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Government, Military and Veterans Affairs Committee
February 14, 2013

[LB235 LB271 LB525 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 14, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB235, LB271, LB525, and a gubernatorial appointment. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; Russ Karpisek; Scott Lautenbaugh; and Jim Scheer. Senators absent: John Murante; and Norm Wallman.

SENATOR AVERY: (Recorder malfunction)...hearing today, the Government, Military and Veterans Affairs Committee. While I am waiting for the members of the committee to arrive I think I'll go ahead and open the gubernatorial appointment portion of the hearing and invite Mr. Wayne Boyd to come forward. Mr. Boyd has been nominated by the Governor as a new appointee to the State Personnel Board. Welcome, sir.

WAYNE BOYD: (Exhibit 1) Thank you. [CONFIRMATION]

SENATOR AVERY: Why don't you start by telling us a little bit about yourself, why you think you would be a good member of this board. [CONFIRMATION]

WAYNE BOYD: Well, I'm an attorney, I've been practicing in South Sioux City for 49 years. My public experience includes: I'm the city attorney for South Sioux City, have been for 44 years; represent several other communities in the area. In the past I've represented school districts, drainage districts, and other public agencies. Served 31 years on the Board of Directors of Nebraska Public Power District, 10 years as chairman of the board, and several years as chairman of the Nuclear Committee. I had several other opportunities to serve the public as special prosecutor in some capital cases and helped investigate a couple of others. Been involved in public service in one way or another ever since I started practicing law. And when I went off of the board of Nebraska Public Power District it was one of those things, I just wanted to continue in some type of public service and was very fortunate that the Governor asked me to serve on the State Personnel Board. I have attended one meeting, and I'm a little bit familiar with the procedures used in handling grievances. During my time as city attorney I dealt with several unions, prepared labor union contracts on behalf of the city, assisted in negotiations, and handled grievances at that level. And I think that this is something that fits in with my background and something that I would like to do. [CONFIRMATION]

SENATOR AVERY: Thank you. Could you elaborate a little bit more on what the State Personnel Board actually does? [CONFIRMATION]

WAYNE BOYD: Well, the State Personnel Board consists of five members appointed by the Governor, confirmed by the Legislature, that handle grievances by state employees. I have attended one meeting already and that was in November. And the procedure is

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that when there is a grievance filed against a state agency by a state employee, it goes through the grievance procedure either under the state personnel manual or under the appropriate labor contract. And then they have the option if they don't like the decision during the grievance, they can proceed to file a complaint or request application for hearing. A hearing officer is appointed who takes all of the evidence, listens to attorneys if there are attorneys involved, and makes a very lengthy, complicated--not complicated--but comprehensive set of facts and his recommendation as to how the grievance should be handled by the Personnel Board. It's an appeal process that a administrative law judge's recommendation and findings along with all of the documents go to the Personnel Board, they meet, and make a decision as to whether or not to affirm or reverse the decision of the administrative law judge. [CONFIRMATION]

SENATOR AVERY: This is a five-year appointment? [CONFIRMATION]

WAYNE BOYD: No. I really can't tell you. [CONFIRMATION]

SENATOR AVERY: Six? No, it's five. [CONFIRMATION]

WAYNE BOYD: Five, yes. [CONFIRMATION]

SENATOR AVERY: Well, let me ask if...do you have a question, Senator Bloomfield? [CONFIRMATION]

SENATOR BLOOMFIELD: I don't have a question but I would like to say, welcome, down here, Mr. Boyd. In other circumstances, I would call him Wayne as I have for the last 25, 30 years. I would highly recommend him for this position or any other board that the Governor would choose to appoint him to. He's well respected in northeast Nebraska. [CONFIRMATION]

SENATOR AVERY: I take it he's your constituent. [CONFIRMATION]

SENATOR BLOOMFIELD: He is my constituent out of South Sioux City. He spent so much time over the past 20 years working back and forth between Norfolk that Senator Scheer might want to claim him part time. [CONFIRMATION]

SENATOR SCHEER: Well, he couldn't vote for me, so... [CONFIRMATION]

SENATOR AVERY: Any other questions? Senator Karpisek. [CONFIRMATION]

SENATOR KARPISEK: Thank you, Senator Avery. Mr. Boyd, thank you for your years of public service; we appreciate that. You said that you did attend one meeting? [CONFIRMATION]

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WAYNE BOYD: Yes. [CONFIRMATION]

SENATOR KARPISEK: And was there any business that you took care of?
[CONFIRMATION]

WAYNE BOYD: Yes, there were two appeals that were presented, I believe it was two at the time. They have some that are on a tentative basis that don't make it there, but I think there were two that we handled at that time. And that was back in November.
[CONFIRMATION]

SENATOR KARPISEK: Was it hard to... [CONFIRMATION]

WAYNE BOYD: No. It's not difficult because ahead of time, ahead of the meeting you receive all of the evidence that was presented, the grievance, the responses, the agency's response to it, and then the facts as presented to the hearing officer, and the hearing officer's recommendation. It's a matter of being able to read that ahead of time. For instance, there's a meeting next week, and assuming that I am confirmed I'll be going to that. And two weeks in advance, we receive all of the recommendations from the hearing officer. [CONFIRMATION]

SENATOR KARPISEK: Great. Thank you again. Thank you, Senator Avery.
[CONFIRMATION]

WAYNE BOYD: Uh-huh. [CONFIRMATION]

SENATOR AVERY: I don't see any more questions. Let me explain what we will do. Probably not until next week will we have an Executive Session--since we try not to have Exec Sessions on the day when we're taking off for a long weekend--and we'll vote on your confirmation then, and it will then be reported to the full Legislature for debate and vote. And we have a good track record in this committee of all of our nominees being confirmed. [CONFIRMATION]

WAYNE BOYD: I appreciate that. [CONFIRMATION]

SENATOR AVERY: We thank...I know that you had some trouble arranging your schedule to appear in person. I do want to thank you for going to that effort because we like to see people, you know, face-to-face that we're confirming. So I thank you for making that effort. [CONFIRMATION]

WAYNE BOYD: I understand that. You know, Sherry said that it would be better if I were here, and I'm glad to do that. [CONFIRMATION]

SENATOR AVERY: It's a brief appearance but nonetheless it's an important one, and

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we do thank you. [CONFIRMATION]

WAYNE BOYD: Okay. Thank you. I appreciate it. I appreciate your time.
[CONFIRMATION]

SENATOR AVERY: Thank you. All right. That ends the hearing on the gubernatorial appointment. Now I'm going to convene the committee for a hearing of bills. And before I do that, let me introduce the members of the committee. I'm going to start on the left this time. Senator Scheer is with us from Norfolk, and next to him--who is almost always here--is Senator Norm Wallman from Cortland; I believe he is out of town. Next to me to my immediate left is Senator Russ Karpisek from Wilber. On my immediate right is the legal counsel for the committee, Christy Abraham. Next to her is the Vice Chair of the committee, Senator Scott Price from Bellevue. And soon to join us, I believe, is Senator Scott Lautenbaugh of Omaha, and next to him is Senator David Bloomfield from Hoskins. And Senator John Murante, on the end there from Gretna, is also out of town. People are taking advantage of early departure for the long weekend. If you wish to testify...first of all, let me tell you we'll follow the order on the agenda as presented or posted outside the room starting with LB235 followed by LB271 and then LB525. If you wish to testify for or against any of these bills, we ask you to fill out this green form. Please print the requested information. You'll find a copy of this form at the entrance to the room--at each entrance actually--and when you appear at the table to testify, give a copy of this to the clerk for the permanent record. And we ask that you state your name and spell your name clearly for the record. If you have any material that you want us to see, exhibits, you need 12 copies. If you don't have 12 copies, the pages will help you with that. Give that material to the clerk for distribution. The pages are Will Rahjes from Elwood, Nebraska, and Cicely Batie from Lexington. And they will be assisting us throughout the hearing today. If you do not wish to testify on a bill but you do have an opinion that you'd like for us to know about, there is a form that you can fill out where you just provide the requested information, your name, address, what bill you care about, and an opportunity to say, yes, I'm for this or against it. These forms are also at each entrance to the room. If you have a cell phone, as I'm sure most of you do, please turn it off or put it on silent mode so that you don't disrupt the proceedings. If you have any electronic devices that make noise, we ask that you do turn them off. Now, the introducers will go first and they will be followed by proponents who are followed by opponents and neutral testifiers. Closing remarks are reserved for the introducers only. And we do ask that you do respond to our questions rather than ask us questions, and we also ask that you not try to engage other people in the audience in your testimony, and that way it's a much more orderly process. We will be using the light system; it is a five-minute system. The green light means you have four minutes, and when the amber light comes on you should be winding up your testimony; that is a one-minute light. And the red light is a no-minute light. That means you should be finished; and if not, I'm tolerant up to a point, so do try to observe the light system. With that, we welcome Senator Scott Lautenbaugh to the committee. [CONFIRMATION]

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SENATOR LAUTENBAUGH: I'm first? [LB235]

SENATOR AVERY: No, you're second. But we will start with LB235. Senator Howard. Welcome. [LB235]

SENATOR HOWARD: (Exhibit 1) Thank you. [LB235]

SENATOR AVERY: This is your first time here to this committee, right? [LB235]

SENATOR HOWARD: It is my first time in the Government Committee. [LB235]

SENATOR AVERY: All right. [LB235]

SENATOR HOWARD: Thank you for having me. Good afternoon, Chairman Avery and members of the committee. For the record, I am Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I bring you LB235, a bill to ensure a transparent election process with adequate public input. LB235 creates a community advisory committee to the election commissioner in a county with a population more than 100,000. In addition, the bill would require public notice and hearings before polling places and precinct lines are moved. Finally, the bill would reduce the precinct size to 1,000, returning it to the precinct size that worked effectively for over a decade. I spent the last year and a half of my life canvassing, as I'm sure a lot of you did when you were running for office. And what I was surprised by was that the one issue I heard the most about was not property taxes and it wasn't healthcare and it wasn't public safety. It was polling places, access to voting, and issues surrounding the elections process. And it concerned me how damaged the public's trust in the process had become over the last year. The challenges of this election cycle in Douglas County were the perfect storm of circumstances from a new census that required redistricting, to a bill in the Legislature that changed the size of wards and precincts. The election commissioners in Douglas, Sarpy, and Lancaster Counties had a really full plate. This bill is an opportunity to restore the public trust that was lost in the last cycle and safeguard against future complications, voter confusion, and controversy. The first thing LB235 does is create an advisory committee. This idea came from a best practice developed by the Douglas County Election Commissioner. Creation of the committee will ensure that a formal body representative of the public is in place to improve communication, advise the election commissioner, and inform other community leaders of changes in the administration of election. I do have an amendment for this committee to consider, offered by the League of Women Voters, to put a member of a nonprofit, nonpartisan organization that specializes in voter registration and elections on the committee. It should have been distributed to you. Yes. Okay, great. Second, LB235 has a hearing and notice requirement that will make certain that no one feels left behind or unheard when reasonable changes to polling places need to be made. This section is deliberately

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broad so that election commissioners are able to use whichever notice mechanism is most responsive to the needs of the citizens of their county. As an example, Douglas County was really effective in this method. They sent postcards to every voter in the district letting them know where their polling place was and how it had changed. Further, Commissioner Phipps opened up the changes for public comment with a public hearing between the primary and the general. I believe this public hearing would satisfy the notice requirement in LB235, and I would like to see these good practices mirrored in other large counties. Finally, LB235 would reduce the size of precincts from 1,750 voters who voted in the last general election to 1,000. This would return precincts to the size they had been for more than a decade before LB449 in 2011. As a direct result of the expansion in that bill, many precincts in Douglas County were redrawn to reflect the allowance of an increased number of voters. And because there is only one polling place per precinct, the creation of larger precincts meant fewer polling places. In Douglas County, this resulted in the closing of polling locations in places like senior citizen towers, lower-income areas with transportation issues, and general confusion on election day. In my district, we went from 20 precincts in the 2008 general election to 10 in the 2012 primary election. And after public input, in the general election three polling places were restored in my district. That experience is a clear signal of the necessity for a serious discussion about the appropriate size of precincts and the number of corresponding polling locations. We must do better. I'm sure there will be some questions about early voting and its effect on precinct size. I am a personal proponent of early voting, voting by mail and other methods that make the electoral process more accessible. Unfortunately, many of the voters in my district are unable to travel to the Election Commission office during business hours for in-person early voting due to a variety of barriers that we can talk about later. I also really want to clarify, this bill is not about the work of the Douglas County Election Commissioner and his staff. I know the staff of the election commissioner at the Election Commission in Douglas County personally, having worked there for many summers when Senator Lautenbaugh was commissioner--hey, boss man. The individuals who work at the commission are consummate professionals and just really wonderful, lovely human beings. LB235 is a bill about learning from the past and moving forward to a future of open elections. This bill is simply good policy to ensure accountability and transparency in the administration of our electoral process, the foundation of a representative democracy. In a democracy, public confidence in the integrity of the electoral process is critical. Thank you for your time and attention to LB235, and I would be happy to answer any questions. [LB235]

SENATOR AVERY: That wasn't so bad, was it? [LB235]

SENATOR HOWARD: Yeah. [LB235]

SENATOR AVERY: We're a very gentle committee. Thank you for your testimony. [LB235]

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SENATOR HOWARD: Thank you. [LB235]

SENATOR AVERY: Let me ask you about this advisory committee. Are there any such committees existing today in any jurisdiction that you know of? [LB235]

SENATOR HOWARD: You know, that's a good question. I can't answer it, but maybe somebody behind me could or I could look it up and address it in my closing. I know that this is something that the election commissioner in Douglas County did between the primary and the general. And just from firsthand knowledge of the folks who are on that advisory committee, they felt it was really effective and it was really responsive, which I think it would be great for these larger counties to be able to get consumer input. [LB235]

SENATOR AVERY: Would the advisory committee have regular meetings or would they meet at the call of the election commissioner or how would that work? [LB235]

SENATOR HOWARD: You know, that's a good question. I would defer to the committee's expertise on what would be best in that regard. I think the bill is drafted to be intentionally broad. I didn't want these election commissioners to feel bound by anything in this bill that didn't work for their county specifically. So if it's something where the advisory board is only there during the redistricting process, if they're there prior to every election to talk about polling-place issues or any other issues that may arise, I think it would...it's really meant to be responsive to their specific needs. [LB235]

SENATOR AVERY: Questions from the committee? Senator Price. [LB235]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Senator Howard. In reading the bill's language, it seems to really basically create a committee that...and put a duty to have a public notice, but that there is no action required on the part of the election commissioner to undertake the suggestions or whatever the committee decides to do except a...so basically, it's a public meeting. [LB235]

SENATOR HOWARD: Well, it's an advisory committee. I didn't want them to feel like their advisory committee could tell them what to do necessarily, especially if the advisory committee doesn't have the expertise of the election commission per se. But I do think that one of the issues that folks felt in Douglas County was that there was a lack of consumer input in this last process. And so the advisory committee I think would be an opportunity to have that consumer input and address those concerns for voters. [LB235]

SENATOR PRICE: But you're not foreseeing that it binds an election commissioner to take any action? [LB235]

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SENATOR HOWARD: No, not necessarily. No. But I do hope that it would help them have a broader perspective of the issues that surround polling places and address some of the complications that arose this last cycle. [LB235]

SENATOR PRICE: Okay, thank you. [LB235]

SENATOR HOWARD: Thank you, Senator Price. [LB235]

SENATOR AVERY: Senator Bloomfield. [LB235]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Howard, I'm going to have a couple of questions. Would you expound a little bit on what you feel to be the benefits of going from 1,750 down to 1,000 voters per precinct? [LB235]

SENATOR HOWARD: Sure. Thank you for the question. So what happened--and I addressed it a little bit in the opening too--was that with bigger precincts that means that there are fewer polling places in a specific area. And so if there are fewer polling places, folks who have barriers to getting to their polling place will have improved access. So we saw a lot of folks who had transportation issues, we saw a lot of folks who had a variety of barriers to getting to their polling place. So if there are fewer, presumably they would be closer to the voters that they were trying to reach. [LB235]

SENATOR BLOOMFIELD: Do you have any idea what the additional cost of that might be? And if not, I'd be more than willing to have you get back to me with that. [LB235]

SENATOR HOWARD: Sure. There is no fiscal impact on the state level but there is an impact on the county level, and I can't speak to that. [LB235]

SENATOR BLOOMFIELD: Would you look into that a little bit? [LB235]

SENATOR HOWARD: Sure. I'd be happy to. [LB235]

SENATOR BLOOMFIELD: And my next question pertains to the amendment that you brought us. [LB235]

SENATOR HOWARD: Yes. [LB235]

SENATOR BLOOMFIELD: You said that came from the League of Women Voters. Are there any other groups such as the League of Women Voters that could perform that task? [LB235]

SENATOR HOWARD: You know, not to my knowledge, but I wouldn't be surprised if there were some, especially in these other areas. [LB235]

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SENATOR BLOOMFIELD: Okay. Okay, thank you. [LB235]

SENATOR AVERY: Any other questions? Senator Scheer. [LB235]

SENATOR SCHEER: Thank you, Senator Avery. Senator Howard, a question in regards to the redistrict the size down to the 1,000 versus 1,750. In statute it already gives a minimum of 75 but the maximum was increased to the 1,750, so truly your election commissioners already have the flexibility to move from 1,750 to 1,000 to 500 under current legislation. And per your testimony, evidently we're responsive to those needs in the community because you mentioned in your area it went from...they added three, I think, from the primary to the general. So are we dictating something legislatively that is already available to them? [LB235]

SENATOR HOWARD: That's a good question. You know, previously the cap had always been 1,000 and in the last legislative session it went up to 1,750. Right now, they can go up to 1,750, but what advocates found when...in the redistricting was that that meant that there were too few polling places in Omaha. So if you bring it back down to 1,000 we would have more polling places and improved access. [LB235]

SENATOR SCHEER: But you mentioned...you noted in your testimony, the commissioner had already done that. [LB235]

SENATOR HOWARD: Well, actually he...so what I mentioned was in 2008 when my mother ran for her second term, there were 20 wards and precincts in District 9. In 2012 when I ran, there were 10, so we got cut in half because of the change. They added 3 more, which brought me to 13. It didn't restore all of the polling places that they had had in 2008. [LB235]

SENATOR SCHEER: I understand, but in fairness part of that is--and maybe elections should not be about cost but certainly it had to be about cost savings as far as those numbers voting--in looking at maps--and I'm not specific to yours--but regardless of how many live in a district, depending upon where the polling place is, by shrinking it doesn't necessarily bring that place into the center of a polling area. I mean, you use what's available in those areas, so to a certain extent even lowering the number per district wouldn't necessarily negate the distance you need to go. Would that be correct? [LB235]

SENATOR HOWARD: You know, it depends on the ward and precinct. So what we saw in my district--and I think everybody here knows when you're running you know your district really well--what we saw was that I had a ward and precinct that was so big that somebody would have to go four miles walking--if they didn't have any transportation and there was no bus route--walking to get to their polling place. That one was split in

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half. And then they went to their previous polling place before. So I think 1,750 or at least what we saw was too big. However, I'm happy to work with the election commissioners if there's a better number that is more accurate of the size that would work best for them because I think it was only in Douglas County that they met the 1,750. And so I think going down to whatever number seems reasonable below 1,750 since 1,750 seemed too big, is something that I would love to work on. [LB235]

SENATOR SCHEER: Okay. Thanks, Senator. Thanks, Senator Avery. [LB235]

SENATOR HOWARD: Thank you, Senator. [LB235]

SENATOR AVERY: Just by way of a little historical perspective, but this committee handled that bill last year, LB449. And the original proposal was for precincts to be at 3,000, and we cut that down to 1,750. And you still maintain that's too big. [LB235]

SENATOR HOWARD: Well, what we found was that it was too big. [LB235]

SENATOR AVERY: Would that might vary by district? [LB235]

SENATOR HOWARD: And I think it does vary by district for sure. [LB235]

SENATOR AVERY: If you have a very dense population... [LB235]

SENATOR HOWARD: I do. [LB235]

SENATOR AVERY: You do? [LB235]

SENATOR HOWARD: I have a wonderful district; everybody's crammed in there. But I think what happened was that the really massive changes in regard to wards and precincts, when you got into these bigger wards and precincts was--and especially in Omaha which is, you know, it's these bigger areas was east of 72nd where it is more...72nd Street in Omaha where it is more urban, where it is more densely populated--it seemed like they got bigger and then the polling places got further away which is not necessarily what we want to see happen. [LB235]

SENATOR AVERY: Any other questions? All right. [LB235]

SENATOR HOWARD: Really? [LB235]

SENATOR AVERY: I don't see any. So you're going to stay to close? [LB235]

SENATOR HOWARD: I'm going to stay forever. Thank you. That's wonderful. Okay. [LB235]

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SENATOR AVERY: Okay. You're welcome. All right. We will now accept proponent testimony. We are on LB235. [LB235]

ADAM MORFELD: Good afternoon. My name is Adam Morfeld, and that's spelled A-d-a-m M-o-r-f-e-l-d, and I'm the executive director of Nebraskans for Civic Reform. Today I am testifying on behalf of Nebraskans for Civil Reform in support of LB235 and I would like to thank Senator Howard for introducing this legislation. I will not belabor the points she has already made but I'll make some new ones. Regardless of one's opinions as to what occurred in Douglas County this last electoral cycle, this bill is simply a step in the right direction to improve communication and transparency between the election commissioner's office and the public they serve in our state's largest counties. Commissioner Phipps himself admitted that several times throughout 2012 that he agreed that he should have communicated better with the public in the decisions that he made and would do so in the future. He did so and we believe him. However, now that we have experienced what can happen when there's a lack of communication between election commissioners and the public in our largest counties, it is time that we put into place permanent mechanisms to ensure maximum communication between appointed election commissioners and the public they serve. This is particularly important as the election commissioners in Sarpy, Lancaster, and Douglas County are selected without input from the residents of these counties and lack the same amount of accountability as other elected county officers. Thus, the need for public notice and the permanent advisory committee is an important component that ensures that these unique county officers are communicating and working with members of the community to ensure confidence in our electoral process. Finally, I believe that this committee should also revisit the issue of the maximum size of population that each polling place serves. Taken to its maximum population of 1,750 voters who voted in the last general election in each precinct, this allowed for the closure of over a third of the polling locations in Douglas County. In an e-mail obtained by a public records request that was released by news outlets in Omaha, even the Secretary of State noted that he was very concerned about the amount of polling locations that were being closed in Douglas County before a major election. One of the reasons cited by the commissioner for the reduction of the polling places was increasing popularity of vote by mail. While NCR is in support of the expansion of vote by mail elections, until we have all vote by mail elections statewide, maximum accessibility to the polls should remain a top priority. We also understand that redistricting of the precincts statewide that have already been changed would be a challenge and potentially costly, and I'm sure you'll hear some opposition testimony today to that effect. However, when it comes to the accessibility of our elections which ensures a robust and representative democracy, money should not be the only metric used to make that determination. In conclusion, we urge you to forward on LB235 to the floor for full debate, providing the public in our largest counties with more transparency and a voice in the administration of our elections is long overdue. And I'd be more than happy to answer any questions. [LB235]

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SENATOR AVERY: Thank you for your testimony. Any questions from the committee? [LB235]

ADAM MORFELD: And I can actually answer Senator Bloomfield's question about cost. I think they saved \$115,000 in that fiscal year in Douglas County with the closing of the polling locations. [LB235]

SENATOR BLOOMFIELD: Okay. Thank you. [LB235]

SENATOR AVERY: Okay. Thank you for your testimony. [LB235]

ADAM MORFELD: Thank you. [LB235]

SENATOR AVERY: Additional proponent testimony on LB235. Welcome. [LB235]

PEGGY ADAIR: (Exhibit 2) Good afternoon, Senator Avery and members of the committee. My name is Peggy Adair, A-d-a-i-r, I represent the League of Women Voters of Nebraska. LB235 is a sensible, practical bill that will help improve voter confidence in the election process. We mentioned the recent difficulties of the election commissioner in Douglas County. It came about because the voters simply felt blindsided and betrayed because they didn't know up front the changes that were being proposed, and they felt like they didn't have a voice in the process. The atmosphere became so deteriorated that any meaningful dialogue became impossible. This LB235 will prevent similar unfortunate situations because it will require the election commissioner to hold public hearings to seek citizen input before making election-process changes. And even if the outcome is the same, even if the election commissioner makes the election-process changes he or she proposes, people will be more willing to buy into the process when that process is open, visible, and people have a voice before the fact rather than after. LB235 will also sustain voter confidence in the election process by requiring counties with election commissioners to have advisory committees. Election commissioners will not appear to be acting alone and unilaterally if they seek the ideas and advice of statutory citizen committees. We also obviously support Senator Howard's amendment. And to answer Senator Bloomfield's questions, right off the top of my head I can think of Common Cause, Nebraskans for Civic Reform, the National Council of Jewish Women. I'm sure there are other community groups out there who work with elections and voter registration. Our point is that we should have somebody on this committee who is of a nonpartisan organization and somebody who's qualified and knowledgeable about the election process and about voter registration; that's simply a no-brainer. Open and accountable government is wise government, and we hope this committee will send this wise piece of legislation to the full Legislature for discussion. [LB235]

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SENATOR AVERY: Thank you, Ms. Adair. [LB235]

PEGGY ADAIR: You're welcome. [LB235]

SENATOR AVERY: Let me ask you, you don't address the precinct numbers or size issue in your testimony. Is that because you don't have an opinion or... [LB235]

PEGGY ADAIR: I'm glad you brought that up. I wasn't going to mention anything about this committee being all male... however... [LB235]

SENATOR AVERY: Yeah, well, that's not our fault. [LB235]

PEGGY ADAIR: ...however, it is. And this being a February 14--which is the birthday of the League of Women Voters--the women had to fight for 72 years before they were able to convince all-male legislatures that women should achieve the right to vote in this country. Men tend--and I'm going to generalize here--but men tend to worry more about numbers, women tend to be more concerned about process and policy. And that's why it's nice to have women on a committee because then we have a balance of people that are concerned about numbers and people that are concerned about policy. So I'm...no. Yes, we are concerned about the number, but we're more concerned about the process and making sure that people feel like they are a part of that process. [LB235]

SENATOR AVERY: I think we have ten female members of the Legislature and that's not enough to go around so that every committee gets a female member. [LB235]

PEGGY ADAIR: Yes. Women are very good at multitasking though. [LB235]

SENATOR AVERY: For a long time there was a female Chair of this committee. [LB235]

PEGGY ADAIR: I know her well. [LB235]

SENATOR AVERY: Any questions from the committee? Senator Lautenbaugh. [LB235]

SENATOR LAUTENBAUGH: Thank you, Senator Avery. I can assure you, Senator Avery did not pick this committee, membershipwise. [LB235]

PEGGY ADAIR: I've heard rumors to that effect. [LB235]

SENATOR LAUTENBAUGH: It's not his fault. I don't think I signed up for this either, come to think of it. Well, that's neither here nor there. I know that the mayor of Omaha has had citizen forums from time to time--this is before, maybe, I don't know--more than one forum from time to time, and he's lucky to get ten people there. Do you really expect there to be a lot of people showing up for a redrawing of the precincts public meeting?

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[LB235]

PEGGY ADAIR: Well, the way that this citizen advisory committee was formed in the bill, the political parties basically would choose two members. And it basically, it was like...the way it's written it's like the two that get the most votes and, you know, in the election. So you're going to have basically two Republicans and two Democrats on this committee chosen by party officials, so they're going to be very concerned about elections and voting anyway. I do think they'll be very cognizant of the issues. And our point in having, you know, the fifth person on this committee being from a nonpartisan group is that we need that nonpartisan voice on this committee. And then, you know, I would love to have two from nonpartisan, nonprofit organizations, but we would be happy enough to have one on the committee. So in answer to your question--long story short--yes, I do think that they would appear. [LB235]

SENATOR LAUTENBAUGH: You're talking about the members of the committee though. [LB235]

PEGGY ADAIR: The advisory committee, yes. [LB235]

SENATOR LAUTENBAUGH: The advisory committee, yes. Is there any contemplation of a public hearing on this or occasion for public input beyond the committee? [LB235]

PEGGY ADAIR: Well, I know for the League of Women Voters, we would certainly reach out to the public because part of what we do is public education and we try to get input from everybody that we possibly can. [LB235]

SENATOR LAUTENBAUGH: Okay. [LB235]

SENATOR AVERY: Senator Bloomfield. [LB235]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Touching a little bit where Senator Lautenbaugh just trod, if we hold that to the committee being two of them from the Democrat party, two from the Republican party, and two nonpartisan, what do we do with our other parties that are seeking to grow in Nebraska? [LB235]

PEGGY ADAIR: Well, the way that the bill is written now, that sixth person would be from a party other than the two main parties. So the way the bill is written now, we would have two Democrats basically, two Republicans, and two people, say, a Libertarian or a Green party or nonpartisan. Those would be the other two members. [LB235]

SENATOR BLOOMFIELD: Okay. Thank you. [LB235]

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PEGGY ADAIR: Uh-huh. [LB235]

SENATOR AVERY: Any other? Thank you for your testimony. [LB235]

PEGGY ADAIR: You're welcome. [LB235]

SENATOR AVERY: Additional proponent testimony, LB235. Welcome, sir. [LB235]

WILLIE HAMILTON: (Exhibit 3) How you doing, Senator Avery and the rest of the committee? First of all, thank you. My name is Willie Hamilton, 2724 North 24th Street. I am the president and founder of the organization Black Men United and also work with the Political Action Committee for the NAACP. Good afternoon, members of the Government, Military and Veterans Affairs Committee. Again my name is Willie Hamilton, president, Black Men United, 2724 North 24th Street. Thank you for giving me the opportunity to come before you today in support of LB235 for the following reasons. When the community initially heard about the closing of the polls, there was literally mass hysteria and anger and disbelief. There was no public notice given or public input requested regarding the planned closing of the polling sites and the devastating impact it would have on the poor, disabled, people of color, and the elderly, we later found out. This was a rallying cry that quickly brought together a diverse group of organizations that had not worked together in the past to come together to address what we believe were barriers designed to impede free and open elections. The timing of the closing of the polls was a serious issue because of the upcoming presidential election. Why would someone make a decision to do something like this and not expect negative repercussions? It just did not make any good sense. The argument given by the election commissioner, Dave Phipps, was that it would save taxpayers \$115,000. I think that is laughable at this point, wouldn't you agree? Lastly, I believe we should restore the original precinct population size from 1,750 to 1,000 as proposed by Senator Howard in this bill. Our diverse group of organizations met with Mr. Phipps and became an adversary committee to him. We met with him on a weekly basis for about two months along with the task force established by the Douglas County Commissioners on the issue directly related to the closing of the polls and the increase in the precinct size. We were able to gain the reopening of 27 polling sites in Douglas County. The redesign and the color of the polling place notification cards and the separation of early ballot request forms from the polling site notification cards, both of these had previously been mailed to voters on one card with very tiny print which was very difficult to read and very confusing to understand. I would have loved to have seen the election commissioner position become an elected one, but I believe that Senator Howard's bill is a step in the right direction to put some type of accountability in place. Thank you for giving me the opportunity to come before you. If you have any questions I'd be happy to answer them. Thank you. [LB235]

SENATOR AVERY: Thank you, Mr. Hamilton. Let me start by asking you if you know

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whether or not the changes that were made in the sizes of precincts had any effect on the turnout in the Omaha area, because I mean I think that that's really at the crux of the discussion is that some people probably found it more difficult to vote or couldn't find their polling place and maybe this had a suppressive effect on turnout. Do you know if that is true? [LB235]

WILLIE HAMILTON: I would definitely agree with that. We had all sorts of...I also have a TV show and a radio show, so we had a lot of call-ins from a lot of folks that were very confused about the polling place locations and other issues--transportation. A lot of folks stayed away from the polls because it was too much of a trouble. And I'll use one example: I picked a gentleman up on 32nd and Lake. The election commissioner's office said that he had to go to Morning Star Baptist Church. We go to Morning Star Baptist Church and they don't have no name or him on that particular site. So we were going to another location; he wasn't there either. So we ended up calling the Nebraska Civic Reform and they actually gave us the right location. So it took four locations for this guy to actually find his right location, and that story resonated throughout the whole day. I went to plenty of locations where in one instance three people live in the same house, same house, but each one of them had to go to a different location to vote. That's ridiculous. So those are just examples of what took place that day and the mass confusion around that. [LB235]

SENATOR AVERY: You may not know this and if you don't you won't be held accountable. Do you know what the turnout in the Omaha area was, the percentage turnout? [LB235]

WILLIE HAMILTON: I do not right offhand. [LB235]

SENATOR AVERY: Statewide it was about 68 percent which is...it's a good turnout. And I was just wondering if Omaha was different from the statewide average, then there might be something that one could...you could make the argument that's tied to something and plausibly to the changes in precincts and polling places. [LB235]

WILLIE HAMILTON: I would not be able to answer that question for you, sir. [LB235]

SENATOR AVERY: Maybe somebody ought to look into that, somebody that used to be an election commissioner. Senator Lautenbaugh. [LB235]

SENATOR LAUTENBAUGH: I couldn't help but notice, sir, you said in your comments that these changes were designed to impede. Do you know by whom? Because we're the ones that passed the laws to authorize this, so... [LB235]

WILLIE HAMILTON: Do I know by whom the design was changed? Well, there's a lot of information out there regarding what took place with this. I know they had one instance

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that Mr. Phipps had actually wrote the bill. We met with Mr. Phipps on a regular basis, and he basically told us that he had no input whatsoever regarding the bill. And then for this to come out--not only did he have input but he actually wrote the bill--it really sent a negative message that we cannot trust the process. And that's what we're talking about, the process. [LB235]

SENATOR LAUTENBAUGH: Well, I guess I don't understand that, because Mr. Phipps obviously was in on writing the bill and he came down here before this committee and indicated as much. [LB235]

WILLIE HAMILTON: Uh-huh. [LB235]

SENATOR LAUTENBAUGH: So, I mean, are you implying that the...and the Legislature did pass the bill. So are you implying that he was doing this design to impede something or was the Legislature in on it too or how did this come about? [LB235]

WILLIE HAMILTON: Now I'm not going to get around about pointing fingers if the Legislature had something to do with it. All I know is what has been put out into the community, and that was e-mails that said exactly that. [LB235]

SENATOR LAUTENBAUGH: I would only question because when you say something is designed to impede, I took that as meaning that this was designed by someone to impede someone. So I thought you might have an idea as to who that was specifically. [LB235]

WILLIE HAMILTON: No, I don't. [LB235]

SENATOR LAUTENBAUGH: Thank you. [LB235]

SENATOR AVERY: Any other questions? Could you answer a question for me? [LB235]

WILLIE HAMILTON: Yes, sir. [LB235]

SENATOR AVERY: What is Black Men United? What do you do? [LB235]

WILLIE HAMILTON: We are a nonprofit organization, 501(c)(3). We work on the area of advocacy when it comes to mass incarceration, voter (inaudible), things of that sort. We also have a Real Men Read program where we actually go into the penal system and have the fathers read a book to their child and we, you know, videotape that and take that DVD and we actually give it to the child so he can actually read along with the father while he's in prison. And then we also have a mentoring program as well. [LB235]

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SENATOR AVERY: Well, that's pretty good. I hadn't heard of the group before. I've heard of you and you've been before this committee before, but I didn't know the group. [LB235]

WILLIE HAMILTON: Yes. And I've heard of you, Senator Avery. [LB235]

SENATOR AVERY: Thank you for your testimony. [LB235]

WILLIE HAMILTON: Thank you. [LB235]

SENATOR AVERY: Any additional proponent testimony on LB235? Welcome. [LB235]

REBECCA GONZALES: (Exhibit 4) Thank you. Thank you, Senator Avery and committee members. My name is Rebecca Gonzales, R-e-b-e-c-c-a G-o-n-z-a-l-e-s, and I'm with Nebraska Appleseed Center for Law in the Public Interest. We are a nonpartisan, nonprofit organization dedicated to justice and opportunity for all Nebraskans. Today I would like to testify in support of LB235. In 2012, Nebraska Appleseed and several other organizations met with the Douglas County Election Commissioner after the polling places were abruptly closed. And he recognized the confusion that was caused by that closure could have been avoided had there been more community input earlier in the process. Secretary of State Gale said after the closing of the polling places, "public trust in the process had eroded." The Douglas County Election Commissioner went on to meet with community members, and he held a series of community hearings or meetings to discuss changes and gather comments and information from the community. The Omaha Community Coalition, a citizens advisory committee, was formed to help him create new precincts and decide which polling places to reopen. Out of that experience, everyone acknowledged that this public input would have been far more effective earlier in the process. Now we have a chance to ensure that early public input takes place in the future. There is no right more central to our democracy than the right to vote, and our Founding Fathers depended on every citizen having that access to vote. Jefferson said, "should things go wrong at any time, the people will set them to rights by the peaceable exercise of their elective rights." Having citizens advise the election commissioner on where to draw boundaries and locate polling places in their neighborhood helps ensure that all citizens can exercise their elective rights. As in the case of Douglas County, citizens can help election commissioners locate neighborhood polling places because they know their own neighborhoods. They know, for example, which polling places are important to the elderly because of access or if there is no bus service to a certain location. An advisory committee will help ensure transparency in the process, full and equal access to vote, effective communication to the public about important changes to the election process, and it can help educate the citizens about voter registration and rebuild trust and participation in democracy's central right. Nebraska Appleseed urges you to pass LB235. We also support the amendment submitted earlier by Senator Howard and the

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League of Women Voters. If I can provide any further information or answer any questions... [LB235]

SENATOR AVERY: Thank you. Questions from the committee? I don't see any. Thank you. [LB235]

REBECCA GONZALES: Thank you. [LB235]

SENATOR AVERY: Any other proponent testimony? Good afternoon. [LB235]

JACK GOULD: Good afternoon, Senator Avery, members of the committee. My name is Jack Gould, J-a-c-k G-o-u-l-d, and I'm here representing Common Cause Nebraska. We support LB235, and I think it's important to note that, you know, whether we are dealing with redistricting at the state level or redrawing precinct boundaries at the local level, the more we can keep politics out of the game the better it is for the general public. One of the things that I think has changed here at the state level with redistricting is the pattern that has been established whereby the Legislature--and along with the Research department--comes up with a plan. The plan is put out there before the public in the newspapers. The public has a chance to see it, and then public hearings are held and the public gets an opportunity to speak. And to the credit of this body, in the last session even the hearing committees--the committee that was doing the redrawing--held public hearings; the public was invited to come--what had been in the past closed hearings. The system isn't perfect but it certainly gives the public an opportunity to speak, it gives the public an opportunity to see the process in action, and it restores confidence in the whole process from a national level even. The appointing of a committee as an advisory is something that I would think most election commissioners would appreciate. We have in the three counties that are most important here in this discussion, we have election commissioners that are appointed; those are political appointments in reality. And having a balanced body to act as a sounding board for the election commissioner is something that I would think they would be very appreciative of. I know that it varies radically in the size of the county, but when you're dealing with three large counties it seems like that process, followed by the Legislature, and then establishing that kind of a committee that can be used as a sounding board seems to be a solid plan from our perspective. Thank you. [LB235]

SENATOR AVERY: Thank you, Mr. Gould. You also focused on the advisory committee, not the numbers. Would you...do you have an opinion or a position on... [LB235]

JACK GOULD: On the numbers? [LB235]

SENATOR AVERY: Yeah. On the size of precincts. [LB235]

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JACK GOULD: Well, you know, I'm not...I don't feel prepared really to get into the size of the precincts. I know I've heard a number of the testimonies today saying it should be returned to what it was. I didn't have direct problems with the sizes of the...because where I live, the precincts are so small that no one has a problem. But I know that it's been a big problem for Douglas County, and I know that the people in that county are very concerned about it. And I think that what has been said about the sizes are reasonable. [LB235]

SENATOR AVERY: Any questions from the committee? Senator Lautenbaugh. [LB235]

SENATOR LAUTENBAUGH: Thank you, Senator Avery. Thank you for coming today, sir. I can remember back when I was election commissioner, I used to go on the NAACP's public access show and we talked about how to get people out to vote and whatnot. And then one time when I was not a guest, I remember the gentleman who was the president then talking about how my predecessor, Margaret Jurgensen, had closed the polling places early in north Omaha to throw the race for Hal Daub which would be unlike Margaret, to say the least, on several levels. And by the way, more importantly, it didn't happen. And I said to the gentleman, you know, I'm happy to come on, I'm happy to help, but don't you see the damage you're doing when you tell people in the community the deck is stacked against you? Why would you vote at that point, why would you bother? I'm reminded of that here when we talked about--and we've heard the damage of public trust and whatnot. As I understand what happened, some precincts were closed--a lot of them. I closed a lot of them too when I was election commissioner. Which is more damaging to the public trust, that or when people say things like these changes were designed to impede? One of my colleagues made the same allegation in a letter to this committee last year. Which is more damaging, the shifting of some polling places or the constant drum beat that something is up and it's designed to hurt someone? [LB235]

JACK GOULD: Well, I think there's no question that a lot of that concern that you're raising can be avoided by simply having the plan out there, having the public see it, and having a hearing where they can come and talk about it. And I know you mentioned earlier that there's a good chance that the public may not show up. Well, if that's the case, I mean, that's consent. I mean, you've tried. You've put it out there, the public has had a chance to speak, and then if they choose not to speak that's their prerogative. But I think what you're talking about can easily be avoided if you follow the procedure, you know, a plan. The public sees the plan, a meeting, a discussion, and then you avoid all the other things that come along. [LB235]

SENATOR LAUTENBAUGH: Thank you. [LB235]

JACK GOULD: Uh-huh. [LB235]

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SENATOR AVERY: Senator Price. [LB235]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Mr. Gould, for coming and testifying. As I've listened to the testimony--and I'm not unsympathetic to it--my question though I have to ask is, when the Legislature passed the bill responsible for changing precincts and districting, did your organization call out and take time to share that with the people in Douglas County--the impact that going from 1,000 to 1,750? [LB235]

JACK GOULD: That wasn't really...I mean, you're talking after the redistricting process? [LB235]

SENATOR PRICE: Yes. So after we had all the... [LB235]

JACK GOULD: Well, we testified at the hearings on the redistricting process and we've done that for 30 years. But it's after the process, the redistricting process, that the precincts are redrawn, it's not before or during. So what we were working on at that time was simply the redistricting process. When it got to the local level--and I confessed to Senator Avery, we're not as effective at the local level as, say, the League of Women Voters or some of the others. Most of our work has been done at the State Capitol. But, I mean, after the redistricting process, then it falls to the responsibility of the precincts to be drawn. And, no, we did not speak out specifically. [LB235]

SENATOR PRICE: Okay, great, because when you say that it is consent when we, the body, passed the bill and everything was done as you articulated with all the input, and as published as put out there, there was a resounding sound of or a deafening roar of silence of anybody saying anything in the community. So that's like a consent because the 1,750 (inaudible). I'm just commenting on that, but I understand what you're doing, what's your role here, and I appreciate it and I am glad to see you do that. But as I've heard the testimony coming by, I just wondered was there not an awareness that this existed prior to the redrawing of the districts? It was known it was to be 1,750, not 1,000. [LB235]

JACK GOULD: Well, you know, I think, again, that the public in general is...if you were to ask people to draw a map of the redistricting process, anybody in the audience, I don't think anybody could do it. And if you said draw the boundaries of various precincts or whatever, most people can't do that. It usually takes something goes wrong, and then the public is concerned because generally these things are done in a reasonable manner and people are not concerned. But in this case, you know, we did have an incident and people did raise the question. And that's not going to happen every time. Many times it'll be a very quiet process. But I think by giving more public input and having an advisory group present, you're avoiding this kind of concern that's been raised, and I just think it's good policy. [LB235]

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SENATOR PRICE: Thank you. [LB235]

SENATOR AVERY: Any other questions? I don't see any. Thank you for your testimony. [LB235]

JACK GOULD: Okay, thank you. [LB235]

SENATOR AVERY: Additional support? We're on proponents to LB235. All right. Seeing none, we'll move to opponents. Welcome. [LB235]

BETH BAZYN FERRELL: Thank you. Good afternoon, Chairman Avery, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l, I'm with the Nebraska Association of County Officials. I'm appearing here in opposition only to the part of the bill that would change the precinct numbers. Our association has not taken any position on the other aspects of the bill or the policies that have been discussed today. Our concern about changing the precinct size is when the bill was discussed and passed last year that would increase the precinct size, it was kind of a split, sort of a happy medium as you said, Senator Avery, between the 3,000 number that was proposed and the 1,000 existing number. Some of the discussion then was that the number of people that are doing early voting is increasing and the number of people that appear at the polling places is decreasing. And so the 1,750 number was considered sort of an efficient number in between, and we would like to see that number continued. As the trend for early voting continues, we think that that would be appropriate to keep it at 1,750. In addition, there are some counties who have been able to take a look at other kinds of polling places that are ADA compliant because of a larger precinct size. So that would...it gives them a little more flexibility than they did when the precinct size was at 1,000. I would be happy to take questions. [LB235]

SENATOR AVERY: Thank you. Questions from the committee? Senator Scheer. [LB235]

SENATOR SCHEER: I just wanted to clarify and make sure that my understanding was correct. It does state in the statute that it's from 75 persons through 1,750, so each county would have the ability to have that precinct size somewhere in between there; it's just the maximum that is set. Would that be correct? [LB235]

BETH BAZYN FERRELL: Yes, that's correct. [LB235]

SENATOR AVERY: Any other questions? I don't see any. Thank you. All right, we're on opposition testimony. Any other opponent testimony? Welcome. [LB235]

WAYNE BENA: Thank you, Chairman Avery. Chairman Avery and members of the Government, Military Affairs and Veterans Committee, my name is Wayne Bena,

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W-a-y-n-e B-e-n-a, and I serve as election commissioner for Sarpy County--the third largest county in population and the smallest one in size. Thank you for the opportunity to testify today in opposition to LB235. I'm going to spend most of my opposition testimony on lowering of the precinct numbers from 1,750 to 1,000. However, I do have concerns that were probably raised in the neutral level with regards to the other portions of this bill. There's five portions of this bill, only four that have been discussed already today. I will try to keep my remarks as brief as possible but I would just ask for a little latitude. And I will not take advantage of that, Senator Avery, if I go a little over. [LB235]

SENATOR AVERY: You're anticipating that already? [LB235]

WAYNE BENA: Five sections and...we'll see what happens. [LB235]

SENATOR AVERY: That's a minute each. [LB235]

WAYNE BENA: Okay. When it comes to the precinct size, I agree with Senator Howard, there was a perfect storm that happened in 2012. Not only did we have a redistricting process that was going to change the makeup of our counties no matter if LB449 was passed or not, we also had a presidential election which was contested and highly partisan. But at the same time, we had to acknowledge over the last ten years early voting has risen exponentially in the state of Nebraska. And for every voter that chooses not to go to their polling site and chooses to vote early--which I am a huge proponent of--is a cost going away...going for early voting and not being taken away from polling sites. Even if I have one voter that shows up at a polling site, that polling site has the same cost between 1 or 1,750 voters. So for every person that takes away from that polling site is more cost. The LB449 which was two years ago, Senator Avery--I just wanted to point that out because it was done the year before redistricting--was done in anticipation of being able to make those changes all at the same time. Election commissioners don't like sitting around having to change precinct boundaries and polling sites all the time. However, this is a once in a ten-year opportunity to get everything done all at the same time when, I would argue, people are the most aware of them wanting to be able to vote because we have the highest turnout in a presidential general election. So when LB449 was passed, of course, we as election commissioners in the redistricting process are going to use this. I know it's something we've done for the last ten years, but also early voting has risen in the last ten years. This was necessary. I reduced precincts in my county to the savings of approximately between \$20,000 and \$30,000 per election. And I would argue to you, there was no controversy in Sarpy County. I would argue there's no controversy in Lancaster County; Hall County which closed more precincts percentagewise than I did. This is a knee-jerk reaction to perceived problems in Douglas County. We've heard from testimony today that maybe it's not because of Douglas County, some say it is. But how I use this, how Lancaster uses this, how Hall uses this, how many other precincts use this was done and there wasn't an outcry. And if we go back to the 1,000, I have to change 25 of my precincts,

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and 25 of my precincts only because they reached the level of over 1,000 in a presidential election year where we have 70 percent turnout. The other goal of this is, it's the other three elections in this state in which turnout is not that high, and we're saving a whole bunch of money in those elections when we're having 17 percent, 12 percent, 40 percent turnout. My precinct plan was to have enough...I'm at four minutes already and I haven't even done my first point. This was done using the number of the highest election possible with the highest number of early voters. In Sarpy County, I had the most ballots cast in the county's history. And if it wasn't for the high number of people NVRA or people that I don't believe in their...I would have had the highest percentage in Sarpy County history; my plan worked in Sarpy County. My voters have gotten past the initial Band-Aid of having to change their polling site. Change is horrible. I don't want to have to do this again. If those goes down to 1,000, I'm going to have to redo this all over again. And the perceived problems that happened in Douglas County of closed polling sites and confusion, if you truly believe that happened--even though of the similar turnout in Douglas County in 2008 as it was in 2012--this is starting all over again. And I will have voters that will have the third polling site in three elections because of these changes, because I had to change it again. That's mine on that. Can I continue, Senator Avery, just on a few points on the election advisory board? [LB235]

SENATOR AVERY: Two more minutes. [LB235]

WAYNE BENA: Okay. In regard to the election advisory board, I would just mention these points: There's no provision to say how often meetings are held. What happens if I decide not to hold any of these meetings? What is the purpose of me selecting only from nonpartisans and Libertarians? If this body does not have any voting power, why does there need to be a balance? Why can I not select someone who is the best qualified such as maybe a former poll worker or a former election commissioner or deputy election commissioner? It really hampers my ability to find the best people. The election advisory board has been stated to be a best practice in Douglas County. What I saw in Douglas County, however, is what I fear what's going to happen if we continue to move down this path. After many of those meetings, folks set up outside the Election Commission office for a press conference in which they criticized the election commissioner. And even if their criticisms were not valid, there was never a press conference to say actually the Douglas County Election Commissioner was okay. I believe this board is going to lead to more partisanship in the election process and allow folks while being transparent, allow also a level of partisanship when they leave the room that will lead to a level of distrust. Finally, in regards to public notice, I have no problem doing a public hearing after redistricting. I realize that now. I realize after I did the redistricting how I was surprised that I didn't have to. I talked to my board, I talked to the Republicans in my county and the Democratic party in my county, and that was it. I have no problem doing a hearing. But every time I have to make a little bit of an adjustment, I don't believe it's necessary to have to go through the whole public notice process. And if I close a polling site within one week of the primary or general--which

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happens--I will not have enough time in general to do that. Most of the time in polling site changes, it happens because there's a fire or electricity is out or what have you. I'm not going to be able to fulfill the obligations of this. Finally, there's one provision of this statute that hasn't been talked about in regards to public notice of political subdivisions on redrawing their precinct boundaries. Thirty seconds, I promise. This is already done. This is saying that it's requiring political subdivisions to have a public hearing any time they want to do redistricting or redo their wards or what have you. Well, I need a resolution from these bodies in order to do this, so any time that a ward has been changed because of an annexation which is subject to a public hearing or what have you, I believe that portion is unnecessary. I'll conclude by saying the process in LB449 worked in Sarpy County and I wish this committee to let this continue on in order that we can see the benefits financially as well as the voters going forward. And thank you for that latitude, Senator Avery. [LB235]

SENATOR AVERY: Thank you, Mr. Bena. Let me start by quoting Secretary Gale who said that, "public trust in the process had eroded." That's the top election official in the state. Are you in disagreement with that conclusion about the process? [LB235]

WAYNE BENA: Public trust of whom? I mean, do you... [LB235]

SENATOR AVERY: I'm not...public trust in the process by which the polls were closed in, I think, mostly Douglas County. I don't think that there was nearly the uproar in Sarpy that there was in Douglas. [LB235]

WAYNE BENA: I mean I would argue, I worked with Douglas County in regards to the notifications of what...of...you know, we are required to notify people if we change anything. If I change anything, we send a postcard to those voters. So I would argue that under what current law was, he followed the process, he notified voters, he notified the media, and after such fact people were upset about their particular polling place change. And I received many calls of people having the particular polling place changed and I'm looking into that and I'm trying to find ways to address those concerns. So I'm not not addressing the public in regards to...no plan is perfect. In regards to of the whole trust, I would just submit I do not wish to testify on behalf of what happened in my county because that's Douglas County. I only know what happened in Douglas County, and my process worked. And changing this from 1,750 to 1,000 will hurt my county. In regards to the other portions of this bill, I'm kind of on the neutral end of this. I don't think it's my role. I think transparency is good. I think probably a public hearing after a huge, massive redistricting process is a good idea. But do I need to have a public hearing every time that I have to change a little line because of a ward change and it would prevent me from having a split on a ballot? I don't think that is a great use of my time or the public's time. As Senator Lautenbaugh, I don't believe people would show up for that. And again, closing a polling place in the last week...a lot of times I have to close a polling place because they don't want to be a polling site any more. And I can

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remember an instance in which a church in 2010 said they didn't want to be used anymore and this, you know, between the primary and the general. I had to get permission from the Secretary of State's Office, which I received, and every person got a postcard. I didn't receive one complaint in that general election. We put signs at the polling site, we chose someplace as close. The process works. The process works. But some of these things, I believe, are a knee-jerk reaction to perceived problems in one county that are going to affect the rest of us in a negative manner. [LB235]

SENATOR AVERY: Let me ask you this. And I don't think that the Douglas County Election Commissioner is here and you're the closest thing to that that I have. [LB235]

WAYNE BENA: Uh-huh. [LB235]

SENATOR AVERY: This time I'm not going to let you testify. [LB235]

WAYNE BENA: Oh, sure. Sure. [LB235]

SENATOR AVERY: Was the absolute number of polling places in Douglas County that were closed or changed...I mean, obviously since that's a very large county, it probably was larger than any other absolute number. But what about the percentage of precincts that were closed or polling places? [LB235]

WAYNE BENA: Do I know the...he was...okay. [LB235]

SENATOR AVERY: Wasn't that really quite larger than what you did in Sarpy and what Mr. Shively did? [LB235]

WAYNE BENA: I believe the Secretary of State's Office ranked...it was Douglas, Lancaster, Hall, and then myself, if you want to have the top four. I will say even though the number is 1,750, my number is nowhere near 1,750. My highest number right now is, I believe, 1,339. In Douglas County, it's the same way. I believe I had conversations with the Douglas County Election Commissioner that he...a lot of his are...they're nowhere near 1,750. So this wasn't a bill in order for us to go all the way up to 1,750. I reached a number during the redistricting process that I wasn't comfortable going higher than, and so we're not touching that upper number right now. [LB235]

SENATOR AVERY: Well, presumably it is a ten-year bill or ten-year law, and you may need that. [LB235]

WAYNE BENA: Yeah. Yeah. And I'm the fastest growing county and I might need that increased flexibility. And I've told my board of commissioners I'm never going lower--the number of precincts that I have. This was a baseline start, hopefully a ten-year plan with...since we are the fastest growing county, there's probably going to be the need for

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other precincts. I'm probably going--over the course of this next year after I hold elections for OPS for the first time in an off year--we'll revisit the precincts, and I'll probably add a few. And not because...you know, there were some that I think they were large, but also unbeknownst to me once I put the precincts on top, there's a huge amount of balance splits that happened just because how each subdivision cut up some precincts. So I'm going to be taking a look at that. I'm never going lower, I'm only going to be going higher. I just want to...I don't like sitting around doing this. It takes a lot of time. The goal was to get all of this done at once, and I know there are some arguments that would say that maybe doing it all at once was maybe not the best idea, but I thought maybe pulling off the Band-Aid would be the best way to do it versus doing a little all the time. And with 75 percent of the voters casting a ballot in a presidential general, they would be the most acute and aware of their polling site changes versus doing this in an off year where maybe half vote and then...or maybe 40 percent and then the other half find out two years later that their polling site changed because they didn't vote two years ago. [LB235]

SENATOR AVERY: I asked Mr. Hamilton a question about the voting turnout in Douglas County. Do you know anything about that number? [LB235]

WAYNE BENA: I would say...after I heard that, I spoke with officials in the Secretary of State's Office and this election was just under 2008 in regards to turnout. I don't know the exact turnout for Douglas. But if you want to talk for Sarpy, this is the highest number of ballots cast in county history; the highest number of early votes in county history. I didn't hit the overall percentage. I would argue to you...the Secretary of State's Office just did their removal of people that we don't believe live at their house and didn't vote in the last two elections which removed about 1,900 people from my registry. Had those been done before the election, I would have had the highest percentage of turnout in modern time in county history. And what that tells me is voters weren't suppressed. The plan works. The most ballots cast ever and the most people early voting. And we're just going to continue to see a rise of early voting. They just need that number as a way of having flexibility to control costs. As I said before, every person that goes away from their polling site is adding more cost to me without doing anything for the polling site cost. And the only way we can control the polling site costs is closing and consolidating when you don't have a whole lot of people voting. And I would submit to you in the next three elections, my precinct plan is going to work even better because the poll workers are going to be a little more busier because they're going to be a little more busier, but at the same time they're not going to be overwhelmed like in a presidential election when we have poll workers. So the process works. [LB235]

SENATOR AVERY: Questions from the committee? Senator Karpisek. [LB235]

SENATOR KARPISEK: Thank you. Thank you for coming. Did you have anything else in your statement? [LB235]

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WAYNE BENA: No. I'm...well, let's see. [LB235]

SENATOR KARPISEK: Okay. I just wanted to make sure that... [LB235]

SENATOR AVERY: I gave him extra time. [LB235]

SENATOR KARPISEK: I know you gave him extra time. [LB235]

WAYNE BENA: I covered it. I got through my stuff. So... [LB235]

SENATOR KARPISEK: Okay. Thank you. I think that you going through the same thing and telling us your situation is very beneficial. And I appreciate that because in saying how it worked for you, even though some think...again, I don't want to get into that but I do appreciate hearing the good that came out of it because that whole bill to me, I just thought it was too big when it came. I mean, there was a lot of moving parts in it but you are growing, I'm glad it worked, and thank you for kind of...because the blinders are on Douglas County and so it's good for us to remember that one size doesn't always fit all but we'll have to work on it all together. So thank you. Thank you, Senator. [LB235]

SENATOR AVERY: Any other? No more questions. Thank you, Mr. Bena. [LB235]

WAYNE BENA: Yeah. [LB235]

SENATOR AVERY: Any other opponent testimony to LB235? Welcome, Mr. Shively. [LB235]

DAVID SHIVELY: Thank you. Senator Avery, my name is David Shively, it's D-a-v-i-d S-h-i-v-e-l-y; I'm the Lancaster County Election Commissioner. I am here as well in opposition to LB235 basically on the...talking about the numbers and what we can have in precinct size for our precincts. I don't want to reiterate anything that Commissioner Bena said, but I do want to also talk about a couple of other issues and talk a little bit about the process that we go through after a census has been done and what we're required to do and the timing that has to take place on that. And that hasn't really been mentioned in any of this process. Once the Legislature approves their new lines for their legislative districts, that's the point that we can start our process in redrawing precinct lines. And the statutes are very clear that we're to match our precinct lines based on the legislative district lines. And so I have been through this twice now, I did this in 2000 and again...after the 2000 census and again after the 2010 census. And it's a time-consuming process to go in and match our precincts up and make sure everything works accordingly. And this last cycle, we also had to take into account that the growing number of absentee ballots, as Commissioner Bena had talked about, has grown. That means there are fewer people actually going to the polling sites on election day. So

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there were needs here in Lancaster County, and I'm sure in other counties as well, to make those precincts a little bit larger and maybe in geographic areas but also to meet those numbers, as well, to make sense for us. Basically, I have about two months to get that done. I had about two months both cycles to get that work done on our end because the statutes also talk about that all the political subdivisions have to have their new lines redrawn within six months of the Legislature completing their work on their legislative district lines. So as the Legislature completed their work in early June, for instance, the Lincoln City Council, the Lancaster County Board of Commissioners had six months to do their redrawing of their precinct lines. But the statute also says that they can't do that until we redraw our precinct lines; they base their lines based on our precinct lines. And so the Lincoln City Council, the Lincoln School District, other school districts, the Lancaster County Board were doing that. Believe you me, about June 15 I had city councilmembers, county board members already talking to me about how they're going to redraw their lines and we couldn't do that until we completed our work. So adding another avenue in here or a step process of an advisory committee or whatever, is going to lengthen the process on our end and will shorten the process for those political subdivisions to get their work done. That's something to keep in mind. As Commissioner Bena said, I don't have any problem having a public hearing after a big redrawing either, I think maybe that's probably better. We did go...I did go down and meet with our City Council, meet with our Lancaster County Board, told them, here are the new precinct lines. This is what we did. We reduced from 223 precincts here in Lancaster County down to 198. I went into that process knowing about how many voters I wanted to have in each precinct, and tried to hit that number. And looking after 2012 election, we came pretty close to the numbers that I was anticipating in most of those precincts. But I did want to just make sure people are aware that you have this other process in this whole thing that's going on, that you also have political subdivisions that need to complete their work by about the first of December because then you have people that want to file for those offices and have time to move on as we get closer to the filing deadlines in February and March. I really don't have anything other to talk about, but I'd be happy to answer any questions. I appreciate your time today. [LB235]

SENATOR AVERY: Now let me see if I understand this right. And by the way, thank you for coming. [LB235]

DAVID SHIVELY: You bet. [LB235]

SENATOR AVERY: The advisory committee process as laid out in this bill you think would add additional time to your work and that would be an impediment to finishing everything in an orderly and timely manner? [LB235]

DAVID SHIVELY: Depending on what happens with the advisory committee and public hearings and such. If you'd have to go in and make some changes on recommendations and stuff, it could lengthen the time to get our work done and then shorten the time that

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the political subdivisions have to get their work done. [LB235]

SENATOR AVERY: But the Secretary of State recommended to Douglas County that they have an advisory committee... [LB235]

DAVID SHIVELY: Right. [LB235]

SENATOR AVERY: ...and it seemed to defuse the situation considerably, so there is some empirical evidence there that having citizen participation...yeah. [LB235]

DAVID SHIVELY: Right. All I'm talking about is timing though here, Senator. I'm talking about timing. Timing does shorten that up. [LB235]

SENATOR AVERY: Yeah, I know. That's the administrator's approach rather than the policymaker's approach. [LB235]

DAVID SHIVELY: Sure. [LB235]

SENATOR AVERY: Okay. [LB235]

DAVID SHIVELY: I understand. [LB235]

SENATOR AVERY: Got it. Well, I do know that Lancaster County had a smooth process. I mean, we didn't seem to have any huge difficulties. And I think a lot of the reason for that is just the way you manage your work. [LB235]

DAVID SHIVELY: Thank you. [LB235]

SENATOR AVERY: But I did notice that both you and Mr. Bena seem to endorse the public hearing part of the bill. [LB235]

DAVID SHIVELY: I don't have any problem with that, no. [LB235]

SENATOR AVERY: Okay. Senator Scheer. [LB235]

SENATOR SCHEER: Thank you, Senator Avery. Just out of curiosity, Mr. Shively, what number were...what target number were you using for your precincts? [LB235]

DAVID SHIVELY: I was shooting for 500, and in the majority of my precincts I believe of this last...for the presidential election, the actual voters in those precincts, I had about 128 of our 198 precincts that had between 400 and 600 voters that voted, cast ballots on election day. [LB235]

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SENATOR SCHEER: But what was the number total as you drew them about, not how many... [LB235]

DAVID SHIVELY: I was shooting for around 500, between 500 actual voters. That's what I was aiming towards. [LB235]

SENATOR SCHEER: Okay, and when you changed your...when you lowered the amount of your districts, then some of your districts expanded in size, did you have concerns expressed by...or had problems from the election from that expanded size? [LB235]

DAVID SHIVELY: Senator, any time you move polling locations, any time you move lines you always have a few voiced concerns because usually when you move a line, someone's going to probably move maybe a little bit closer to a polling location and others are going to move a little bit further away. And I've been here since 1999. Any time I've moved something, I always have a few people that are upset because they moved. People, in general, don't like change. You always sit in the same location every time you go to church. You always want to go to the same place that you get your groceries. I mean, people try to do the same thing. So going to a polling location is something that they, you know, changing that is...it's something they're just not used to. They like going to their...they like consistency. [LB235]

SENATOR SCHEER: So part of this election possibly could be just the simple change of location regardless of the downsizing, just the change of the polling places may have created some problem in and of itself. [LB235]

DAVID SHIVELY: Right. [LB235]

SENATOR SCHEER: Okay. Thank you. [LB235]

SENATOR AVERY: (Exhibits 5, 6, 7) Thank you. Any other questions? I don't see any. Thank you for your testimony. Any other opponent testimony? Any neutral testimony? Okay, Senator, you want to close? While you're getting up, I am going to read into the record a letter of support from the American Association of University Women, another letter of support from the National Association for the Advancement of Colored People, and a letter of opposition from the Platte County Election Commissioner. Now, you proceed. [LB235]

SENATOR HOWARD: I don't have much to say in closing except nobody on this committee asked me why I voted for the change in the OPS school board--nobody. But I'd like to share with you why I did vote for it which was because we had had so many problems with that board in the city that the only way I saw us restoring public trust was by a shake-up, was by changing the size and changing what they were doing. I think

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this bill is an opportunity for that kind of shake-up in the election commission. It's an opportunity for us to restore public trust, to introduce public input, and to show the county that we are making a good-faith effort to hear voters regardless of the changes. I completely defer to the committee when it comes to precinct size. I think 1,350 was as big as Sarpy went, and I think 1,250 was as big as Douglas County went. And so if we need to lower the size to that reasonable number, I am happy with that. But I think introducing public input is critical into this process. And I really appreciate your consideration of this bill. Do you have any other questions for me? [LB235]

SENATOR AVERY: So you are amenable to some amendments from the committee? [LB235]

SENATOR HOWARD: I am so amenable. I am just the most amenable. Oh, I'm ready. Okay, let me scoot in. [LB235]

SENATOR AVERY: Senator Lautenbaugh. [LB235]

SENATOR LAUTENBAUGH: I just wanted you to know, the reason we didn't ask you why you voted is because you voted the right way. I learned a long time ago to get the answer you want, shut up. So... [LB235]

SENATOR HOWARD: I actually...there was just one little comment. I read all of the legislative history from LB449 which was a hoot--mostly because it was a big bill, it had multiple sections. And when Senator Nelson introduced it, he went through it section by section. The precinct change was in Section 9, and at the end of his introduction Senator Price said, Senator Nelson, can I stop you right there? And Senator Nelson said, yes, I'm ready. And he goes, could you add more sections to this bill for us? So I think what happened was it was a very big bill and that nobody could have anticipated the impact of those changes. So I thank you for your consideration and I look forward to working with you on this, and thank you for your time. [LB235]

SENATOR AVERY: I will tell you that this committee took that bill very seriously. We sat down with the Secretary of State and went through every suggested change, got his position on it. And as I recall, we followed his advice on most of it, if not all of it. [LB235]

SENATOR HOWARD: He's a smart guy. [LB235]

SENATOR AVERY: So it was not just hastily put together, you know. It was well thought out. [LB235]

SENATOR HOWARD: Oh, no. Oh, I believe it. [LB235]

SENATOR AVERY: I don't see any more questions. Thank you very much and we

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would welcome you back any time. [LB235]

SENATOR HOWARD: Thank you. My one time this session. You guys were very nice. [LB235]

SENATOR AVERY: That ends the hearing on LB235. We'll now move to LB271 and invite our colleague, Senator Lautenbaugh, to the table to open. [LB235]

SENATOR PRICE: Senator Lautenbaugh. [LB235]

SENATOR LAUTENBAUGH: Thank you, Mr. Vice Chair and members of the committee. I brought LB271, as I recall, at the suggestion of the Secretary of State. And what this is in response to is an issue that I'd kind of forgotten about from back in the day, but it's in response to a complaint under the Help America Vote Act by a visually impaired voter who complained that the ballot marking equipment--which is known as an AutoMARK machine--was not available 35 days prior to the election when early voting, both by mail and in person, starts under current law. Following the hearing, the hearing officer made a recommendation that the in-person early voting period be shortened to 25 days. This proposal--and that's what this bill does, by the way--this proposal will only impact early voting in person, not early voting by mail which will remain starting 35 days out from the election. It is important and required to provide the same voting opportunities for both disabled and nondisabled voters. The difficulty is that the programming for the AutoMARKs cannot be completed until the printed ballots are available. With the current vendor that 92 of the 93 counties use for coding of ballots and AutoMARKs, they need approximately ten days to two weeks after the ballots are certified to produce and proofread the paper ballots and then an additional ten days to two weeks to program and test the AutoMARKs that mark the ballots for the visually impaired. Under current law, the ballot is certified 50 days prior to the election, generally about the second week of September. Two approaches are possible to correct this situation: one, to move the certification date earlier, or two, reduce the in-person early voting period to accommodate this very problem we just discussed. As was indicated at the HAVA hearing, it is possible to move many of the deadlines that occur prior to certification such as candidate petition deadlines, withdrawal dates, etcetera. However, there are two occurrences that are outside the provisions of the Election Act. The first occurs in presidential years and it is the date the national political party conventions certify their candidates for president and vice president. Unfortunately, for election administrators these dates have moved later and later in the past few cycles. The second occurs in cycles when there's an initiative petition submitted. In the past ten years, every cycle with a submitted petition--2010 and 2012 did not have any--there has been a court action regarding an issue or other issues. While the courts have been very accommodating in expediting these cases, generally these cases are not resolved until early September or later depending on whether appeals are pursued. The nominating conventions are under the control of the parties, and despite objections from election

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administrators nationally, there does not appear to be much movement to hold conventions earlier. The petition situation arises from the process itself. According to the NCSL, the national average time period for in-person early voting for those that have it is 22 days. At the current 35 days in Nebraska, there are only five states that have a longer time period and each of those have earlier certification dates. The hearing officer in this complaint recognized these issues in his recommendation in stating, "My recommendation is based on the findings that the programming requirements of the current AutoMARK equipment, the certification of candidates by the national parties, and the initiative and referenda process are factors largely outside the state's control when considering the time period for in-person voting." And I do recall this being an issue because we were always scrambling at the end to get the ballot available to be mailed out. And this is a step--the programming of these AutoMARK machines and testing them--that out of necessity can't be done before the ballots exist. So I think this law is a very commonsense approach, changing it to 25 days for in-person early voting. And again, we're still above the national average for in-person voting. I think this accommodates everyone and puts us in compliance. And I would point out that it's been alleged that while a lot of other counties managed to do this, and other states, and whatnot, well when the truth is told, they just missed the deadline like happened in this case too. It is very tough to get this right, and so I think this is a commonsense change. I'd be happy to answer any questions you might have. [LB271]

SENATOR PRICE: Thanks, Senator Lautenbaugh. I thought first, and thank you for clarifying near the end, you said that there are five states that somehow or another have a longer period of time. And I was going to ask you, are they meeting the letter of the law of HAVA and everything to get these ballots out? I mean, if we're saying that the party convention dates are what's causing a condensing of that time frame, then they're actually just blatantly disregarding the law. [LB271]

SENATOR LAUTENBAUGH: No, they're quietly disregarding the law. I think that's what you would find. They're not disregarding it, they're doing the best they can I would say. But they are running afoul of the technical letter of the law in many states. [LB271]

SENATOR PRICE: So we'd actually try to actually follow the law then, under this one. [LB271]

SENATOR LAUTENBAUGH: We're trying to create a law we can follow, yes. [LB271]

SENATOR PRICE: Do you know how any of that is impacted by the military overseas voting efforts, what happens when those ballots and time frame are required for them? [LB271]

SENATOR LAUTENBAUGH: This wouldn't affect that because, again, this is just for in-person voters. All the other deadlines would stay the same, for the mailing... [LB271]

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SENATOR PRICE: I just wanted to work "military" into the conversation, so I appreciate you. I'm glad I got that out. [LB271]

SENATOR LAUTENBAUGH: I'm happy I could be of help. [LB271]

SENATOR PRICE: I will turn the committee back over to Chairman Avery now. [LB271]

SENATOR AVERY: Thank you, Senator Price. Any more questions from the committee? Don't see any. Thank you. [LB271]

SENATOR LAUTENBAUGH: Thank you. [LB271]

SENATOR AVERY: All right. We'll accept proponent testimony to LB271. Good afternoon, sir. [LB271]

JOHN GALE: (Exhibit 1) Good afternoon, Mr. Chairman and members of the Government, Military and Veterans Affairs Committee. I am John Gale, J-o-h-n G-a-l-e, Secretary of State for the state of Nebraska, Chief Elections Officer, and I'm here to testify in strong support of LB271. I concur wholeheartedly with the testimony of Senator Lautenbaugh and all of the points that he made in this regard. The issue that had been addressed by Ms. Floyd when she filed her HAVA complaint to my office which required, under the Help America Vote Act, that we set the matter for hearing for a formal process to take evidence and determine whether or not there was any type of violation of the Help America Vote Act and any remedies that might be suggested. It wasn't, obviously, any kind of a criminal procedure where you're trying to determine guilt or innocence, it was not a damage issue where you're trying to decide who owes who what amount of money. It was intended by HAVA to require the hearing officer, if he found any type or nature--large or small--of a HAVA violation, to make remedial recommendations. And I have distributed for each of you a copy of the hearing officer's report. Mr. Rob Kinsey, an attorney in Lincoln, a trial attorney with an excellent reputation handled those hearings and took considerable evidence on the question of whether or not Ms. Floyd had been denied the right as a visually-impaired voter to vote early in person with the use of AutoMARK equipment in Lancaster County. And the answer was, yes, that had happened. And then the question became, well, is this something that really needs some attention? What kind of...was this inadvertent or is this something that really requires some attention? And having heard the evidence, he realized that it's a difficult thing to meet this 35-day requirement that we have, that was in the law before HAVA was passed. We've all tried to do that. Ninety-two of the 93 counties use exactly the same company, Election Systems and Software out of Omaha, the largest election equipment and software company in the world, who do an excellent job. But when you have the deadlines that are being pushed from the bottom to the top, in order to get the certification done timely by our office, in order to get the ballots

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printed and distributed, and then in order to code all of the automatic equipment for both in-person voting and getting ready for the election, it just seems it's so tight it never quite comes together on that 35th day and that there's always some unexpected event that causes a difficulty so that it's not 35 days, it's maybe 30 days or maybe it's 28 days when the in-person AutoMARK equipment is truly available for the handicapped and visually impaired. And we take that very, very seriously. It was one of the very serious purposes of HAVA that the physically handicapped and visually impaired be accommodated equally with every other voter. So realizing that this was an issue that wasn't going to be predictably addressed in a suitable fashion, Mr. Kinsey recommended--as Senator Lautenbaugh recommended--that we go to a 25-day which gives us 10 more days to meet that requirement for in-person voting with AutoMARK equipment available for the physically handicapped and visually impaired. And he made that recommendation and as you read his opinion you'll realize that what he is saying is, there are other ways to do it but this is the most direct method of doing it, is to reduce it from 35 to 25. And the reason for that is because we have the initiative, statewide initiative petition process. And I can tell you having gone through that a number of times, it is an enormous scramble to get those petitions in, to get them sent out to the county election officials, to get their verification done, to get them back, and be ready to decide whether the issue goes on the ballot or doesn't go on the ballot. It's an...there's no way to cut that time down. We won't meet the deadlines if that time is cut down. And with the national election issues, it has taken a longer and longer time. Do we know who the candidate is going to be? Sure. We almost absolutely know who the candidates will be, but our law says we have to wait until we hear certification from those national parties. We have to wait. These other five states that have more than 25 days are able...they can guess at it. They don't have a law like we have that says we have to wait. You can make a good guess and be right 100 percent of the time if you're allowed to do that, and those states are obviously allowed to do that. Also, some of those states don't have the initiative petition process that makes you have to wait until a late date, and that late date is not the complication. The late date is--they'll go to court on a regular basis--we don't hear until after September 15 from the Supreme Court. And so you shove those imponderables in and try to change all those dates, you're going to have unexpected, unintended consequences that you won't have if you go with a change to 25 days. So we fully support LB271. Thank you. [LB271]

SENATOR AVERY: Thank you. Is there any other way to do it that you can think of other than change the date by ten days? [LB271]

JOHN GALE: If I had another answer for you, Senator, I would be delighted to share it with you. But ES&S is a very sophisticated, high tech company, and dealing with their equipment--this is their equipment--but dealing with the short time, they need ten days to two weeks to get the certification from us and then to get all of the ballots printed for all of the counties--92 of the 93 counties--and, of course, all of those ballots are very, very different; every precinct is different. So you have 1,450 kinds of ballots that have to

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be printed and distributed in that two-week period. If they can do it shorter than that, great. That maybe helps the next process which is for them to then be able to start recoding all of the AutoMARK equipment to get it ready for in-person voting or the election day. There's just no way to make that tighter. We have kept hoping and hoping that that would happen, but in every election cycle because of the things that are happening on the backside, there's always something that affects our ability to stay within 35. So... [LB271]

SENATOR AVERY: And the ten days are...that's the minimum you need or is it maximum? [LB271]

JOHN GALE: Actually, it's the maximum we need. If we went from 35 to 25 we could nail it on a regular basis, even with these court cases that pop up with initiative petition issues or with late declaration by the national party. We can live with all that. Ten more days we think truly, honestly, that we can nail it every time and be ready. And we want to be ready. [LB271]

SENATOR AVERY: But if it were five days, you couldn't probably make it? [LB271]

JOHN GALE: I don't think that would give us the assurance. If we're going to do something, we may as well do it in a way that the issue doesn't arise again in the future. And we want the physically handicapped and the visually impaired who want to vote in person that same equal opportunity to do that as any other citizen. And right now, there's that several-day period of time where they're not able to, where the average citizen can. [LB271]

SENATOR AVERY: Questions from the committee? Senator Bloomfield. [LB271]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Mr. Secretary, you mentioned in your testimony that four or five states can guess at the candidates but we have a law prohibiting that. Is there something we could do to adjust that law rather than adjust the days or not? [LB271]

JOHN GALE: Well, that one singular thing, Senator, might help. That might help, but we still have, of course, this whole initiative petition process. And in looking back, I've got a list of all of the cases from 2002 to 2008 that have gone to court and have not been decided until after September 15. So even if you gave us a little more leniency in a reasonable guess as to who the candidates are for president, we still could get hampered and impaired by this other process. So it seems like on the other end is the way to deal with it. And it's always a hard scramble for us over here, but if we had ten more days we think we could make it happen the way it should happen. [LB271]

SENATOR BLOOMFIELD: Okay. Thank you. [LB271]

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JOHN GALE: Thank you, Senator. [LB271]

SENATOR AVERY: Any other questions? I don't see any. Thank you for coming down. [LB271]

JOHN GALE: Thank you, Chairman. And thank you. [LB271]

SENATOR AVERY: You're always welcome here. Any other proponent testimony? We're on LB271. [LB271]

DAVID SHIVELY: Good afternoon, Senator Avery, members of the Government Committee. My name is David Shively, D-a-v-i-d S-h-i-v-e-l-y, I'm the Lancaster County Election Commissioner, I'm here today in support of LB271. I will try not to reiterate many of the things that Secretary Gale said, but I did want to come down and testify in support of this because the HAVA complaint that was filed was filed against my office. We did everything in our power to have everything ready to go and all of our proofing and everything on our end so we could have it ready to go to Election Systems and Software at an appropriate time. But there just is a number of days that it takes to get that programming back to us to have the AutoMARK set up in the proper time. And so giving us an additional ten days to have this for in-person voting going on will allow us to meet that deadline. Let's make it very clear that this just is on in-person voting. Anyone can still get a ballot 35 days out. It just has to be either mailed to them or taken with them if they pick it up at our office. They wouldn't be able to vote that ballot in our office, but it would still allow anyone to still get a ballot 35 days out. They just would not be able to cast the ballot in person at our office until 25 days out. With that, I'd be happy to answer any questions. [LB271]

SENATOR AVERY: Thank you. Questions? Don't see any. Thank you for your testimony. [LB271]

DAVID SHIVELY: Thank you. [LB271]

SENATOR AVERY: Any other opponent testimony? [LB271]

_____: Proponent. [LB271]

SENATOR AVERY: Proponent, I'm sorry. Proponent. [LB271]

BETH BAZYN FERRELL: Yes, proponent. Good afternoon, Chairman Avery, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. We support the bill for the reasons that you've heard today. We believe that the additional ten days would be

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helpful to all counties so that they can be in compliance. I would be happy to take any questions. [LB271]

SENATOR AVERY: Questions? Don't see any. Thank you for your testimony. Any other proponent testimony? Seeing none, we'll now accept opponent testimony to LB271. Opponent testimony. Welcome, sir. [LB271]

ADAM MORFELD: Good afternoon, Chairman Avery, members of the committee. My name is Adam Morfeld, that's A-d-a-m M-o-r-f-e-l-d. I'll keep my opposition testimony very brief being as though I am going to be testifying in support for LB525 which I believe is the alternative bill, and I'll outline my reasons there. I do believe that we should try to maintain maximum accessibility to in-person voting and that this bill does not do that. I think that there are ways to increase the amount of time that people can create--or not create, excuse me--file lawsuits and then the courts can adjudicate those lawsuits. I'll talk about that a little bit in my testimony in a few minutes. In addition, I believe that there should be ways that we can work with ES&S, particularly with the amount of money that we spend with that company, to make sure that our laws are in compliance with state and federal law in regard to making sure that the polling places are accessible as possible, particularly to AutoMARK machines. But with that being said, I just wanted to officially lodge my opposition to LB271. Thank you. [LB271]

SENATOR AVERY: Thank you. Question from Senator Scheer. [LB271]

SENATOR SCHEER: Thank you for testifying again. Something that just is in my mind, how...I understand it's ten less days but if we're all treated equally, where is the harm if we all have still the same opportunity to vote? [LB271]

ADAM MORFELD: Well, Senator, we'll all be treated equally if we have ten less days under the plan provided by the Secretary of State and Senator Lautenbaugh's bill. However, I think we should all be treated equally by maintaining the current in-person early voting time line that we have because that creates greater accessibility overall to the elections. I think they both can be achieved. I just think that this is the easiest way for the Secretary of State and election administrators to do that. I think we should be making it easier on the voters and that, yes, if there's increased burden on the Secretary of State to change numerous deadlines to make that work, I think that that's the route that this committee and this Legislature should go. [LB271]

SENATOR SCHEER: Would you anticipate there would be less people to vote if it was changed from 35 to 25 days? [LB271]

ADAM MORFELD: I think it would be less convenient for people to vote. I know that in Florida and other places that shortened the in-person early voting time line, there were long lines. There was a lot of issues and problems with that. So, yes, I do think it would

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be less convenient. I think there's a possibility that less people could vote. [LB271]

SENATOR SCHEER: Okay. Thank you. Thank you, Senator Avery. [LB271]

SENATOR AVERY: Thank you. Any other questions? Thank you for your testimony. [LB271]

ADAM MORFELD: Thank you. [LB271]

SENATOR AVERY: Any other proponent testimony? Welcome back. [LB271]

PEGGY ADAIR: (Exhibit 2) Thank you. My name is Peggy Adair, A-d-a-i-r. I represent the League of Women Voters. My written testimony includes four photos of voters during the presidential election of 2012. And for those of you who can't see the photos, the first one is a very lovely couple voting in Kearney, Nebraska. They are the only ones in the photo because there is no line. The second photo is a gentleman voting in Douglas County. There was no line to vote in Douglas County. In fact, there are three poll workers for the one person who is voting. The third and fourth photos show hundreds of people standing outside in long lines to vote in Florida. The Florida Legislature reduced early voting by six days in 2011 resulting in hundreds and thousands of citizens waiting outside in serpentine lines for hours and hours and hours to exercise their right to vote. Nebraska, no lines. Florida, long lines. Let's don't be Florida. [LB271]

SENATOR AVERY: I can agree with that. Let's don't be Florida. Let me ask you, is it possible these lines might be caused by something other than changing their in-person early voting? [LB271]

PEGGY ADAIR: Actually, there was research done on this by a professor at I want to say Dartmouth and also University of Florida. They looked at the voting patterns in Florida in 2008 in light of this legislation that occurred in 2011, and they actually predicted that this was going to happen. The voters who tend to vote early tend to be older people. This was in early voting in person tend to be older people, they tend to be people who have been registered for a long time, and they tend to be people who vote often. The voters who vote towards the end of that early voting process tend to be first-time voters and younger voters and voters who haven't been registered in the past. So what happens is you have this group of voters who vote very, very early, and then they get on top of them, then they have these voters who are voting later in the early-voting process and so you have these...the combination of these two groups and you end up with these long lines. And I would like to add that Nebraska doesn't actually have 35 days of early voting in person because the election commissioner's office is closed on Saturdays and Sundays; so, in effect, we have 25 days of actual in-person voting. So the process that has been recommended in LB271 would actually not be

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equal opportunity because those who have a mail-in vote would be allowed to vote 35 days early, but those who want to walk in and vote in person would only have 25 days and, in effect, only 17 days; actually 8 days with 25. [LB271]

SENATOR AVERY: Do you have any suggestions on how we could preserve that 35-day opportunity to early vote in person without this change? I mean, we had a problem that apparently was unavoidable, and this bill, LB271, is designed to correct that or avoid a future occurrence. Do you have any ideas on how the election commissioner could go about allowing 35-day early voting in person if the machines aren't ready? [LB271]

PEGGY ADAIR: Senator Haar is on his way. [LB271]

SENATOR AVERY: Well, Senator Haar's bill I think is the anti-status quo. That means going back to a previous time. Am I wrong? [LB271]

PEGGY ADAIR: No, Senator Haar's bill would actually have...would place the onus on the government bodies and on the candidates to file ten days earlier than what they do now. So it would allow that ten-day period, but the onus would be on the governmental body rather than suppressing the right of voters. [LB271]

SENATOR AVERY: Okay. I'll wait for that testimony. Senator Scheer. [LB271]

SENATOR SCHEER: Thank you, Senator Avery. Can you tell me what day the picture was taken of the people in Kearney? [LB271]

PEGGY ADAIR: I can't, but I can find out if you want to know. It was sometime during the presidential election, the early-voting process. I can sure find out. [LB271]

SENATOR SCHEER: Okay, as well as Florida? [LB271]

PEGGY ADAIR: I'm sorry? [LB271]

SENATOR SCHEER: As well as the picture in Florida? [LB271]

PEGGY ADAIR: Correct, yes. [LB271]

SENATOR SCHEER: Okay. So we could be comparing apples to oranges here? [LB271]

PEGGY ADAIR: Well, Nebraska and Florida I would say is apples and oranges. [LB271]

SENATOR SCHEER: Okay. Well, so we really aren't comparing anything with these

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pictures is my point. You've got two people in a picture and it could be the 35th day or it could be the 3rd day before the election, I don't know. And so the fact that we change it from 35 to 25 would have immaterial address to this picture, and based on your comments and your description of voters that the younger voters would vote in the later stages of the early election--I'm looking at the picture of the serpentine and it's almost all younger voters. So I'm not exactly sure that this a true reflection of current versus what may happen if we go to 25 days versus 35 days. [LB271]

PEGGY ADAIR: Well, again, I would have to refer to the research that has been done on that, and the research found that out, that actually that that did happen. They expected it to happen and it did happen. So, you know, I can get you the research from the professors that are a lot smarter about this stuff than I am. [LB271]

SENATOR SCHEER: Okay. Well, I'm just going by the pictures which you said was Nebraska versus Florida, so... [LB271]

SENATOR AVERY: I would point out that we have the apples and they grow the oranges. [LB271]

PEGGY ADAIR: That was very clever of you. [LB271]

SENATOR SCHEER: Thank you, Senator Avery. [LB271]

SENATOR AVERY: Any other questions? I don't see any. Thank you for your testimony. [LB271]

PEGGY ADAIR: You're welcome. [LB271]

SENATOR AVERY: (Exhibits 3, 4) Any other testimony? Opposition testimony? Any opposition testimony? No more opposition testimony. All right, neutral testimony? No neutral testimony? What happened to Senator Lautenbaugh? I guess he is waiving closing. I have a letter here from the American Association of University Women in opposition to LB271, and I have another letter here from the Platte County Election Commissioner in support of LB271. (See also Exhibit 5.) With that, we close the hearing on LB271 and now we go in search of Senator Haar because we're ready to start on LB525. Will, you want to go get him? Could I have a show of hands of people who plan to testify on this bill, LB525? Okay. Thank you. Senator Haar, you just lost five minutes of your time. All right, we will now open the hearing on LB525 and welcome, Senator Haar, to the Government Committee. Welcome, sir. [LB525]

SENATOR HAAR: Thank you very much, Chairman Avery and members of the committee. I'll take that time off my LA's salary. [LB525]

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SENATOR BLOOMFIELD: Can't take it off of yours. [LB525]

SENATOR HAAR: Right. There would be absolutely nothing left. So LB525--thanks for your attention. I know it's getting later in the day. LB525 and LB271 are in response to a complaint filed by a blind voter in Lancaster County who wished to vote early in person the first week of October but was informed the machines that assist blind voters called the AutoMARK machines were not programmed yet. Federal law requires that these machines that allow people with disabilities to vote independently and privately be available at every polling location. And the hearing officer that adjudicated the complaint found the lack of AutoMARK machines at the Lancaster County Election Office was a violation of federal law. Given testimony by ES&S representatives--and they're the people that program the AutoMARK machines--and the Secretary of State's office it was discovered that ES&S did not have enough time to program the AutoMARK machines for use by the October 1, early in-person voting start dates. They needed more time from the time of certification and laying out of the ballots. LB525 maintains the current in-person early-voting deadline, which is October 1, and pushes back deadlines required of election officials and the Secretary of State by ten days. In other words, the gist of my bill is that we leave the early-voting date where it is and put the responsibility on elected officials and administrators to get ready for them. This is to allow election administrators time to get valid information to ES&S and have both the ballots and AutoMARK machines ready for the October 1 deadline, the election vendor that designs the ballots and programs the AutoMARK machines. Currently, five other states have earlier in-person voting start dates: Idaho, Iowa, South Dakota, Vermont, and Wyoming. If these states can have earlier in-person voting than Nebraska and have their AutoMARK machines ready to go, then certainly Nebraska can do the same. Finally, the deadlines for the submission of signatures for the initiative and referendum process are constitutionally mandated and cannot be changed which does reduce the amount of time the Secretary of State has to verify said signatures but maintains maximum accessibility to in-person early voting. We did look through the contracts, not I, but we did look through the contracts that the state has with ES&S, and there is no mention of the date. That is something that gets negotiated between the Secretary of State and ES&S. And so my bill, LB525, would put the onus on the Secretary of State and elected officials and give the benefit as it currently exists to people who want to vote--to the citizens. [LB525]

SENATOR AVERY: Thank you, Senator. Questions from the committee? Thank you. Are you going to stay around for closing? [LB525]

SENATOR HAAR: I will. Thank you. [LB525]

SENATOR AVERY: Okay. All right. We will now accept proponent testimony on LB525. [LB525]

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ADAM MORFELD: Good afternoon. My name is Adam Morfeld, that's A-d-a-m M-o-r-f-e-l-d, and I'm the executive director of Nebraskans for Civic Reform. And I'm sure you're all getting tired of seeing me today. Senator Karpisek agrees. I won't go over why we got to this point because Senator Haar and Secretary Gale already kind of went there. But after the public hearing and after the administrative officer's findings and recommendations that we actually eliminate ten days of early voting, we wanted to look at ways that we could actually maintain the early voting deadline as it is now without pushing it back and finding other solutions. And so the Secretary of State's Office in their testimony today and actually at the hearing laid out two arguments in support of their position to reduce the amount of time to vote in person early. Mr. Erickson during the hearing and Secretary Gale today noted that the state needs to receive, you know, official certification of the presidential candidates before the ballot can be certified and sent to AutoMARK. Well, I think that we can change that law to do what other states do. I mean, I don't think that's in LB525 but it's not something...I don't know if that's something we anticipated, and that's a good point that the Secretary of State brought up. But I believe that law can be changed just so we can at least send in advance what we reasonably believe the ballot is going to look like, and what we'll already know what an overwhelming majority of the candidates that will be on the ballot because really this is the presidential election and the nominations of the parties that's holding things up. Ninety-eight percent of the ballot has already been decided, that we already know who the candidates are going to be. The exception that the Secretary of State brought up was the initiative and referendum process, and sometimes court opinions go beyond the certification date. It's my understanding that that has actually happened that the court decision has come out after the September 15 or 14 certification date. But at no time has the court actually changed the lower court's opinion, so it's never actually affected that from my understanding. That being said, one thing that LB525 does is reduce the amount of time that the election commissioners and election officials have to verify the signatures by ten days--so it goes from 40 to 30--which gives individuals and the courts that much more time--ten days--to actually file a lawsuit and then make a decision. In addition, in the testimony given by the ES&S representative at the hearing, he noted--as was noted today--that several states actually give this information ahead of time; that way they can prep sooner. And then at that point, once the ballot is actually certified, they can verify the ballot and then start even sooner on the programming of the AutoMARK machines to make sure that they're ready October 1. That being said, I urge you to move LB525 to the floor and consider other possibilities such as revisions of the deadlines for submission about information and that the Secretary of State and ES&S work out before each election. When there's a will, there's away, and I believe that LB525 provides that way. Thank you. [LB525]

SENATOR AVERY: Thank you. Questions from the committee? Thank you for your testimony. [LB525]

ADAM MORFELD: Thank you. [LB525]

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SENATOR AVERY: Additional proponent testimony? Welcome, sir. [LB525]

TONY OLIVERO: (Exhibit 1) Good afternoon, Senator Avery, members of the committee. Thank you for your time. My name is Tony Olivero, T-o-n-y O-l-i-v-e-r-o, and I'm representing the National Federation of the Blind of Nebraska. We are supporting LB525 for a number of reasons, many of which have already been articulated so I will not reiterate them. Some of the remaining reasons: We have, as an organization, many members living in rural parts of the state that often have semi to nonexistent public transportation including buses and taxi services. This often requires them to arrange their schedules around hired drivers or a friend or family member to ensure that they can get somewhere. Reducing the number of early voting days would have an impact on some members' ability to get there to the polling place and exercise their civic duty. Furthermore, we believe that Nebraska originally created a 35-day period for a good reason, and we don't want to see that change just to ensure that an accessible ballot is available when changing other deadlines would have an impact on state officials rather than members of the voting public. A 35-day early voting period ensures that both blind voters requiring accessible ballots and those who do not have an ample opportunity to participate in the elections process and cast their votes. And that's all I have, if you have any questions. [LB525]

SENATOR AVERY: Thank you. Thank you for testifying. Questions from the committee? One question from Senator Karpisek, or two. [LB525]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Mr. Olivero, for being here. Tell us, when you go to vote how do you get to your polling station? [LB525]

TONY OLIVERO: I walked this year. [LB525]

SENATOR KARPISEK: Okay. [LB525]

TONY OLIVERO: I'll be honest with you, I spent an hour and a half wandering around trying to find it because it was in a very weird place. [LB525]

SENATOR KARPISEK: Can you usually walk to... [LB525]

TONY OLIVERO: It...I can't speak for every member of our organization. [LB525]

SENATOR KARPISEK: Sure. [LB525]

TONY OLIVERO: My situation was the first time I voted in Nebraska so I hadn't been exposed to it. But there are a number of our members who, you know, live places where they cannot just walk to a polling location. [LB525]

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SENATOR KARPISEK: Okay. And then getting a ride or getting there somehow is probably they have to set something up to get there. [LB525]

TONY OLIVERO: That's right. [LB525]

SENATOR KARPISEK: Well, I just really didn't want to have you come all the way here and not ask you a question. Thank you very much. [LB525]

TONY OLIVERO: Thank you. [LB525]

SENATOR AVERY: Thank you, Senator Karpisek. Let me ask you one before you get away. [LB525]

TONY OLIVERO: Yes, sir. [LB525]

SENATOR AVERY: How...functionally, when you are voting, how do these AutoMARK machines work? I mean, is it audio? [LB525]

TONY OLIVERO: There are both audio and large print versions available. I, myself, have used the audio and I will say that having tested on nearly every piece of nonvisual election technology available in the United States, the AutoMARK is, in my opinion, the best machine that's out there. [LB525]

SENATOR AVERY: And do you vote in orally yourself? Do you talk back and it's recorded? [LB525]

TONY OLIVERO: No, sir. There's a key pad that there are basically four arrow buttons and a select button,... [LB525]

SENATOR AVERY: Uh-huh. [LB525]

TONY OLIVERO: ...as well as some controls that will let you change the speed and the volume of the synthetic speech. [LB525]

SENATOR AVERY: Yeah. [LB525]

TONY OLIVERO: And you are able to arrow up and down through the choices on the particular ballot question and press the select button when you have made your choice and then press the right arrow to move to the next question. And the system allows you to move back and forth, you know, between ballot questions and finally to review before it prints your choices on the paper ballot. [LB525]

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SENATOR AVERY: Okay. Thank you for that. I don't see any more questions. Thank you for testifying. [LB525]

TONY OLIVERO: I do have written copies of our... [LB525]

SENATOR AVERY: You do? [LB525]

TONY OLIVERO: Yes. [LB525]

SENATOR AVERY: The page is coming to distribute that. [LB525]

TONY OLIVERO: Okay. Thank you, sir. Thank you, Senator. [LB525]

SENATOR AVERY: Thank you. [LB525]

SENATOR KARPISEK: Thank you. [LB525]

SENATOR AVERY: Next testifier? We're on proponent testimony on LB525. Welcome, sir. [LB525]

MICHAEL FLOYD: Welcome. Thank you very much. My name is Michael Floyd, M-i-c-h-a-e-l F-l-o-y-d, and I'm here to give testimony on behalf of...in support of, I should say, LB525. I just want to make a couple of real summary comments. First of all, my wife is Fatos, the individual who brought the complaint, and the complaint was found in her favor. Listening to the testimony this afternoon, it sounds like between LB271 and LB525 there's really not a lot of disagreement that blind people ought to have equal access to the ballot as the sighted citizens of the state. It seems like it's coming down to whether the opportunity of 35 days of early voting for all citizens of the state should be suppressed to 25 days. And, you know, for me voting--and I can speak for Fatos too--Fatos is a naturalized citizen, she comes from a country where 90 percent turnout for voting is typical. She really sees this as a serious obligation and I do too. I think this comes down to, you know, do we honor the voters of the state or do we honor the bureaucrats? You know, do we make it more convenient and retain the customary 35 days for the citizens of the state and provide them the opportunity to fulfill their obligation of citizenship or do we make it a little more convenient for certain elected officials or others to get the job done here? I think in good conscience, that we need to see that the citizens continue to have this same customary opportunity to vote for 35 days in advance of the general election. Thank you very much. [LB525]

SENATOR AVERY: Thank you, Mr. Floyd. Questions from the committee? There are five of us here and nobody has a question. But we do appreciate your testimony. Thank you. [LB525]

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MICHAEL FLOYD: Well, thank you very much. Glad to be here today. Thank you. [LB525]

SENATOR AVERY: Next testifier. Welcome back. [LB525]

PEGGY ADAIR: (Exhibit 2) Thank you. Chairman Avery and members of the committee, my name is Peggy Adair, A-d-a-i-r. I represent the League of Women Voters of Nebraska, and I would have to say that Mr. Floyd is a hard act to follow. He spoke very eloquently about the main issues. And I would just have to say that the 1,160,000 registered voters in Nebraska did not cause this problem, and they should not be the ones to suffer for it. This is an excellent bill that solves this problem, and I hope you all will consider sending this bill to the full Legislature for discussion. [LB525]

SENATOR AVERY: Thank you. [LB525]

PEGGY ADAIR: You're welcome. [LB525]

SENATOR AVERY: Questions from the committee? I like your statement, the voters didn't cause this. [LB525]

PEGGY ADAIR: Well, it's getting late and it's Valentine's Day and I'm getting hungry and I'm wanting that flower and that steak dinner. [LB525]

SENATOR KARPISEK: So you'd better be getting it, huh? [LB525]

PEGGY ADAIR: Oh, he better. [LB525]

SENATOR AVERY: Thank you for your testimony. More proponent testimony? We're on LB525. Welcome, Mr. Gould. [LB525]

JACK GOULD: Thank you. Senator Avery, members of the committee. My name is Jack Gould, that's J-a-c-k G-o-u-l-d, and I will try to be very brief. You know, I think that the individual who filed the suit that brought this all about probably had no intention of reducing the number of voting days. The thing that...the problem itself I would hope could be addressed by maintaining the same number of days--35 days--and not shrinking the public's ability to vote. And that, in essence, is what we're trying to do here. I know that there's complications. I listened to the testimony of the Secretary of State, but there's got to be a better way. We don't want to reduce voting, we want to encourage more. And I hope that you'll take that into consideration and advance the bill. Thank you. [LB525]

SENATOR AVERY: Thank you. Questions? I don't see any. Thank you. Any other proponent testimony? Good afternoon. [LB525]

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MARY BOSCHULT: (Exhibit 3) Good afternoon, Senator Avery. My name is Mary Boschult, M-a-r-y B-o-s-c-h-u-l-t, and I'm here today as the president of the League of Women Voters of Lincoln and Lancaster County. We support LB525. The League of Women Voters is a nonpartisan organization that encourages informed and active participation in government. We work to increase understanding of major public policy issues and also to influence public policy through education and advocacy. It is fitting to be here today as Peggy has informed you earlier, because today, February 14, is the 93rd anniversary of the League of Women Voters. As our name implies, we are interested in voting and in making the franchise available, accessible, and meaningful. We have a great respect and appreciation for our Lancaster County Election Commissioner, Dave Shively, and our Chief Deputy Election Commissioner, Maura Kelly Tolzin. We recognize the competency and professionalism that they and their staff, their poll works demonstrate in election administration. Our appreciation is magnified when you hear of election administration problems in other counties and in other states. We understand the current time lines to certify the ballot and complete programming for AutoMARK machines to be available for the onset of early voting are challenging. We support the solution proposed in LB525 that moves the ballot certification dates back and does not reduce the days available to citizens for early voting. [LB525]

SENATOR AVERY: Thank you. [LB525]

MARY BOSCHULT: Thank you. [LB525]

SENATOR AVERY: Questions? I don't see any. [LB525]

MARY BOSCHULT: Great. [LB525]

SENATOR AVERY: Thank you very much for your testimony. Any additional proponent testimony? All right. Opposition testimony? Hello again. [LB525]

BETH BAZYN FERRELL: Hello again. Good afternoon, Chairman Avery and members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm appearing in opposition to the bill as written. We prefer the version that we just heard, LB271. I think we all agree that there's a problem that needs a solution but we prefer the alternative. I'd be happy to answer questions. [LB525]

SENATOR AVERY: All right, thank you. I like short testimony. Thank you. Any other opponent testimony? Any neutral testimony? Senator Haar, do you wish to close? [LB525]

WAYNE BENA: Senator Avery. [LB525]

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SENATOR AVERY: Oh, I'm sorry. I thought you were leaving. [LB525]

WAYNE BENA: It was a last second there. [LB525]

SENATOR AVERY: Are you neutral? [LB525]

WAYNE BENA: Yeah. [LB525]

SENATOR AVERY: Okay. [LB525]

WAYNE BENA: Can I fill this out after? Okay. For the record, my name is Wayne Bena, W-a-y-n-e B-e-n-a, Sarpy County Election Commissioner. Commissioner Shively and I were discussing we really didn't want to take a position on either one of these two bills. That's your...I just wanted to point out in regards to some of the work that we have to do, one of my greatest...you know, I saw in my first election I can remember when I opened the early voting site, I went, wait a minute, I don't have an AutoMARK card yet. Why is that? And I called ES&S and they said, well, this is the way it always is. You get your ballots first and you get this later. I luckily have never had a person that has requested the AutoMARK in those first ten days. But one of the things in when debating whether or not it's the early voting period or moving up these deadlines, one of the frustrations that I have had is in the proofing process of the ballots. And sometimes it can go very easily and sometimes it can go very poorly. In my last couple elections, the proofing process of the ballots to actually certify the ballots to be done and printed can take much longer than I would like. And so to put the onus back onto election officials to get their work done sooner, I would just point out that sometimes it's out of our control because so many things were screwed up on the ballots to begin with in working with the vendor to make sure that we get the ballot done so it can be printed. So sometimes that is an extra added delay in the process that hasn't been brought up thus far. For example, many times I had two races in a row that had the same title even though they were two completely separate races or a race that wasn't supposed to be on that ballot be on that ballot. So the proofing process is something that's given me very much frustration in my three years of election commissioner and can affect the time line in regards to getting the ballots done as well as getting them ready or so once they're done they can do the AutoMARK cards. I wanted to bring that to your attention. [LB525]

SENATOR AVERY: Thank you, Mr. Bena. While I've got you here, you can answer a question I was going to ask the introducer. [LB525]

WAYNE BENA: Sure. [LB525]

SENATOR AVERY: I was trying to count all the changes that are being suggested in this legislation but they are apparently all changes in election dates. Do you have an

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opinion on how difficult it would be to adjust to such changes, because there are one, two, three, four and a quarter pages here of changes? [LB525]

WAYNE BENA: I would say if you look at...in most scenarios of let's say a May primary, you have a filing deadline of March 1. And let's say under that scenario depending upon when the election in May is, I have to start the early-voting period in early April. The stuff for military we handle on...we make that deadline by making our own ballots or using proofs. We don't need an actual real ballot, there's other things to do. So it is a very tight time frame from March 1 to April 1, when I have to get that ballot out because of the proofing process. And then once the proofing process, they have to do their work. I would say the more time you bump that back, the harder it is to be able...it's going to rush the proofing process. My goal is to never have a mistake on a ballot, and I'm sure no voter would ever want a mistake on a ballot. But I get it right. I'd rather get it right than get it done fast. So... [LB525]

SENATOR AVERY: How many times do you have to proof it before you feel comfortable with it? [LB525]

WAYNE BENA: Before the primary election I think I went through at least 10 to 12 different "back-and-forths." And that's a little bit of a frustration of mine that I believe ES&S is working on because I've stood up at the highest mountain and gone off about this, is that once, you know, I make the changes, they didn't lock down other changes and we found new problems. And so they're working hard to address the issues I've brought up so that we can shorten that process. But I wanted to bring it to your attention that no ballot is going to be perfect and that's why there is a proofing process. I just want to make sure that we don't get into so much proofing that we're going to miss a deadline. But if you crunch that deadline it might put a little bit more pressure to speed through the proofing process which could be a detriment to the ballot. So... [LB525]

SENATOR AVERY: And you and Election Commissioner Shively consulted on this and you're both in agreement that you're kind of not taking a position between the two? Okay. [LB525]

WAYNE BENA: No. That's up to you guys to determine which it is. I wanted to bring this information in regards to what our process is, and the ballot proofing process really was not brought up during this. So I wanted that information as you made your decision. [LB525]

SENATOR AVERY: Thank you. I appreciate that. [LB525]

WAYNE BENA: Okay. [LB525]

SENATOR AVERY: Any other questions? Thank you. All right. Now any more neutral

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testimony? Senator Haar. [LB525]

SENATOR HAAR: In closing, just a few remarks. First of all, when I first started voting it was absentee ballot and now it's moved to vote by mail. And we even have counties in Nebraska now that are going to go to all their balloting by vote by mail. And Mr. Morfeld suggests that there are solutions to the time crunch. And by the way, all the dates would be moved and I have a whole list of those. Unlike what I usually do, I didn't print off the list for everybody but you probably have it there. [LB525]

SENATOR AVERY: We do. [LB525]

SENATOR HAAR: The Secretary of State, of course, produces that list for all election commissioners. So I would be more than happy to explore what have been described as the roadblocks to the process, because when all is said and done, I believe that the citizens ought to get the break. And if it's at all possible to make, you know...bureaucrats sounds--I don't like that word exactly--but the elected officials and so on. If it requires us to work a little bit harder, I think that's preferable. If possible, I think the citizens ought to get the break and we ought to leave the date for election where it is and move all those deadlines forward by ten days. [LB525]

SENATOR AVERY: Thank you. Senator Scheer. [LB525]

SENATOR SCHEER: Thank you, Senator Avery. Senator Haar, that struck sort of a chord, give the citizens a break. But realistically, all of us in here are citizens; you and I are both citizens. And when you're moving everything back, that also affects the average citizen that is trying to determine if he or she chooses to run for an office, whatever it may be, as well. So there's unintended consequences for those same citizenry as you move those deadlines back. So it's not carte blanche that we're doing this for all citizens but those that are choosing to think about running are some other type of class of citizen. I mean, if no one ever decided to run for an office, you know, we'd be mute, we wouldn't have elections. So...and I guess I'm more cognizant of the time element as well because in my particular race just this last...a year ago last spring. My opponent filed less than five minutes before the deadline. So, you know, it's not a what-if. I mean, my personal case, you know, I would have been really happy not to have had a opponent, believe me. So maybe the ten days would have really helped me out. But the fact remains that a lot of people take, you know, longer than maybe others to decide to do that, and so when we start crunching everything back the other direction, it has an impact on those citizens as well. So I just thought I'd throw that at you as well. [LB525]

SENATOR HAAR: I certainly agree that it's not quite as simple as just one or the other. I wish I would have not had an opponent either or somebody wouldn't have told him what the filing date was. That would have made it easier. But again, we weigh everything.

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And I think when it comes down to people running for office, that's always a hard decision. They'd have to just decide a little bit earlier. And my opinion would be that giving on that end would be worth giving people the additional time to vote, to vote by mail. [LB525]

SENATOR SCHEER: Okay. Thank you, Senator Avery. [LB525]

SENATOR HAAR: You bet. But good point. Thank you. [LB525]

SENATOR AVERY: Any other questions? Thank you, Senator. That ends the hearing on LB525 and the hearings for today. Thank all of you for coming to the hearing and participating. And to the committee, I want to wish you a happy four-day weekend. [LB525]