of them failed and they accused the farmer of making it fail, and going around and telling people how to fill it out. And this is going to happen whether it be nursing homes, assisted living, coffee shops--so it's not a secret ballot. So how do you...how do we fix it? [LB736]

SENATOR SCHUMACHER: Well, at least we can fix a little. I mean, the mail-in voting thing, that's got a lot of issues, and not the least of which you've got these ballots floating around out there that somebody could return and... [LB736]

SENATOR WALLMAN: Sure. [LB736]

SENATOR SCHUMACHER: But this little piece of it is we just simply require them to stick an extra envelope in there. Yeah, it will cost a fraction of a cent or whatever you...envelopes cost when you buy them in mass. And so the voter can stick the ballots inside an inside envelope and there you have a two-step process. You take the inside envelope and throw it on a pile and open later and you record from the other envelope that, you know, that particular person voted, the way it always used to be done. And we've went down the road of let's save money, let's be cheap, let's make it easy, and suddenly we're in violation of our constitution. And more so than violation of the constitution, in violation of a fundamental mechanism of psychology which allows the voters, in the sanctity of their own conscience, to mark a ballot and know that they aren't going to be held socially accountable for voting their conscience. [LB736]

SENATOR AVERY: What mechanism would you expect the Secretary of State to devise as to how these would be handled? For example, if...say a voter decided I don't want to use the secret envelope. Would they be counted as well? You give that authority to the Secretary of State, right? To come up with procedures or rules? [LB736]

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SENATOR SCHUMACHER: I would think so. I would...if you return your ballot and you don't put it in a secrecy ballot envelope, seems to me it should be counted. But if you want the secrecy envelope, it should be there and it should be available to you for you to use and I'll just bet you most people will. [LB736]

SENATOR AVERY: Um-hum. Any questions from the committee? They get silent on you. [LB736]

SENATOR SCHUMACHER: I know they get silent. [LB736]

SENATOR AVERY: They grilled me. [LB736]

SENATOR SCHUMACHER: I don't do these kind...(laughter) [LB736]

SENATOR AVERY: All right, Senator Pahls. [LB736]

SENATOR PAHLS: I'll ask a question. You know, you started out with the frog. [LB736]

SENATOR SCHUMACHER: Uh-huh. [LB736]

SENATOR PAHLS: Okay, so if I...and I'm going to use, you know, in a...if I say yes on the...on your idea--in other words, I kiss this bill--will you turn into a prince? [LB736]

SENATOR SCHUMACHER: And then I'll kiss you. (Laughter) [LB736]

SENATOR AVERY: And it will be illegal. (Laughter) [LB736]

SENATOR SCHUMACHER: And it will be illegal. That's great. (Laughter) [LB736]

SENATOR AVERY: Senator Price has a question. [LB736]

SENATOR PRICE: There's going to be a cost and you talk...you called it a frivolous, silly argument on cost. And what my question is--and hopefully someone will come up to tell us. I know that in Gretna they held a bonding vote by mail. But you talk Douglas County, Sarpy County, Lancaster, you know, the larger counties. That cost is significant and we've cut aid to counties. Who...do the...counties going to pay the bill? Who...what political subdivision pays the bill--and that frivolous bill? [LB736]

SENATOR SCHUMACHER: First of all, the...this mail-in-only option is available only to counties under 10,000, so we're not talking Douglas, Lancaster. They have options. This is for the general election and primary election things. Under...unless we make an appropriation or add this right now, it would be a county expense. We take their county inheritance money and I'm not sure where, what...but never...it'll be a county expense

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and they will have to pay for an envelope. [LB736]

SENATOR PRICE: Okay, and that would put that...there's a difference between bond issues and candidates. It's candidate to 10,000, I believe, but any county can do a bond issue. That's not a size standard, just FYI for the record. [LB736]

SENATOR SCHUMACHER: Right, and but...even in this day and age where we're all pinching pennies and trying to figure out how to get revenue, maybe a bond issue is more sensitive than a candidate issue. Maybe I don't want you to know I voted for...voted against the new school bond issue. [LB736]

SENATOR PRICE: Notwithstanding, thank you. [LB736]

SENATOR SCHUMACHER: And this is important. Thank you. [LB736]

SENATOR AVERY: Senator Pahls. [LB736]

SENATOR PAHLS: Thank you, Chairman. Okay, this just hit my mind right now. I know that in the Douglas County, the...one of the school districts just went to a bond issue. Now, do they charge that back to the district? [LB736]

SENATOR SCHUMACHER: I honestly don't... [LB736]

SENATOR PAHLS: Okay, well, then maybe somebody else can answer... [LB736]

SENATOR SCHUMACHER: Yeah. [LB736]

SENATOR PAHLS: ...that's...question is... [LB736]

SENATOR SCHUMACHER: Yeah. [LB736]

SENATOR PAHLS: Okay. [LB736]

SENATOR SCHUMACHER: Yeah, I don't know. [LB736]

SENATOR PAHLS: Okay, thank you. [LB736]

SENATOR PRICE: Bobble heads going on. [LB736]

SENATOR PAHLS: Thank you. [LB736]

SENATOR AVERY: Any more questions? I don't see any. Are you going to stay to close? [LB736]

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SENATOR SCHUMACHER: I will. [LB736]

SENATOR AVERY: Okay. [LB736]

SENATOR SCHUMACHER: Thank you. [LB736]

SENATOR AVERY: (Exhibits 1 and 2) I do want to read into the record that a letter of support from the Nebraskans for Civic Reform and an e-mail of support from a voter in Stanton County or Stanton, Nebraska, and...that's the same one. All right, it will move now to proponents of LB736. Any proponents of LB736? Okay, I presume there are opponents. Opponents, we'll move to that testimony now. Come forward. [LB736]

SENATOR PRICE: Don't all jump up at once. Got to be like a (inaudible) game right here, you know? [LB736]

SENATOR AVERY: Welcome, sir. [LB736]

WAYNE BENA: Good afternoon. Senator Avery and members of the Government, Military and Veterans Affairs Committee, my name is Wayne Bena, W-a-y-n-e B-e-n-a, and I currently serve as election commissioner for Sarpy County in Nebraska's third-largest county, with approximately 94,000 registered voters. And I drew the short straw of the big three election commissioners, so I go first. I have some prepared remarks, but I think it's important...I want to say there's three important promises that I've made in my life and in no particular order: my marriage vows, my oath to be a lawyer, and my oath of office to be election commissioner--and it's something that I take very seriously. And the privacy of a person's ballot is very important to me as I am suspecting it is for Senator Schumacher. And the policies and the procedures that I put in place in my office do...to protect those...the sacred privacy of the ballot. You're correct, in large counties such as mine, Senator--for response to some of Senator Schumacher's comments--we are processing multiple...thousands upon thousands of ballots a day. And we want to get the work done and we want to get it right and we train our staff not to look at the ballots when taking them out of the privacy envelope and putting them in secure ballot boxes. So we take...I take my oath very seriously and if I were to suspect anyone taking a look at those ballots, they would be immediately dismissed from my office. But that's in my particular situation. But I'm here to testify also in regards to opposition to LB36 (sic) in regards to the cost. As an illustration of how this would affect my budget, this week I conducted a test of what this bill...how this bill would affect my processes of mailing out an absentee ballot and processing that absentee ballot when it came out. Between the time it took to add an extra ballot to the mail that we...go out, in addition to doubling the amount of time it takes to process that ballot--because not only we'll be taking a privacy ballot out of the outside envelope, but also taking that privacy envelope and taking the ballot out--added on average between

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27 and 33 seconds to the process, so I'm averaging out at about 30 seconds. In the 2008 elections, Sarpy County processed approximately 25,000 early voting ballots. So if you take the 25,000 ballots times 30 seconds, times the number...minutes, times the...it added up to 208 additional hours of work just for the addition of the privacy envelope. At a rate of \$10 per hour that we pay temporary workers and some of our workers that do this work, that's approximately...in actual of man-hours, of approximately \$2,080 per election cycle. And I would disagree that the envelopes are...cost a half cent. The 25,000 envelopes would cost my county approximately \$8,000, for a total cost of \$10,000 for an election of 25,000 envelopes, not including the extra cost of the postage sending it out--which I don't have based upon not knowing the weight--and then postal costs are going up it seems every six months. As well, there will be an extra cost to the voter of sending that back if they choose to...choose the mail option of that. Currently in my county, it's approximately \$1.05. It could go up depending upon the weight of that envelope. That's just for irregular poll site elections, gubernatorial and presidential. As was stated previously in some of the questioners, we...many of our counties now are going to all-mail elections for special elections not involving candidates. As Senator Price...I conducted the first all-mail election in Sarpy County history last February in Gretna from...for an issue. Approximately had a 50 percent turnout and a 93 percent approval rate. Just recently in this past November, Douglas County and I jointly together did the largest by-mail election in county history with the Millard school bond election. Those costs, while paid for by the political subdivision, are reimbursed to the county, not my budget. So by the grace of my county board, if I go over budget, it's whether or not those costs are reimbursed back to me, based upon other costs of my office, because special elections not necessarily are always prepared for. So there is a legitimate cost to this issue. And again, I'd remind...and speak for myself. I take my oath of office very seriously and the privacy of the ballot is the most important thing to me when conducting an election. And I will take any questions if you have any and welcome them. [LB736]

SENATOR AVERY: Thank you, Mr. Bena. A question from Senator Price. [LB736]

SENATOR PRICE: Thank you, Senator Avery. Thank you, Mr. Bena, for coming down. You do a fine job. My question is...and I might have been reading my nonelectric device and missed the point about I have the ballot that has the address that's mailed to the office and I'm a poll...I'm one of the workers. I open up, there's a unmarked envelope inside of it, correct? Then I open the unmarked envelope and I pull out the ballot? Or does the opened envelope now get transported to another room where someone else will take the ballot out of the unmarked envelope? How does that... [LB736]

WAYNE BENA: I... [LB736]

SENATOR PRICE: ...process work? [LB736]

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WAYNE BENA: I believe, and it's not a...in my opinion, it's not addressed in the bill. And according to the bill, the Secretary of State would come up with policies and procedures of how this process would handle. So there is a million different ways that any one Secretary of State or the next one that comes after them could do the policies and procedures of how that would happen. [LB736]

SENATOR PRICE: Oh. [LB736]

WAYNE BENA: It's not stated. I...in my belief, in the bill, the Secretary of State would come up with procedures of how that process that you described would occur. [LB736]

SENATOR PRICE: So in the interest of time, I'll just add this to be answered by someone then. Sanctity of vote--we have to have command and control over that ballot at all times. I'm sure there will come a chain of accountability. If I ship this, I'm going to have to stamp it or something, or do something to know that this blank one was actually...came in an envelope--that no one just walked in and said oh, by the way, I've got 10 ballots, no cards up my sleeves, right? But...and then just put an empty, unmarked ballot in the box. So I just...whereas we discuss this, I want to make sure that someone answers the question (inaudible) that not just the privacy, but the security of the vote in that...I mean, we did it before, I understand. So obviously, this is ground that's been plowed before from what I understand, but I'm...I want to hear the updates on that one, so I'd appreciate it. [LB736]

WAYNE BENA: Yeah, I would say that there are a million different scenarios if this happens that would have to be covered under policies and procedures of whether or not...in specific situations, whether or not we could count said ballot in said procedures. [LB736]

SENATOR PRICE: Thank you. [LB736]

WAYNE BENA: Um-hum. [LB736]

SENATOR AVERY: Senator Janssen. [LB736]

SENATOR JANSSEN: Thank you, Chairman Avery. Thank you for testifying. Still kind of trying to come to grips with the cooking the frog here, but you said something in your...and I was kind of listening. Did you talk about when you have staff and you do this? Do you have additional staff that you hire, part-time staff to help count these ballots when you do those? [LB736]

WAYNE BENA: Correct. [LB736]

SENATOR JANSSEN: So that's what you're... [LB736]

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WAYNE BENA: I mean it's a mixture. I mean, it could be a mixture of full-time or temporary staff. The temporary staff that we bring in on a more regular basis that we know and trust and I would hire if I'd had an open position, so. [LB736]

SENATOR JANSSEN: So okay, so you are paying them... [LB736]

WAYNE BENA: Yes, um-hum. [LB736]

SENATOR JANSSEN: ...to help with that. And so that was where you were coming with the cost... [LB736]

WAYNE BENA: Yeah, I... [LB736]

SENATOR JANSSEN: ...issue on that. [LB736]

WAYNE BENA: It would...the cost would be an extra...in my opinion, if...going off of 25,000 ballots, 208 extra man hours times \$10 an hour, just for the privacy envelope alone. [LB736]

SENATOR JANSSEN: And one question that...I'm always kind of watching government spending. If I did the math right--which is entirely possible I did not--you're paying 31.25 cents for an envelope and that seems...I own a business and I'm not paying 31.25 cents for a blank envelope. [LB736]

WAYNE BENA: And I based that off of...I just got a quote for...I was trying to lower...I got a quote for two...what the printing of the envelopes that we have. It could be lower, depending upon if I got a price break off of large purchases, but this was just off of purchasing 5,000 envelopes at 2,000 with all...with the different type of printing. Now depending upon what I have to put on that ballot, maybe just a plain envelope, it could be less. But this is for the ink and all the printing that we have to do on the envelope. I just don't know what this privacy envelope's going to have to have on it, so, yeah. [LB736]

SENATOR JANSSEN: Okay, I was under the assumption that it was to stay plain. That's what I was and that... [LB736]

WAYNE BENA: It could be, but again I don't...it's not necessarily put on there. Do...I mean, does it have to say it's from Sarpy? Could you use a Douglas County privacy envelope in a Sarpy? You know, I mean, it...if they accidentally get mixed and matched, we don't...I don't know. It's not as clear in the bill. [LB736]

SENATOR JANSSEN: Uh-huh. It's kicking around in my mind that somebody, if you had

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the proper chain of custody in the...in your office, you could just have people go ahead and put it in their own blank envelope and send it back if you'd pull them out and put them in a different pile. Maybe that would work, too, I don't know, but that's different. Just...I want to get better prices on the envelopes for all government entities, I guess, is my main gist on that one. (Laughter). [LB736]

SENATOR PRICE: Could have been in the envelope business. [LB736]

SENATOR AVERY: Any other questions from the committee? Don't see any, thank you, Mr. Bena. [LB736]

SENATOR WALLMAN: Well... [LB736]

SENATOR JANSSEN: Stormin' Norman. [LB736]

SENATOR AVERY: Oh, I'm sorry. Norm? [LB736]

SENATOR WALLMAN: Yeah, thank you, Chairman Avery. Yes, all these you send out was a...you said percentage? Ninety-three percent you get back? Was that right or...? [LB736]

WAYNE BENA: In the Gretna special election, we...it was 50 percent turnout, which was higher than the general election then, that they just had three months prior, and it was a 93 percent...it vote...it was passed by 93-7 percent. In that case, that was the 93 percent, but we were very pleased in that election with the 50 percent turnout. [LB736]

SENATOR WALLMAN: Thank you. [LB736]

SENATOR AVERY: Any more? I don't see any more questions. Thank you, Mr. Bena. [LB736]

WAYNE BENA: Thank you. [LB736]

SENATOR AVERY: Any more opposition testimony? I thought he drew the short straw. [LB736]

DAVE PHIPPS: I think he got to go first. [LB736]

SENATOR AVERY: Oh. [LB736]

DAVE PHIPPS: (Exhibit 3) He gets all the hard questions. Mr. Chairman, members of the committee, my name is Dave Phipps, D-a-v-e P-h-i-p-p-s. I'm the Douglas County Election Commissioner, and thank you all for letting me come up and talk--I will be very

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brief. Really, my arguments are the same as Mr. Bena's. You know, it is an extra cost. The envelope is...it's not just a, you know, number 10 or a number 9 envelope for us, especially with early voting ballots. We actually...for the size, would be a custom-made envelope, which is what our return envelopes are now. Or actually, what our outgoing mail ones, so we'd have to have two different custom envelopes because of the size of the ballot. So the cost is substantially higher than what a, you know, kind of off-the-shelf, Staples-brand envelope would be. In our case, I think we figured it'd be around \$0.17 per envelope for early voting, you know. And our cost? Generally, if you just looked at the early voting portion of it, because we would increase our size and our weight of the outgoing mail, it would bump our costs up to the next level. I didn't really figure in staff time because I didn't do the experiment where I figured out how long it would take to stuff them. But if you just go on postage alone and looked at what we did in 2008--which is the last presidential--kind of compared to what's coming up this year, we figured about a \$20,000-\$25,000 increase per election of that size, although those sizes are getting larger and larger as we have more and more people. You know, really the only thing I would say is I understand Senator Schumacher's, you know, reasoning for this. For a small county, in all honesty I don't believe that those folks, those clerks, or their smaller election commissioners are looking at the ballots. But I can tell you in my office we really aren't. I mean, what we do is we have poll workers that come in starting, you know, eight days before the election. And they start, you know, opening up those envelopes and putting the ballots into piles. You know, and we have two people of opposite parties always working together. You know, the chances are, out of, you know, 200,000 potential voters--or 300,000, sorry--potential voters in Douglas County, the chances of you seeing somebody that you know and then having the time and taking the effort to look is pretty slim. You know, it's just not a problem. I mean, I've never had a voter come up and say well, I'm not going to vote early or I'm not going to vote in this provisional envelope because, you know, I think you're going to look at what my vote is. So, I mean, I...in reality, I think it's...this is kind of a solution looking for a problem. And you know, we've been down this road. It seems like we've gone away from it because we've realized that it is an unneeded expense and an unneeded burden for election officials and so we've gone away from that. I'd hate to see us take a step back. So with that, I thank you for your time and be happy to answer any questions you have. [LB736]

SENATOR AVERY: Let me clarify something. [LB736]

DAVE PHIPPS: Yes. [LB736]

SENATOR AVERY: A ballot comes in, you...well, you slice it open. [LB736]

DAVE PHIPPS: The first thing we would do... [LB736]

SENATOR AVERY: ...the envelope? [LB736]

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DAVE PHIPPS: ...would actually be to verify the signature and to make sure that the person who signed it was the poster. [LB736]

SENATOR AVERY: And that's on the outside of the envelope? [LB736]

DAVE PHIPPS: Yeah, it's on the outside of the envelope. [LB736]

SENATOR AVERY: Okay. And then you take out the ballot and throw it in the pile? [LB736]

DAVE PHIPPS: Beginning eight days prior to the election is the first time that we can do that. But yeah, so basically the 35 days of early voting happen, we verify throughout that 35-day period, and then the eight days beginning, we have literally boxes and boxes full of envelopes. And then we bring in poll workers and they just sit in a group in our conference room and start slitting them open, pulling the ballots out, and moving on. [LB736]

SENATOR AVERY: And piling them up anonymously. [LB736]

DAVE PHIPPS: Yeah, in just whatever order they come up with. [LB736]

SENATOR AVERY: Not a pile of these are my friends, these are not my friends, ... [LB736]

DAVE PHIPPS: Exactly. (Laugh) [LB736]

SENATOR AVERY: ...I know this person, I don't know this person. [LB736]

DAVE PHIPPS: Right. [LB736]

SENATOR AVERY: Any questions for the (inaudible)? Senator Pahls. [LB736]

SENATOR PAHLS: Thank you. So let's say that a group of us are opening up the envelopes. I mean, is it...do you have parties involved? I mean, do you...so many Democrats, so many Republicans? [LB736]

DAVE PHIPPS: Yeah, we actually will have two people performing that operation together. Now I know it seems kind of weird, but basically one person's slitting them open, maybe one person's pulling them out; or maybe one person's slitting it open and pulling it out, but there's somebody watching them... [LB736]

SENATOR PAHLS: Okay. [LB736]

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DAVE PHIPPS: ...and those people are of different parties. [LB736]

SENATOR PAHLS: Okay. [LB736]

DAVE PHIPPS: So one may be a Republican, one may be a Democrat, one may be a nonpartisan, one being a Libertarian, but we don't ever have two Republicans working together. [LB736]

SENATOR PAHLS: Okay, okay. [LB736]

DAVE PHIPPS: Because, you know, you can't... [LB736]

SENATOR AVERY: Or two Democrats. [LB736]

DAVE PHIPPS: Right, because you know you can't trust those Republicans together. (Laughter) Sorry, I am one. (Laughter) [LB736]

SENATOR PAHLS: Would you repeat that? (Laughter) [LB736]

SENATOR AVERY: Any other questions from the committee? I don't see any. Thank you for your testimony. [LB736]

DAVE PHIPPS: Thank you, Senators. [LB736]

SENATOR AVERY: Any other opponent testimony? Welcome. [LB736]

DIANE OLMER: (Exhibit 4) Hello. My name is Diane Olmer, D-i-a-n-e O-l-m-e-r, and I'm the Platte County Election Commissioner. And Senator Schumacher is my senator and I feel bad that I'm in opposition to his bill. We've talked a little bit on the e-mail about it and we kind of know our views about the bill before us. But, you know, there's been a lot of discussion already. I'm not going to try and repeat. I did testify in 1999 in front of this committee, trying to get the secrecy envelope taken away. And I can remember Senator DiAnna Schimek being, I think, the head of the committee at that time or at least on the board--or committee--and my statement to her was at some point in time you're going to have to trust us. At some point in time we're going to have to open the envelope. Now, have we separated the secrecy envelope from the other or have we taken this envelope with no secrecy envelope and put the ballots over here? At some time you're going to have to trust us because if somebody's going to commit fraud in that office, it doesn't matter if we have a secrecy envelope or not--they could still do it. So I don't think the secrecy envelope solves the problem. It may make the voter feel better about it, about the process, but kind of the question to me is that we have good people in our office, and like the other election commissioner said, they're out the door if they're not doing their job. So at some point in time, you're going to...it's up to us to perform the duties

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that we've been given to make sure the ballot is secret, keeping secret. But if that secrecy envelope is there, is there any guarantee that that couldn't be slit open? Somebody looks at it, the other...the name is here, and they get a new secrecy envelope--they're in the office where they're issued--and put it in there? There is no guarantee that this solves the problem. I guess in my own personal opinion, the problem maybe isn't with the secrecy envelope--it might be actually with the all-mail election process. Some people don't like it, and maybe we're discussing the wrong issue here. There was a little history given, too, that nobody mentioned. It used to be when we had a school board would bring a tax issue to us and it would be on a date other than the primary general special election, it was up to that school board to decide if they would have it at the polls or through the mail and a lot of times, they left that decision up to the bonding company. And then it got to be kind of a thing where well, the bonding company thinks if we have it in February and we do it at the polls, very few will show up and we're going to make sure we get the ones that we'd like to vote show up. And so that was kind of the reasoning for giving that job to the election commissioners or election officials as how to hold that election, a special election--that means with just an issue. And the statutes and Secretary of State have instructed us on the way we make a decision, on how we should decide--hold it at the polls or not, look at the cost--and you look at the turnout. It's been proven quite a few times that the turnout will be better with the all-mail election. I did, in '07 and '08, a school bond election for the same school. They changed the wording a little bit six months later. The first one was at the polls; it was 30 percent turnout. The second was through the mail in February and it was a 60 percent turnout, so that's kind of some of the reasoning behind our thinking on if we should hold one or not. We're trying to have a more complete voice of the people when we do an all-mail election. So I guess my real point here is at some point know that you're going to have to trust us to take care of our employees, because even with that secrecy envelope, could there be fraud? Yes, there could. So I welcome any questions and thank you for listening. [LB736]

SENATOR AVERY: Thank you for your testimony. What if you had, on that original form where people request to vote by mail, a box that they could check that said I wish to have a secret envelope? And that would cut down on the number and maybe you wouldn't get any. [LB736]

DIANE OLMER: Well, we'd have to have them available. I guess if that was the option, I'd rather have all or none so that when we're doing our job, we're putting...maybe then...well you know, there's confusion. I want to...for sure, the biggest part of my job is when we're issuing early ballots through the mail or doing all-mail elections, to get the right ballot in the envelope. And then if I have to decide well, this one gets a secrecy envelope, this one doesn't. I'd rather have all or none. So if you decide we should have a secrecy envelope, fine. Let's have them all. That's just my opinion. Maybe the guys back there in the bigger counties would say hey, that was a good idea, but that's just my opinion. [LB736]

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SENATOR AVERY: Questions from the committee? [LB736]

SENATOR SULLIVAN: Bill? [LB736]

SENATOR AVERY: Senator Sullivan. [LB736]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Diane. Clarify for me, if you will. On the ballot that is...when a voter requests the mail-in ballot and then it's returned, are they identified with their name at the return address, or how exactly are they identified? [LB736]

DIANE OLMER: The back of the return...the ID envelope which comes back. And when we're talking about cost of envelopes, pretty much everybody in the state--which wasn't mentioned--sends out an envelope big enough to put that ballot in unfolded. So that might be why ballot--or envelopes--are more expensive than somebody at a business. But on the back of the envelope that comes back there is a set of instructions. And there's a place where the voter has to sign his name and there's a place for party and the election that it's concerning, but they do have to sign their name. And so the signature's there, yes. [LB736]

SENATOR SULLIVAN: Well, your point is well taken about maybe we're addressing the wrong thing in terms of do we need to look at how we handle these mail-in ballots and...or the mail-in process or...do you have any ideas on that? [LB736]

DIANE OLMER: I...you know, I guess I really would leave that up to you. There are good points and there are questionable points. It definitely increases the turnout... [LB736]

SENATOR SULLIVAN: Um-hum. [LB736]

DIANE OLMER: ...and it kind of takes it out of the hands of...the way things are now, the special election of the bonding company deciding when to have an election. When I held that election by mail for the Lakeview School District in February, the pretty much deciding factor for me was the possibility of bad weather. I thought you know, we're going to do this through the mail so that my poll workers don't have to worry about getting there and my voters don't have to worry about getting there... [LB736]

SENATOR SULLIVAN: Um-hum. [LB736]

DIANE OLMER: ...and we will hopefully get a good turnout. And it was the same people from six months ago to this and it was double the turnout. It failed both times. It did not change the outcome, but it gave a better cross section of what the voters wanted.

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[LB736]

SENATOR SULLIVAN: Suppose there would be any other way to track the return of that envelope and who sent it back without somehow having to have that signature there?
[LB736]

DIANE OLMER: Well, you know, you sign your name at the polls. [LB736]

SENATOR SULLIVAN: True, true. [LB736]

DIANE OLMER: And that signature, when it comes back, when we're talking about verifying who's voted or who's signed, that's the most important part of that envelope.
[LB736]

SENATOR SULLIVAN: Um-hum. [LB736]

DIANE OLMER: We do, in our computer system, have your signature captured. [LB736]

SENATOR SULLIVAN: Uh-huh. [LB736]

DIANE OLMER: So when we get that envelope back, we take it and we compare that signature to the one that comes up on the computer from your last voter registration, so that is very important. [LB736]

SENATOR SULLIVAN: Okay. [LB736]

DIANE OLMER: That's our way of figuring out if you voted it. Or, it came to your household and you weren't home and your husband voted it or your kid did and just sent them in. The signature's very important. [LB736]

SENATOR SULLIVAN: Okay. [LB736]

DIANE OLMER: We do have to have that on there... [LB736]

SENATOR SULLIVAN: Um-hum. [LB736]

DIANE OLMER: ...when it...on the return envelope, so. [LB736]

SENATOR SULLIVAN: Okay. [LB736]

SENATOR AVERY: Senator Wallman. [LB736]

SENATOR WALLMAN: Yes, just bond elections mainly, you're just do...all across the

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state there's mail-ins? Is that the way it's done now? [LB736]

DIANE OLMER: It's up to the election official how it's done. The school comes to you, presents the issue, they have to do it within 50 days, and then it's up to you to weigh the facts and decide how to do the bond. I don't always do them by mail. I've done...we had one for Columbus Public School just recently. It was in last October and we did that at the polls. The size of an election will make a difference to me, maybe not to others. There's a point where it's cheaper and all of a sudden gets more expensive, but we're supposed to also look at outcome. I guarantee it's always going to be more through the mail. [LB736]

SENATOR WALLMAN: But that's not your expenses, that's the school district's expense. [LB736]

DIANE OLMER: That's the school district's expense, yes. [LB736]

SENATOR WALLMAN: Whether you have it at the polls or the mail-in, right? [LB736]

DIANE OLMER: Right. When it's the special issue, they pay...say it's in October instead of on a November ballot. They pay everything, so in November, we do a prorating thing if it's on that ballot. [LB736]

SENATOR WALLMAN: Well, thank you. [LB736]

SENATOR AVERY: Senator Pahls. [LB736]

SENATOR PAHLS: I have a question. Is it cheaper to go through mail or to have your polling places open? [LB736]

DIANE OLMER: It depends on the size of the election. I had a all-mail election for the village of Monroe. It was a...did they want a lottery or not. Well, it was, I think, two or three hundred ballots that got sent out--definitely way cheaper than having a polling place open. When it came to the Lakeview election, it would have been cheaper to hold it at the polls. It was more expensive to send the ballots--and that's about 3,000 voters--to send out the ballots as to hold it at the polls because on a special election, too, you can cut down your polling places and have people drive a little farther. But the things we're supposed to consider according to statute are outcome, cost. And I guess outcome, in my mind, means the weather in Nebraska, so that determines, you know. But the cost at certain point goes up, depending on how many ballots you send out. [LB736]

SENATOR PAHLS: But if you say the outcome is the...you're telling me if you mail and you... [LB736]

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DIANE OLMER: I'm saying the turnout. I said that wrong. [LB736]

SENATOR PAHLS: Okay. [LB736]

DIANE OLMER: The turnout. [LB736]

SENATOR PAHLS: Okay, the turnout. If the turnout is higher by mail-in, that would hold true on all elections then, then... [LB736]

DIANE OLMER: Pretty much. [LB736]

SENATOR PAHLS: ...then actually we should probably go to mail. [LB736]

DIANE OLMER: I thought there was going to be some legislation to that effect this year, but I didn't see it. I knew there was a group thinking about that. And would we have a better turnout in Nebraska for primaries and generals? It's probably a given. But I think Oregon does that. They might be the only state right now. [LB736]

SENATOR PAHLS: Okay. [LB736]

DIANE OLMER: But as far as turnout? Yeah, it would increase. [LB736]

SENATOR PAHLS: And your job in some ways would be easier because then you wouldn't have to...I'm not looking to make life easy for you, but... [LB736]

DIANE OLMER: It'd be okay. [LB736]

SENATOR PAHLS: ...the polls, you know, getting the polling places... [LB736]

DIANE OLMER: It would be...it's...I've done the all mail for, like, my Lakeview, and it was a pretty...you know, I don't have a big staff. The hard part is the front end of the election, the counting and receiving ballots--of course that's a lot easier. And setting up polling places? I just had a visit this morning with a new polling place. That is always something on our minds, making sure they're handicapped accessible. Yes, there are easier parts and a little tougher parts on both ends. [LB736]

SENATOR PAHLS: But do I hear from you that you are...you would propose mail-ins over what we're currently doing, then? [LB736]

DIANE OLMER: No, I didn't say that. I like to go to the polls, too, once...sometimes if I'm too busy, I vote early. Otherwise, I go to the polls, too. I didn't say that we should get rid of all the polling sites. I'm just saying all-mail elections are not a bad thing. I'm saying

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that's the question here... [LB736]

SENATOR PAHLS: Yeah. [LB736]

DIANE OLMER: ...maybe not the secrecy envelope. I'm saying the question actually that we're...should be discussing is: Should we have all-mail elections or not? Am I saying...I'm going to kind of keep my opinions to myself. [LB736]

SENATOR PAHLS: Well, and I understand. I'm not... [LB736]

DIANE OLMER: Yeah. [LB736]

SENATOR PAHLS: ...trying to put you... [LB736]

DIANE OLMER: That's...I think maybe that's the real question here. [LB736]

SENATOR PAHLS: But if you're looking for outcomes, if we're looking for outcomes... [LB736]

DIANE OLMER: If you're looking for turnout,... [LB736]

SENATOR PAHLS: Okay. [LB736]

DIANE OLMER: ...you should do them by mail. [LB736]

SENATOR PAHLS: Okay, for turnout issues. [LB736]

DIANE OLMER: Um-hum. [LB736]

SENATOR PAHLS: Okay, thank you. [LB736]

SENATOR AVERY: Ms. Olmer, I do think we have a bill coming up later this session... [LB736]

DIANE OLMER: Oh, do we? Okay. [LB736]

SENATOR AVERY: ...on all-mail balloting. [LB736]

DIANE OLMER: I must have missed it. [LB736]

SENATOR AVERY: Yeah. Senator Wallman has a question. [LB736]

SENATOR WALLMAN: Yeah, thank you, Chairman Avery. Yeah, again, thanks for

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coming. I'm a stinker at voter turnout. I wish that more turned out. But in reality, maybe we ought to have it more handy, like on a Saturday. You know, a two-day thing? [LB736]

DIANE OLMER: I'm glad you brought that up because I think myself, on a Saturday...and I think South Carolina just did their primary... [LB736]

SENATOR WALLMAN: Yeah. [LB736]

DIANE OLMER: ...on a Saturday. I think you might have a less voter turnout. [LB736]

SENATOR WALLMAN: Less? [LB736]

DIANE OLMER: I know on the weekend, it's hard to find...I'll sure have a hard time finding poll workers. [LB736]

SENATOR WALLMAN: Okay. [LB736]

DIANE OLMER: They're busy with their grandkids, they're roaming, they're visiting, you know, whatever,... [LB736]

SENATOR WALLMAN: Sure. [LB736]

DIANE OLMER: ...they've got a day off work. I think voters, since Tuesday...what else goes on on Tuesday? So you have to go to work. There's time before and after and there's a law saying that the employer shall let you go, also, if you don't have that time. I really think...really don't think it would increase the turnout. [LB736]

SENATOR WALLMAN: Okay. [LB736]

DIANE OLMER: There again, just my opinion. [LB736]

SENATOR WALLMAN: Okay, thanks. [LB736]

SENATOR AVERY: Any other questions? I don't see any, thank you. [LB736]

DIANE OLMER: Okay, thank you. [LB736]

SENATOR AVERY: (Exhibit 5) Any other opponent testimony? I have one e-mail from Sandra Stelling, the Jefferson County Election Commissioner, in opposition. All right, we'll move to neutral testimony. [LB736]

NEAL ERICKSON: Chairman Avery and members of the Committee, for the record my

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name is Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n. I'm Deputy Secretary of State for Elections, testifying here in behalf of Secretary of State John Gale, in a neutral capacity on LB736. And the reason for--after discussing with the Secretary--the reason for the neutral stance is this is a policy decision for the Legislature to make. You know, there are...and Senator Schumacher certainly has heard from people, I've heard from people over the years who don't like not having a secrecy envelope in there. We've also heard from people who don't like having the voter identification information that's required for a by-mail ballot on the outside of the envelope that goes through the mail. And sometimes those perceptions can rise to a level where they in effect become a reality, you know, with something that needs to be addressed. On the other hand, there is also...there's certainly a cost factor in terms of putting these envelopes in there, and over the past 15 years or so, the state has taken various steps to eliminate those in various ballot formations. I did want to correct a couple things that...or I guess some misconceptions that Senator Schumacher's opening may have contributed to. We currently have no counties that do entirely by mail. The precinct by mail that was passed in '05 was allowed for--at that time--counties under 7,000 to apply to the Secretary of State for specific precincts and the rationales for that were based on economies. Currently, at the last election, we had 23 precincts out of 1,500 that did it by mail. This year, we've already had some applications and, for example, we had eight applications from Hamilton County. We rejected all but two of those. There's a lot of factors we go in...that we look at when we start saying we're going to have a precinct by mail. Is the building ADA compliant? The size of the precinct, we have not approved a precinct--at least prior to this round--of a precinct larger than 250 voters. When the issue was first passed, we had examples in Cherry County, for example, of 35 registered voters in a precinct--21 who voted regularly, 13 of them voted by mail regularly. So we were opening a polling place with a receiving board that cost about \$600, we were going to put a piece of disability equipment that cost \$5,000, and vote counting equipment in there, another \$5,000 for--on a regular basis--about eight voters. It just did not make sense economically. In addition, it wasn't convenient to the voters. The polling place had an average distance of 25 miles for that voter to drive. It just didn't make sense, and that's why that program was put in place. But at that time when they asked...when secretary Gale supported that legislation, it was with the specific understanding that the precinct by-mail provisions were not to be a back door to all-mail voting, and I think Secretary Gale has held to that. We've been very discriminating about how we evaluate those precincts that apply for by-mail. I think Election Commissioner Olmer actually made a good point with some of the secrecy envelope issues, and that is what we're really talking about is unscrupulous poll workers. If you have...or election workers. If you have scrupulous election workers, they're not going to look at the ballots. They don't want to, they don't care; their job is to count ballots, get this process done. That's what they do. However, we do recognize that if you have an unscrupulous poll worker or unethical poll worker, they could make a determination how that person voted. But I'll be honest with you, I don't think a secrecy ballot makes a whole lot of difference one way or the other. Whether you put 5 in there or 10 secrecy ballots in there, if you have an unscrupulous

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election worker, they will have the capability to open up all those secrecy ballots or envelopes in determining what that vote is. So we're really talking about...I think Election Commissioner Olmer really hit on it. The goal here is not...is to have ethical and scrupulous poll workers, is probably the best answer. However, I would not discount...you know, the reason we're testifying neutral is we do hear these same complaints from constituents out there. And it is something, it's a policy decision for this body and the Legislature as a whole to decide. And whichever way you go with it is, you know, how we'll deal with the process. I'd answer any questions you might have. [LB736]

SENATOR AVERY: Thank you. Senator Sullivan. [LB736]

SENATOR SULLIVAN: Thank you, Senator Avery, and thank you, Neal, for your testimony. Just a clarification on your comment about disapproving some applications that have been...when they apply for voting by mail. Why have you...why have those been disapproved? [LB736]

NEAL ERICKSON: Precincts are too large, roads to the polling place are good, the polling place is ADA-compliant, not long distances to travel. The polling place is the more traditional approach that we have used throughout the history of this state and we're not looking to eliminate that. But there are certain situations where that format doesn't work particularly well from economics. Diane Olmer mentioned how the cost can vary. Once you get into larger and more dense populations, you get economies that scale with some of these processes, and that's why sometimes a vote-by-mail situation may cost more than a polling place does--it just kind of evens out. One thing that we've...I think we've told this committee before, we have a wide disparity in terms of how much it costs to deliver a ballot to the voter. You know Omaha and Lincoln, we'll see costs in the neighborhood of \$2.50 to \$3 per voter. You get out to Hooker and Grant County and you're talking \$22 to \$23 per voter. That's a big disparity and it just has to do with the size and the population density. [LB736]

SENATOR SULLIVAN: I know that it probably varies among counties as to...well, first of all, I'm sure in particularly rural counties it's sometimes hard to find poll workers. And maybe there's a variation in how they are trained and with the standards to which they are held. Can you shed a little light on that, I guess, in terms of your experience and how poll workers are trained and what directives they're given? [LB736]

NEAL ERICKSON: And not to sound glib, but the election officials--the local election officials--will train them to the best of their abilities. There is actually someone who testifies fairly frequently on election issues here who actually did a stint as a poll worker and was actually in charge of provisional ballots at that polling site. This is somebody who is...I consider very sharp and very professional and managed to screw up practically every one of them. It just kind of varied by individual. They do the best they

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can. It's just you're dealing with, you know, 13-14,000 people at a general election that we bring in to work polling places and help with the election process. And as with anything, once you get 13,000 or 14,000 people, they're going to have some people that maybe don't grasp it all, don't...you know, don't do the job perfectly, things like that. It just happens. [LB736]

SENATOR SULLIVAN: You indicated that you heard comments similar to what Senator Schumacher has brought to us. How pervasive is this? How many comments have you received? [LB736]

NEAL ERICKSON: Well, if I was to guess, I would say it's in the minority, considering the number of...in fact, I'd say it's a very small minority, considering the number of mail ballots that are passed out or that go through the system. On the other hand, they are...you know, they have very strong feelings about it. That doesn't always necessarily mean that it is in reality a problem. You know, the example I always use, my hardest day is not election day. My hardest day is the day after election because I guarantee you, starting at 8:00 a.m., those are the calls I get. The elections have to be rigged because I've lost last night and everybody I talked to says they voted for me. It's just kind of the nature of the process sometimes. [LB736]

SENATOR SULLIVAN: Okay, thank you. [LB736]

SENATOR PRICE: Are there any further questions? Seeing none, thank you, Mr. Erickson. [LB736]

NEAL ERICKSON: Thank you. [LB736]

SENATOR PRICE: Is there anybody else who'd like to testify in neutral? Seeing none. Senator Schumacher, you're welcome to close. [LB736]

SENATOR SCHUMACHER: Thank you, Senator Price, members of the committee. Just a few remarks here in closing and addressing some of the issues that have been raised. You know, we just got done fighting a war. We've spent \$1 trillion--not \$10,000, \$1 trillion. A lot of American blood was spilled, and no matter how we all felt and whether or not that was a good idea or not, just about uniformly across the country, one picture made us feel just a little bit good about it. And that was those folks who never voted before, who were under the oppression of tyranny, dropping that secret ballot into the box. And no matter how we felt, that kind of made us feel a little better--mission accomplished. That's what this is about. You know, it's common that...well, what this is about is, you know, unethical election workers who might try to do something out of the ordinary. Probably not in the smaller jurisdiction. Probably they're doing something when they're opening that and they know this is Paul Schumacher's ballot or Kate Sullivan's ballot or Scott Price's ballot. You know, they notice hey, what's this

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Republican doing voting for a Democrat for president? Wait until we tell the party chairman about it. It's just the human nature of it and the fear that one might have that when you send that ballot in and they see your name on the back and they find...open it up and happen to just notice that it's you voting against the school bond issue or for the school bond issue, the fear that that might influence your decision is what is right or wrong. That perception--even if it doesn't occur in reality--that deters and shapes your vote is so very important. Look at the rich world that the people who are lucky enough to be able to go to a polling place have...get the benefit of as opposed to somebody who's told they've got to vote by mail. You go to the polling place, you get in the booth and you mark your ballot, and then you stick it in the metal case--you know, we'd get rid of those. And then you'd march over and they'd look at the signatures on the back side and they ceremoniously stick it in the ballot box, make sure nobody can see what it is. Why do we go through that if that's not important? It's the perception that your conscience is speaking. We can skip that step. Just hand it to the election worker, they're too busy anyway. Cost, cost. Sarpy County, big county, their \$10,000. They're going to sweep the streets after a snowstorm for \$10,000. The core of our democracy isn't worth a little money? We're going to cut out everything else so we can spend on something else, but the very core of the system isn't worth a few bucks. Little...isn't worth 200 extra hours divided by 20 workers or whatever? It is a policy decision and Mr. Erickson was correct on that and the policy has been decided. All votes shall be by ballot or other means authorized by the Legislature, whereby the vote and the secrecy of the elector's vote will--not might be, chances are, shall be--will be preserved. The people have spoken. This is in the highest law of this state and if it's going to be changed because we're going to save \$10,000 in Sarpy County or because we're going to save a little work in the election commissioner's office, then let's put her out there in a constitutional amendment and let's say people, let's revoke that provision of the constitution because you know, we just can't afford it anymore. I'll take any questions. [LB736]

SENATOR AVERY: Thank you. Questions? Senator Price. [LB736]

SENATOR PRICE: Senator Avery, thank you. Senator Schumacher, thank you, I understand the passion. But that notwithstanding, let me ask this: What precludes somebody in any system we put up be able to say anything? They could say...right now, they could say I voted one way or another or we put their ballot and they could say...because if they're a poll worker, right? We're giving validity to what they say just based on...hey, I mean, there's no provision to protect the sanctity of vote from hearsay. And what you're saying basically amounts to a person now could say one way I voted and I put in a secret ballot and they could still say. It doesn't change anything if they wanted to influence...if someone wanted to influence or do...be nefarious. That's that mythical bad actor. They could just say anything they want to at any point in time because they're, by virtue of being a poll worker, they're given validity and we...so what remedy is there in law right now to take that person to task? [LB736]

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SENATOR SCHUMACHER: If somebody were guilty of it, they'd have to have motive and opportunity. When you put that thing inside of the metal case that dropped into the voting thing and the voter said, you know I...or the election worker said I could see through the metal case, there's no credibility in a statement coming from a poll worker under that circumstance. If a poll worker says that under the double envelope thing where the envelopes are then separated off, less credibility because the common sense says you know, that's pretty hard to do. But when the poll worker is the one opening the envelope, pulling stuff out and looking at the signature or worse yet, click and it's on the internet, it takes on credibility. This is a minor expense for a great privilege. [LB736]

SENATOR PRICE: Thank you. [LB736]

SENATOR AVERY: Any more questions? [LB736]

SENATOR SCHUMACHER: Thank you. [LB736]

SENATOR AVERY: Thank you, Senator. That ends the hearing on LB736. We'll now move to LB878 and invite Senator Wallman to come forward. Welcome, sir. [LB736]

SENATOR WALLMAN: Thank you, Chairman Avery. Members of the Government, Military and Veterans Affairs Committee, for the record, my name is Norm Wallman, N-o-r-m W-a-l-l-m-a-n, and I am here to introduce LB878. And I should mention, that's a hard act to follow. And this bill makes four changes to the Election Act and the first change is moving the date of publication for the election calendar to November 1, rather than the current December 1. In recent election cycles, there has been a growth in the number of groups that provide multistate election information to constituents such as disabled voters, military voters, students, and overseas voters. The earlier date will allow a more timely publication of these drives. In addition, there are several deadlines that occur in the first few weeks of December. This will prove a slightly-longer lead time for those deadlines. The second change replaces the term "majority" with "one-half or more." In situations where the Secretary of State calls a special election to refill a political subdivision board due to numerous vacancies, this addresses a situation with a board that has an even number of members and half of them are vacant. While half is not a majority, the remaining half of the board does not constitute a quorum, or...and the board is not able to hold a meeting to refill their board. This happened in Wymore, where one guy always left and they couldn't vote on anything because they didn't have the quorum. So, the third change is rewriting two sections regarding which offices appear in the general election only. Current statute did not include reclamation districts that historically have been a general-election-only office and mistakenly included the office and the list of offices to be automatically advanced. The new language references those offices that have filing deadlines in February and March for inclusion on the primary ballot and those that file in July in August for inclusion on the general election. The fourth and last change removes two outdated sections that required an

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appointment of a custodian of election equipment. This requirement dates back to 1959, when mechanical voting machines were in use. While this position was advisable at the time, voters had to interact with the vote marking device. Current equipment is more user-friendly and the duties of the position are fulfilled in other ways. So, this was brought to me by Secretary of...election commissioners, so if anybody has any questions, then somebody will be following me. [LB878]

SENATOR AVERY: So you're asking me not to ask you any questions? [LB878]

SENATOR WALLMAN: Right. (Laughter) [LB878]

SENATOR AVERY: Thank you, Senator Wallman. I have a question for you. Did the Secretary of State describe this as a technical cleanup bill? [LB878]

SENATOR WALLMAN: Yeah, yeah. [LB878]

SENATOR AVERY: Yeah, okay. Thank you. Proponent testimony? You're almost the last one to remain. [LB878]

NEAL ERICKSON: Chairman Avery and members of the committee, once again for the record, Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n, Deputy Secretary of State for Elections, here on behalf of the Secretary of State, John Gale, in support of LB878. First of all, I'd like to thank Senator Wallman. This is a relatively minor cleanup bill. It's got a few changes in there and we thought it'd be a nice welcome to the Government Committee for Senator Wallman. And Senator Seiler, if you'd been appointed a few days earlier, I probably could have found one for you as well, but... (Laughter) No, Senator Wallman did an excellent job of describing this. It is four items. The changing the date of the publication of the official election calendar from December 1 to November 1, as he described, we do get requests from people for that election calendar and we have to...we give them actually drafts and say it's not going to be official until December 1. It has to be approved by the Attorney General and so regardless of whether we give it to them in October or even September, we usually don't get it back until shortly before December 1. It's just kind of the nature of their workload there and we understand that. By doing it this way, I think we're going to kind of force the issue and get it a little bit earlier. The second item, on the half or more, once again I think Senator Wallman described it accurately. We actually had a situation in Dodge County this year. Where you see it occur is when you have even-numbered boards and that's going to be on your school boards. And Dodge Public Schools recalled three of their school board members, didn't have a quorum, but the statute didn't actually fit either, because it wasn't a majority of the six. We did go ahead and order the special election anyway and got that board refilled. On the other hand, we thought we should probably get this language so it would address even-numbered boards where you have that situation that exactly half of them are gone--not a majority but still not enough to form a quorum. The

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third change is probably the most complicated and I will take some of the blame for that. Where it started was we had a section of statute that said reclamations shall appear on the primary ballot. They were subject to automatic advancement, which means they have to be on the primary. As Bill Drafting and myself got into it, we started looking at some cross-references and thought: Well, maybe we'd better clean this up, too, and do we really want to start putting lists in there? So it got a little bit messier than I would have liked if...than just striking reclamation districts, but I think that we end up with a better statute section this way. We had a...and if you want to look on, oh, I think it's page 9, we made a reference to 32-606. That was the way it read in the original statute, when it should have been 32-606(1), so we ended up cleaning all of that stuff up as well. The last change was eliminating two sections regarding custodians of election equipment. As Senator Wallman mentioned, this...these date back to 1959 when with lever machines, there probably was a little bit more of a need for them in terms of training not only the poll workers on how to operate them, but also educating the public as well on how to operate them. Since we've gone to optical scan, it's a little more intuitive process and the custodian of election was also responsible for inventory, things like that. Currently, the election officials are responsible for those and we have them certify the election equipment inventory to us every year, so we didn't see the need for a special designated custodian of election equipment and so those two sections are removed in this proposal. We encourage you to support this bill and advance it and with that, I'll answer any questions you might have. [LB878]

SENATOR AVERY: Thank you, Mr. Erickson. Questions from the committee? Don't see any. Thank you. [LB878]

NEAL ERICKSON: Thank you. [LB878]

SENATOR AVERY: Any other proponent testimony? Any opponent testimony? Neutral testimony? We thank you for coming. That ends the hearing on LB878 and the hearings for today. I will ask the committee to remain for a brief Executive Session. [LB878]