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Government, Military and Veterans Affairs Committee  
February 28, 2013

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[LB515 LB565 LB576 LB646]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 28, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB576, LB515, LB565, and LB646. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; Russ Karpisek; Scott Lautenbaugh; John Murante; Jim Scheer; and Norm Wallman. Senators absent: None.

SENATOR AVERY: (Recorder malfunction)...hearing today of the Government, Military and Veterans Affairs Committee. We will be taking up four bills. And the order in which we will take up these bills is established by the agenda posted outside the door beginning with LB576 followed by LB515 and LB565 and LB646. Before we start, I want to introduce the members of the committee starting with my colleague here on the far right, Senator John Murante from Gretna. Seated next to him is Senator Dave Bloomfield from Hoskins. To join us later will be Senator Scott Lautenbaugh of Omaha. Seated next to him is our Vice Chair of the committee, Senator Scott Price of Bellevue. And on my immediate right is Christy Abraham who is the legal counsel for the committee. Going to the left, soon we will be joined by Senator Russ Karpisek from Wilber who is currently opening on a bill in another committee. Senator Norm Wallman sits next to him, he is from Cortland. And next to him is Senator Jim Scheer from Norfolk. At the very end there is Sherry Shaffer who is the committee clerk. If you have any interest in testifying on any of these bills, for or against, we ask that you fill out the green form. Please answer or provide the information requested in clear, printed English. And these are available at each entrance to the room. If you want to record your support for or opposition to any of these bills but do not wish to testify, the white sheet of paper here is provided to you to provide information that we need on that. That, too, is available at the entrance to the room. If you have any exhibits you want the committee to view, we will need 12 copies. If you don't have 12 copies, we have pages that will help us. The pages are Will Rahjes from Elwood, Nebraska, and Cicely Batie from Lexington, and they will be assisting. You can provide...hand any material to the clerk and she'll make sure that it gets distributed. The order of business will be introducers are allowed to make initial statements, followed by proponents, who are then followed by opponents and neutral testifiers. Closing remarks are reserved for the introducing senators only. If you have a cell phone or any electronic device that makes noise--any device that makes noise, electronic or otherwise--please put them on silent so that we do not have to be disturbed. We will be using the light system for testifiers. The green light is a four-minute light, the amber light is a one-minute light, and the red light means you should be finished. So we will ask that you abide by these rules. And we're ready to start. Senator Burke Harr is now joining us to talk to us about LB576. Welcome, Senator Harr.

SENATOR HARR: (Exhibit 1) Thank you, Chairman Avery and members of the

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Government Committee. This is my first time in front of the committee in three years, so be gentle. And for those of you who don't know me, I am Senator Burke Harr, H-a-r-r. And I represent midtown Omaha--represents the Dundee-Benson neighborhood along with the area surrounding your Creighton Prep Junior Jays. During my election, I would travel to local polling places and place yard signs at specified areas on election day. I started noticing that each polling place, however, would have a different definition of where I could put my yard signs and those of others regardless of where the election commissioner or the county clerk placed flags to denote the difference or the distance that we could place them. Some election workers measure the 200 feet from a side entrance or the side of a building, some from the corner of a building, and some...well, to be honest, I don't know where they started measuring from. There were a few polling places that would not even allow us to put yard signs...allow any yard signs on the day of election at all because it was "their policy not to allow any." I would drive by other polling places later in the day and some signs would be up and some signs would be down. There didn't seem to be any rhyme or reason as to enforcement or why some signs were up, why they were down. And as I researched this issue I became more and more aware of a problem. I heard stories about a resident being forced to remove his yard sign off his own property because it was within the 200-yard distance. I heard stories of election workers coming onto people's property and removing yard signs or the worst I heard was someone was actually asked to take down a yard sign or to...they would come over and cover their window because it violated the law. The law as it is currently written is ambiguous and can be taken care of at best by well-meaning election workers and at worst by unscrupulous election campaign staff workers. The question is, what would stop me as a worker from taking down someone's yard sign or leaving someone else's up? The system, as it's set up right now, is ripe for fraud. And so I'm here with LB576, which will solve all our problems at the low, low cost of...yeah. LB576 defines the distance as 200 feet--which is always an issue--and then measures it from the main entrance of the building. The distance does not cross a public thoroughfare or extend onto someone's private property. And the election commissioner or the county clerk shall designate what is that single, main entrance into an election building. LB576 also states that an owner of a building that is a polling place shall allow election workers on their property outside of the flagged area. So if there is...it says, all must be allowed. So the owner of that property can't pick and choose who they want, and they must allow it the day of the election. Anyone who removes lawfully allowed material or the owner of the property who does not allow election material shall be guilty of a Class V misdemeanor which is maximum \$100 fine, no prison time. I also have an amendment that if I could hand out I would like to introduce. I am bringing this amendment on behalf of NACO. They had concerns about how this will affect very rural areas. The amendment allows election commissioners or the county clerk in unincorporated areas to use their discretion when placing the 200 feet from the main entrance. I would ask you to please advance LB576, and I would entertain any questions you may have. [LB576]

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SENATOR AVERY: Thank you, Senator. Let me start by asking you this. If a person's private property falls within that 200-foot parameter... [LB576]

SENATOR HARR: Uh-huh. [LB576]

SENATOR AVERY: ...they can display a campaign sign, any kind of electioneering material? [LB576]

SENATOR HARR: It's unclear. At this point, it's very unclear as to whether they can or... [LB576]

SENATOR AVERY: Under your bill. [LB576]

SENATOR HARR: Under my bill, yes, they could. [LB576]

SENATOR AVERY: So then they become, potentially, targeted by all kinds of candidates that will say, hey, here's an opportunity to get my campaign literature, my campaign signs closer to the polling place. And they're...people are knocking on their door, you know, all for days and days prior to the election wanting to get a sign up in their yard where maybe they previously didn't have one. [LB576]

SENATOR HARR: That is correct. [LB576]

SENATOR AVERY: Do you see that as a problem? [LB576]

SENATOR HARR: I...no, I do not, and let me explain why. Because I believe in the constitution and the constitutional right to campaign...free speech. And right now, we are denying people within that zone their constitutional right to free speech because we're saying on election day everybody else is allowed to have campaign signs up in their yard, but you cannot. So is it somewhat of a hindrance for that person? Yes. But I think they'll learn to handle it. And I think we want to encourage more and not less campaigning, if we could, or more free speech than less free speech. And so right now we're...I mean, there's a question in my mind as to whether the current law is even constitutional to enforce that within the 200-foot parameter because we are now telling people what they can and cannot do on their private property. And I don't know if there's a rational basis for doing that. [LB576]

SENATOR AVERY: What about if the private property owner wanted to exclude some signs? They could do that? [LB576]

SENATOR HARR: Yes, if it's on private property, they can exclude or include whomever they like and choose. [LB576]

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SENATOR AVERY: Yeah. I know in the city of Lincoln, they used to have an ordinance that you cannot put up yard signs until this date. And after this date, you can. And someone challenged that in court and it was not upheld. And so... [LB576]

SENATOR HARR: Yeah, it was found unconstitutional. [LB576]

SENATOR AVERY: Yeah. [LB576]

SENATOR HARR: And so I think that's similarly what we would have here if someone tried to enforce it, but good luck getting an injunction when someone takes down your yard sign. This clarifies the law so everyone knows what the law is and isn't. And it's on the books so you can point to it instead of asking a campaign worker ahead of time, can you read this court opinion, assuming you even have one. [LB576]

SENATOR AVERY: For the most part, candidates in Lincoln abide by the old ordinance because a lot of people find the signs irritating anyway. I have one constituent that still has my yard sign up since 2010. Senator Price. [LB576]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Senator Harr. There are elements of your bill which I am in strong agreement. One being that one about private property because we'll have a polling site be a church, like in Gretna, be a church and right next door is a private residence. I mean, we didn't challenge it. But I would challenge one aspect when you talk about a building. So in my district at one point in time there was a large church surrounded by a parking lot. Multiple precincts were in that same church. So people would have a tendency to park at one door, walk into that door and go to that...because they separated that polling even within the church. So you'd have two separate areas of polling... [LB576]

SENATOR HARR: Oh, and so each precinct would enter a different... [LB576]

SENATOR PRICE: Yeah, and they would (inaudible) facility. So when we entertained this bill a few years ago, we've heard much of this before. If the Qwest Center was used as a polling site and multiple polling sites, 200 feet from any corner of that building creates many acres of off-limits area. [LB576]

SENATOR HARR: Yeah. [LB576]

SENATOR PRICE: So creating...making a single, designated point as a primary when you have multiple precincts' polling sites within that same structure seems somewhat cumbersome. [LB576]

SENATOR HARR: I am amenable to amendments. That is a valid concern. I can tell you my precinct or where I vote has two precincts in it. But it's a school, and so in my

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mind it was okay because we all enter the main entrance. Safety is a big issue in schools, now more than ever, and so we all have to enter that same entrance. Knock on wood, it's not as big an issue yet with churches. But I would definitely entertain an amendment to rectify that problem if that is. [LB576]

SENATOR PRICE: Great, because if I'm correct, your district is about the size of a postage stamp compared to Senator Schilz's or Seiler's. Thank you very much. [LB576]

SENATOR HARR: Yeah. Yeah. [LB576]

SENATOR AVERY: Senator Bloomfield. [LB576]

SENATOR BLOOMFIELD: Thank you. Senator, I agree with you. We have issues when it comes to this, but I'm not sure that your bill is 100 percent of the answer. Going back to local polling places, one of ours where we go in the main entrance is probably 40 feet from the bar door--from the door into the local "constabulatory." And I really don't know that we ought to be hanging political signs on that bar. [LB576]

SENATOR HARR: I guess my response to that is, if I were a responsible bar owner I probably wouldn't have too many political signs because you're probably going to upset half your patrons. [LB576]

SENATOR BLOOMFIELD: Depends on where you're at. [LB576]

SENATOR HARR: Well... [LB576]

SENATOR BLOOMFIELD: In my case this time around, my local "constabulatory" would have not offended very many people. [LB576]

SENATOR HARR: They must have been your signs then. [LB576]

SENATOR BLOOMFIELD: With my signs. And they would have offended a bunch of the other guy's signs. That, to me, gives the other guy a distinct disadvantage. [LB576]

SENATOR HARR: Yeah. Well, I think what it goes to is...and that's a valid concern. But I think what that goes to is free will and letting those people...and letting private property decide what they want to do or not to do. And I'm a big advocate of that. I think...I mean, property rights is one of our most fundamental and basic rights that we have. And to take it away on election day, which is when we exercise one of our other most valid and fundamental rights which is our right to vote and our right to speech, it seems as though this is rather elemental. While it may upset some people to have a sign, these rights exist for a reason. And they do upset people, and that's why we have to protect them. And that's what this is trying to do, is protect those most fundamental rights that we

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have: free speech, election, private property. And it might upset people, but that's what free speech does. [LB576]

SENATOR BLOOMFIELD: Okay. Thank you. [LB576]

SENATOR AVERY: Senator Scheer. [LB576]

SENATOR SCHEER: Thank you, Senator. Senator Harr, just out of curiosity, is there a difference between federal election campaign laws, as far as this, versus state? [LB576]

SENATOR HARR: There isn't a federal distance from a polling place. That's a state statute, yeah. [LB576]

SENATOR SCHEER: Okay. It's all state. Okay. Thank you. [LB576]

SENATOR AVERY: Let's suppose that I am a private property owner and I happen to have a type of property that lends itself to being a convenient polling place. Would I be giving up private property rights if I were to say, yes, you can use my property for a polling place? [LB576]

SENATOR HARR: So the question is, if it's a private property where you rent it out and you're a polling place, can they decide who is and isn't on their property? [LB576]

SENATOR AVERY: No, not that. [LB576]

SENATOR HARR: Okay, I'm sorry. [LB576]

SENATOR AVERY: But if I own a property--it can be a business--but it's really convenient for locating a polling place there. I could conceivably say you can't put any kind of electioneering material at this place because it's my property and I don't want it there. [LB576]

SENATOR HARR: Uh-huh. Well, in that case you're volunteering. [LB576]

SENATOR AVERY: Uh-huh. [LB576]

SENATOR HARR: So by volunteering, you're voluntarily waiving your right to private property and saying I would rather...by taking this revenue, I take what comes with that revenue. And part of that is the ability for others to put electioneering signs on your property. [LB576]

SENATOR AVERY: So I'd be giving up certain rights to how that property could be used for the duration of the election itself. [LB576]

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SENATOR HARR: For which you are compensated. [LB576]

SENATOR AVERY: What is the compensation? Is it...it's not a market rate, is it? [LB576]

SENATOR HARR: I don't know how those are compensated. And again, personal experience in Omaha, we have enough 501(c)(3)s that...and part of your responsibilities as being a 501(c)(3) is that you open up your property for such events. I mean, your land is not taxed, but as a result you have polling places on your property. [LB576]

SENATOR AVERY: You have some public responsibilities. [LB576]

SENATOR HARR: Public responsibility, exactly. Thank you. [LB576]

SENATOR AVERY: Senator Bloomfield. [LB576]

SENATOR BLOOMFIELD: Realizing that you are a private property promoter, that you are also an entrepreneur, did we just open the window for that bar next door to sell somebody a place to put a 20-foot banner? [LB576]

SENATOR HARR: Possibly. [LB576]

SENATOR BLOOMFIELD: Okay. [LB576]

SENATOR HARR: Yeah. [LB576]

SENATOR BLOOMFIELD: Thank you. [LB576]

SENATOR HARR: Yeah. [LB576]

SENATOR AVERY: I won't get into the question of selling alcohol on election day. [LB576]

SENATOR HARR: Thank you, Senator Chambers...I mean, Avery. [LB576]

SENATOR AVERY: I don't see any more questions. Are you going to stay around and close? [LB576]

SENATOR HARR: I will, thank you. [LB576]

SENATOR AVERY: All right, good. All right, we will now accept proponent testimony on LB576. Proponent testimony. Does no one support this bill? Welcome, Mr. Twiss.

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[LB576]

BOB TWISS: Good afternoon, Chairman Avery. I'm not going to touch the mike. My name is Bob Twiss, B-o-b T-w-i-s-s. I came in and I did not intend to speak on this bill and then I was contemplating neutral. That's why I hesitated in that. Actually had a bill before this committee some years ago to address some of these similar type of problems, and I'll try to sum it up in this way; and then I do have a suggestion for an amendment or at least a removal. We were having considerable difficulty because at the time--this was a previous election commissioner, previous sheriff, etcetera, and it has no reflection on my good friend the now deceased Pat Thomas either--but in Sarpy county, the smaller communities, Springfield, Gretna, contract for their police services. Bellevue, Papillion, and La Vista have their own police force. So there was the dichotomy between the election commissioner's office and the law enforcement people as to who was really in charge. And when I was assisting with campaigns, I would get--and I'll have to fill out a sheet--and I would get the finger-pointing back and forth. They did it, they did it, they did it. And sometimes I couldn't even retrieve the signs yet on election day, and that's very valuable time; especially on election day. So what I suggested at the time--and there was a bill previously--basically, define the...first of all, I would like it shorter than 200 foot. But I don't think we'll ever get that. It was shortened years ago after a very wise individual gathered petitions on election day to remove a former mayor of Omaha. And I think maybe it was around 50 feet at that time. So then it went to 200 foot, however, it included in the current language--correct me if I'm wrong--includes 200 foot from any portion of that building. So that leads to a problem in there. Any portion of a building--could be the Qwest Center, could be a large high school--that was a problem and still is a problem, especially in Sarpy. And we've had problems in Cass as well, and elsewhere. But 200 foot, so at least define the main entrance. There's a single entrance, and there will probably be testimony behind me that says it's too difficult. Well, it's not too difficult. I happen to be in the commercial sign business and generally there's a sandwich board that says, vote here. Well, that's where they put it. They put it at their main entrance. So 200 foot, define the main entrance, make sure that--this was the third aspect of the bill--that they're flagged, zoned, or coned. I call them inside the cone zone--the 200-foot rule. However they're designated, that that be done at least a half hour--and may have asked for an hour--before the polls open. So at least a half hour before the polls open. Now on the personal property, personally-owned property, I do have a little difficulty unless the language has been changed that an owner of the property who does not allow election material shall be guilty of a misdemeanor. I don't think that is appropriate at all. I think that people, candidates, candidate helpers, etcetera, can ask for permission--as we pride ourselves in doing--from the property owners. If you have the permission to do it, and even if it is within the 200-foot rule, then that's private property. That's the exercise of free speech, and there are U.S. Supreme Court decisions addressing that type of issue in there as well. And I know that the Secretary of State and I do differ on that interpretation as well. But those three main things in there, sign it, half hour--or cone



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zone it, however you want to flag it--cone zone, whatever. Half hour before the polls open, the campaign can get...if an honest mistake is made and signs are pulled, then the campaign can get that back or a campaign designee can get it back. We had the difficulty that they were put in the deputy's trunk and the deputy...when you have one deputy making a measurement...for example in Sarpy County, you have to start on the east end of the county outside of, as I said, Bellevue, La Vista, Papillion. They might get to Springfield by 11 o'clock and they might get to Gretna by 2 o'clock. And thus, that's where I had the problems, and I have them time and time again until I sat down with city and county and election officials and we pretty well resolved a great deal of those difficulties. And I see some shaking of heads as well. [LB576]

SENATOR AVERY: Now you see a red light. [LB576]

BOB TWISS: And I'll entertain any questions. [LB576]

SENATOR AVERY: Thank you, Mr. Twiss. Any questions from the committee? I don't see any. Thank you for your testimony. [LB576]

BOB TWISS: Thank you. [LB576]

SENATOR AVERY: Any other proponent testimony? Any opponent testimony? [LB576]

DALE BAKER: Good afternoon. [LB576]

SENATOR AVERY: Good afternoon. [LB576]

DALE BAKER: I'm Dale Baker, D-a-l-e B-a-k-e-r. I am the Hall County Election Commissioner. I also represent the Nebraska Association of County Clerks, Register of Deeds, and Election Commissioners. I'm the cochair of the legislative committee, and I'm happy to be here today. Thank you for giving me the opportunity to speak. This particular bill I oppose for several reasons. And as an election commissioner, I'm an advocate for the voter. And on election day the voters are coming to the polling place to cast their votes. And I think that that 200-foot safe zone is an important part of the election process. Now I worked in political campaigns, I've been on the other side of that 200-foot. And so I know that if you're campaigning, it's important for that person to maybe see your sign at the last minute before they go in to vote. But also, that was maybe before we were all inundated with telephone calls and advertisements on the TV that are relentless and go for almost a year prior to an election cycle. So I think that campaign signs are an important part, but I also think that a voter having respite when they come to the polling place and having what I would consider a safe zone is important. So I think that 200 feet...if you take the 200 feet away from us--let's say because you feel that private property is somebody's private property--but that person is right by the polling place. It's one day. We're talking about one day out of the year that

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they can't have their political sign in their yard. If they've had it there all year long but they maybe move it to the other side of the yard to stay away from that 200 foot, for the voter, I think that that's a good space. I think we need to save that. The other part of this bill that bothers me is when you talk about making the polling places...designating a single entrance. Now by HAVA...the HAVA Act makes us designate a polling place that has a handicapped-accessible door. That is not always the main door. So there's a little variation in the polling-place door because this door has a handicapped-accessible door and the other door does not. So when you're talking about that 200 foot, am I going to put signs around the radius of this building for 200 foot? This bill doesn't tell me exactly what to do with that 200 foot, so I have a problem with that. You're telling the owner of a building who has generously given...in Hall County I have had as many as 36 polling locations. I've never paid 5 cents for a polling place--ever. But if you start telling the property owners that they have to put a sign up, I may get away with that one time but I probably won't get away with it twice. I'll lose that polling place. So I've done my due diligence in making that handicapped accessible. I've done my due diligence to make sure that there's adequate parking, there's adequate everything in this particular polling place. But now you're going to go and tell that owner who is giving me this polling place year after year after year that he has to put a sign up. I don't think that that's going to fly. And if I were a property owner, and I was passionate about a particular candidate and you tell me on that day that I have to have a sign for the opponent that I've spent money against, I don't think I'm going to let you come back again. Saint Francis Hospital has been very generous with their facility for us. The Presbyterian churches, the churches, the schools, and then you're going to require them to put the signs up for just a day? Who's going to come and get those signs? Who's going to man that...who's going to be watching that? Because, quite frankly, I don't have the time and my poll workers are busy during the day. So I guess those are the things that in this bill...bring to my attention. I hope that I'm speaking for the other election officials when I've spoken today. And I thank you for hearing my opposition. [LB576]

SENATOR AVERY: Thank you. [LB576]

DALE BAKER: Yes. [LB576]

SENATOR AVERY: Questions? Senator Price. [LB576]

SENATOR PRICE: Thank you, Chairman Avery. Thank you for coming and testifying today, Ms. Baker. [LB576]

DALE BAKER: Yep. [LB576]

SENATOR PRICE: When you talk about...I've got a couple of questions. So what has your in-person rate done over the last ten years at the poll? Has it historically gone, I would say, down with early voting? [LB576]

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DALE BAKER: Early voting is obviously a trend that is increasing by every election, right. [LB576]

SENATOR PRICE: So we have early voting. And you had stated that a citizen should forgo their constitutional right, protected free speech, political free speech--which is the most protected constitutional right we have--for even one day. Then where do we go next when we say, well, you can give this right up for a day because--and I juxtapose it, if you would over--I can vote at my home where I have signs all around me and we don't do the same thing. So someone voting early, there's still...you can still... [LB576]

DALE BAKER: So you're talking...your question is about the 200 feet that goes over into private property? [LB576]

SENATOR PRICE: Right. So that's the genesis of my question. Right now, I can be inundated and there's no 200-foot around me. If I live in a senior residence and it becomes a polling site--but it's not a polling site, but I live there--there can be signs on there now because there's no barring from that if I wanted to do early voting at a residence. So while we don't address it right now with the law, I do believe, to say that someone could forgo their constitutional right even for a day puts us in a poor position for talking about constitutional rights. [LB576]

DALE BAKER: Point well taken. Thank you. [LB576]

SENATOR PRICE: Thank you very much. [LB576]

DALE BAKER: Uh-huh. [LB576]

SENATOR AVERY: Any other questions? Senator Murante. [LB576]

SENATOR MURANTE: Yes. Thank you for coming down. [LB576]

DALE BAKER: You bet. [LB576]

SENATOR MURANTE: I'll tell you, I was deeply troubled with exactly what Senator Price...the concept that people have constitutional rights, but we can...it's okay to suspend them just if it's just for one day out of an election cycle. That is a concept that I tell you, I just...I can't really wrap my mind around that one. But you said something that I wanted to go down the road because this is an issue that's been discussed before. And you said that you're an advocate of the voter and that the voter should have, I think the word you used was, a respite from campaigning on election day before they get to the polls. And that presupposes that political speech articulated by candidates is something that is inherently offensive to voters, that it's something that we, as

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legislators, should protect voters from. And it's a scary thing and we need to insulate voters as much as possible from political speech because they don't like it or it's dangerous or for some other reason. So I'd like you to expand on what it is we're doing here that protects voters, and if it's protecting them from political speech, why we should be doing that. [LB576]

DALE BAKER: Okay. I'm going to answer you, but I'm not quite sure about the question that you just asked me. So voters...you know, I am the person that probably gets the most feedback from voters, okay? So I'm the one that hears about, well, why did you give my phone number out, because I'm getting inundated with phone calls? Why did you, you know...why did...you know, all of this stuff that happens in a political campaign, chances are, it's my fault. Why did you send me a card for an early ballot? I didn't send you a card for an early ballot; that came from a candidate. So I guess I'm...I hear this stuff that makes voters disenchanted with the process. And this body is all, you know, is always trying to make things better for the voter. So I guess that's why I feel like this 200 feet, wherever it may be...and if we want to talk about it being on private property...I agree with what you just said. I agree 100 percent about what you just said. But I do think that my job is to advocate for that person so that when they go in there they don't feel like they're being pressured or attacked. And I think that that's what this is supposed to do. I think that's what the 200 feet is supposed to do. Am I answering your question? Yes? [LB576]

SENATOR MURANTE: Kind of. I think it's more a philosophical disagreement than it is a question you can answer. [LB576]

DALE BAKER: Okay. [LB576]

SENATOR MURANTE: But thank you for your response. [LB576]

DALE BAKER: Okay. [LB576]

SENATOR AVERY: Any other questions? I don't see any. Thank you, Ms. Baker. [LB576]

DALE BAKER: You bet. [LB576]

SENATOR AVERY: Any other opponent testimony? Any neutral testimony? Welcome. [LB576]

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 neutral today. Senator Harr offered the amendment on our behalf and that changed our position from

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opposition to neutral. We think it's important to help out those rural areas that have polling places that may be in unincorporated areas, and the amendment would help address that. We do think that there are some situations that have come up in the discussion today where an election commissioner might need a little more guidance than the bill provides as it is. But we'd be happy to work with Senator Harr and try and define that further. [LB576]

SENATOR AVERY: Thank you. [LB576]

BETH BAZYN FERRELL: I'd be happy to answer questions. [LB576]

SENATOR AVERY: Questions from the committee? Senator Murante. [LB576]

SENATOR MURANTE: Yeah, I just have a brief question regarding the language as I understand it. Let's take my legislative district for example, northwest Sarpy County--37,000 people. Just like everybody else, every other legislative district, 37,000 people are in it. About 5,000 people live in the city of Gretna. Everything else would be unincorporated. Is that what you're including? Is that what...I consider it unincorporated. Is that term the same as is used in this language? [LB576]

BETH BAZYN FERRELL: It is, and I guess we hadn't necessarily envisioned that. We're thinking more of the rural areas. But if there's a better way to define that, I think we would be happy to do that. [LB576]

SENATOR MURANTE: Okay, so is it your...let me put it a different way. Is it your intention to apply this amendment to any polling place that is not incorporated within an annexed city boundary or is this just for low-population counties in Nebraska? [LB576]

BETH BAZYN FERRELL: Our intent...we were really looking at the low-population areas... [LB576]

SENATOR MURANTE: Okay. [LB576]

BETH BAZYN FERRELL: ...where the polling place is out somewhere. [LB576]

SENATOR MURANTE: Okay, thank you. [LB576]

SENATOR AVERY: Senator Price. [LB576]

SENATOR PRICE: Thank you, Chairman. I think what Senator Murante is saying we have a lot of SIDs and extraterritorial zoning jurisdiction, ETJs. And so I think that's where we talk about the unincorporated falls outside the ETJ given on whether you're a primary class, secondary class, and then changes. So if that clarifies for the record, the

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commentary. [LB576]

SENATOR AVERY: (Exhibit 2) Any other questions? I don't see any. Thank you. Any other neutral testimony? All right. Let me read into the record, before we close, a letter of opposition to this bill, LB576, from Diane Olmer who is the Platte County Election Commissioner. [LB576]

SENATOR MURANTE: Out of curiosity, has Diane Olmer supported any bills this year? [LB576]

SENATOR PRICE: Yes. [LB576]

SENATOR AVERY: One. [LB576]

SENATOR MURANTE: She did support one? [LB576]

SENATOR PRICE: Yes. [LB576]

SENATOR MURANTE: Okay. I stand corrected. [LB576]

SENATOR AVERY: Senator Harr. [LB576]

SENATOR HARR: Chairman Avery, members of the Government Committee, thank you. I want to thank Mr. Twiss and Ms. Baker for coming to testify. And I especially want to thank Ms. Baker because she showed you the problem with the current law as it's written. Your problem is you've got...I mean, first of all, they didn't come talk to me beforehand and I am glad they didn't because I might have asked her to change her testimony. But she exactly states what the problem is. You have...Hall County openly admits that they go onto people's private property and tell them they can't put up signs. We're violating people's private property rights. You can't do that, you just can't. She feels that the voter...well, we have something more than feelings. We have something called the constitution, and that trumps feelings. So again, we've got to honor the right of private property. Then she talks about she might lose some polling places and readily admits that there are polling places where people put up one candidate and not the other. That is unfair. A polling place must remain neutral. Private property can pick winners and losers. But if you are a polling place, you cannot say I will allow one candidate and not the other. And if we lose polling places I say, good, because those aren't good polling places. Those people aren't neutral arbitrators, they're agreeing to being polling places because they see the political advantage out of this because they can pick the winners and losers. And they can say, I want all of my candidates on here and none of these candidates on here. That's a problem. That's why this bill is here today is because of exactly what she talks about. Now I'm sorry if maybe a voter here or there gets offended because there's too much information out there. But it sure as heck

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beats the alternative where we know absolutely nothing about a candidate. Now is a sign going to tell you a lot? No, but it is a start. And it might click your memory. Oh, yeah, that's the person who came to my house. Oh, yeah, I got a flier. You cannot get rid of signs. And if we are going to have them, we have to have a policy that is clear, concise, and easily understandable so that we don't have a situation where you have enforcement one way in Hall County, enforcement another way in Douglas County, a third way in Sarpy County. And right now, that's what we have. That's the problem we face. And that's why this bill is so important. And that's why I would ask you to please pass LB576. [LB576]

SENATOR AVERY: Thank you. I think we have another question. Senator Price. [LB576]

SENATOR PRICE: Great passion. [LB576]

SENATOR HARR: Thank you. Sometimes a prosecutor closing comes out in me a little. [LB576]

SENATOR PRICE: So I'm going to take...I'm going to bring up two points. The first point is the smallest, moot point and you don't have to answer, it's just for a point of record. And that is, this is more than signs. This is people standing there, and people handing out handbills, waving a sign, all sorts of things come under, not just the placement of signs. [LB576]

SENATOR HARR: Fair. [LB576]

SENATOR PRICE: But more importantly--to which I would like a discussion following this--by denoting 200 feet from a primary entrance, we're calling that area which the equipment is at, the workers are at, and within 200 foot, the polling place. The property can be much larger than 200 feet. So going back to the premise where we talked about the private property, I have a poll within a large private property. Now how am I infringing on a private property owner's rights? [LB576]

SENATOR HARR: Good question. [LB576]

SENATOR PRICE: And so that's...therein lies...we don't just...and to finish my point of thought--okay--is, the entire perimeter of the property is not the polling place from whence the 200-foot rule would begin. [LB576]

SENATOR HARR: So if I understand what you're saying is, if the polling place is on private property... [LB576]

SENATOR PRICE: Right. [LB576]

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SENATOR HARR: And so we're saying not a 501(c)(3), but a private property, right? [LB576]

SENATOR PRICE: Uh-huh. [LB576]

SENATOR HARR: And so what you're saying is the 200 radius is...the property is bigger than that 200-foot radius, right? [LB576]

SENATOR PRICE: Yeah. [LB576]

SENATOR HARR: And you're saying, how can we go and tell that private property owner what they can and cannot do? [LB576]

SENATOR PRICE: Right. [LB576]

SENATOR HARR: Great. The answer is, they have voluntarily waived that right by agreeing to be a polling place. That is what you get. You are either compensated for this or this is part of your...you feel it's part of your public duty. But by taking this on, you have waived that right. [LB576]

SENATOR PRICE: Is that explicit or complicit? [LB576]

SENATOR HARR: What's that? Well, it's what...it would be explicit. That's what the statute says. [LB576]

SENATOR PRICE: Okay. I just wanted to make sure. [LB576]

SENATOR HARR: Yeah. Yeah. [LB576]

SENATOR PRICE: We looked for that underlying part, you know, and this other part. So... [LB576]

SENATOR HARR: Yeah, no. They would say...because they would look to the statute and say, I agree to it. And then, hopefully if they were a responsible property owner, they would look and say, okay. Or if the polling election commissioner, whomever it is, would then also say, hey just FYI, you're going to sign a contract to be a polling place. It's not as though we just let anyone be a polling place without a contract because the last thing we want is I'll be a polling place, and then the day of the election, ha-ha, I'm not going to let you on my property. So we have to have a contract. And in that contract, it'll state what the statute is. And hopefully, if it's well written, it will state what the statute is and that person will realize, okay, XYZ, I give that up, fine, and sign on the dotted line. [LB576]



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SENATOR PRICE: All right. Thank you. [LB576]

SENATOR AVERY: Thank you. I don't see any more questions. Thank you very much, Senator Harr. [LB576]

SENATOR HARR: Thank you. It was very enjoyable in here. I appreciate it. [LB576]

SENATOR AVERY: Well, we're happy. [LB576]

SENATOR HARR: Have a good day. [LB576]

SENATOR AVERY: That ends the hearing on LB576. We'll now move to LB515 and invite Senator Carlson to address us. Good afternoon, Senator Carlson, and welcome. [LB515]

SENATOR CARLSON: (Exhibit 1) Good afternoon, Senator Avery and members of the committee. I'm Tom Carlson, T-o-m C-a-r-l-s-o-n, representing District 38 here to introduce LB515. The bill was brought to me by the irrigation districts, and the bill basically expands the definition of electors as they relate to irrigation districts. There are many different ownership interests in land today and these include joint tenants, tenants in common, corporate interests, land purchase contracts, life estates. But LB515 amends the original language to include these landowners as qualified electors for the purpose of voting in irrigation district elections. LB515 also provides the authority and the means by which such elections can be conducted by mail. Recent elections in the districts have had small turnouts due to long distances to the polling place, increasing fuel costs, and time constraints. The election districts feel that allowing ballots by mail would increase participation in the elections as well as provide a cost savings to both the voters and the district. So, again, the purpose of this bill is to make sure that those that should have the ability to vote, get to vote. And if the cost savings of being able to vote by mail would make sense, then I think that's another good part of this plan. So there are others here to testify and I'm going to listen carefully to what they have to say. There's a little technicality in there in terms of what amount of land needs to be owned in order to have a vote, and I think that will come out pretty clearly in other testimony. But I'll try to answer any questions that you might have. [LB515]

SENATOR AVERY: Thank you, Senator. Questions from the committee? Senator Wallman. [LB515]

SENATOR WALLMAN: Thank you, Chairman Avery. Yes, welcome, Senator Carlson. [LB515]

SENATOR CARLSON: Thank you. [LB515]

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SENATOR WALLMAN: In other words, you know, I was reading on page--I'd better put my glasses back on--on page 6, "If two or more persons." That means a tenant and the landowner on the same parcel of land? [LB515]

SENATOR CARLSON: What line are you on, Senator? [LB515]

SENATOR WALLMAN: Page...line 9. [LB515]

SENATOR CARLSON: Okay. [LB515]

SENATOR WALLMAN: And then does the board of directors determine the party entitled to vote, huh? [LB515]

SENATOR CARLSON: Yeah, that's in there. New language: If two or more claim conflicting rights to vote, then the secretary of the board would determine who gets to vote. But somebody is going to get to vote. [LB515]

SENATOR WALLMAN: Okay. Just one person, do you think then? Probably... [LB515]

SENATOR CARLSON: Maybe, maybe not. And it depends on acres and number of owners, but I think that will be explained in a little more detail. [LB515]

SENATOR WALLMAN: Thank you, Senator. [LB515]

SENATOR CARLSON: Okay. [LB515]

SENATOR AVERY: Senator Price. [LB515]

SENATOR PRICE: Thank you, Chairman Avery. And Senator Carlson, I apologize for my ignorance and I hope that you'll help me out here. In this arena, is it new to say that a corporation or an LLC would now be given a vote as an entity versus individual people? So if I own land prescriptive to what you say here, I'm a landowner of the size--whatever it is--I get a vote. But if I'm also part of a company, does the company get a vote also? I mean, is that current law or is that the new part? [LB515]

SENATOR CARLSON: Well, there's...my understanding is that there's been some confusion and perhaps conflict at times as to who really is eligible to vote. And so there's a number of acres that apply, and if you have multiple owners...the bill is going to say that if you have four owners and 40 acres apiece that that amounts to there's four votes; but no more than four. So it wouldn't matter if it was 160 acres or 1,000 acres. But there's been some misgivings and some difficult feelings because somebody that had ownership in a piece of property couldn't vote, and this is to clarify that. And I think

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it does. [LB515]

SENATOR PRICE: Great, because I was just wrestling within my head of the one person, one vote. If I have a bunch of acreage or a little acreage, I have a bunch of owners, you know? I'm concerned about that, against other intellectual law that I understand. So thank you very much--I think. [LB515]

SENATOR CARLSON: Okay. [LB515]

SENATOR AVERY: Can you think of any other instances where the right to vote in this country is determined by land ownership? [LB515]

SENATOR CARLSON: Hadn't thought about it that way. [LB515]

SENATOR AVERY: It used to be. It used to be. [LB515]

SENATOR CARLSON: Well, it may be the NRDs. And when I say that, I don't know that for sure. [LB515]

SENATOR AVERY: Yeah. [LB515]

SENATOR CARLSON: But it's really based on who owns land. [LB515]

SENATOR AVERY: And the assumption is they have a stake in the outcome. [LB515]

SENATOR CARLSON: Right. They're irrigating that land and they need the right to irrigate it and then they need the right to be in on the decision as to how the irrigation takes place. [LB515]

SENATOR AVERY: And other voters do not? [LB515]

SENATOR CARLSON: No. And those who own are paying for it so we're not using tax dollars to fund these irrigation districts. [LB515]

SENATOR AVERY: They're paid for with their own...on taxes. [LB515]

SENATOR CARLSON: Operation and maintenance costs. [LB515]

SENATOR AVERY: Okay. Senator Price. [LB515]

SENATOR PRICE: Thank you, Senator Avery. Just as a clarification--and I appreciate the assistance I received on that--but I think that's how it is in a SID. I live in a SID, I pay for it, and I have...for me to have a vote on a SID board, I have to be an owner in that

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SID. So I think we do have other structures that do something similar, but it just caught me off guard to think about it in the numbers. My wife and I each have one vote even though we have one property, you know. So that what was just kind of throwing me off. If I had multiple owners and an operation...thank you. [LB515]

SENATOR CARLSON: Okay. [LB515]

SENATOR AVERY: Any other questions? I don't see any. Are you going to stay and close? [LB515]

SENATOR CARLSON: I hope so. [LB515]

SENATOR AVERY: Okay. [LB515]

SENATOR CARLSON: Okay. Thank you. [LB515]

SENATOR AVERY: All right. We will now accept proponent testimony on LB515. Welcome, sir. [LB515]

BRAD EDGERTON: (Exhibit 2) Thank you. Good afternoon. Senator Avery and members of the committee, my name is Brad Edgerton. I'm the manager of Frenchman-Cambridge Irrigation District. I'm here today on behalf of the Nebraska State Irrigation Association and... [LB515]

SENATOR AVERY: Could I...can you spell your last name for us? [LB515]

BRAD EDGERTON: Sure. B-r-a-d E-d-g-e-r-t-o-n. [LB515]

SENATOR AVERY: All right. Thank you. [LB515]

BRAD EDGERTON: You bet. I'm here today on behalf of the Nebraska State Irrigation Association and Frenchman-Cambridge Irrigation District to offer testimony in support of LB515. I'd like to thank Senator Carlson for introducing this LB515 for the Nebraska State Irrigation Association. He did an excellent job on the opening of this bill. The NSIA and others have been working on these changes this past summer. Several draft copies have been circulated among NSIA member districts throughout the summer in preparation for this legislative session. LB515 is an attempt to modernize irrigation district election laws and redefine the term "elector." The handout that I made available is what we provide at the polling place as a guide to our election board so that when people come in to vote...and the district provides a list of electors to the election board. And on occasion, we'll have people come in to vote and their names will not be on that list, and they question the election board on why that's the case. So we provide that handout as a guide to the election board. And we try to keep a current list in our office

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but it's difficult. Our reading of the statute is a person that owns 15 acres of land is eligible to be an elector. So we believe LB515 would clarify this and allow for corporations and LLCs and other entities to have a vote in the elections. We believe every owner of a water-right acre within the district has a right to vote and elect their representatives. So I think LB515 would correct these deficiencies and give the district a clear direction on who an elector is. With that, I ask that you advance LB515 and I can answer any questions that you may have. [LB515]

SENATOR AVERY: Thank you, sir. I note here in the handout that if land is in a corporation, there are no electors. Is that correct? [LB515]

BRAD EDGERTON: That's how we currently see the statutes. And that's based on information from my attorney, Stan Goodwin, who helped draft this legislation with help from other attorneys around that represent other irrigation districts. So... [LB515]

SENATOR AVERY: Can we infer from that, that corporations in this context are not considered persons and, therefore, do not have rights conferred upon them as persons do? [LB515]

BRAD EDGERTON: That's the opinion of our attorney. So...and that's... [LB515]

SENATOR AVERY: You have a good attorney. Senator Price. [LB515]

SENATOR PRICE: Thank you, Chairman Avery, notwithstanding previous commentary. So try to think outside the box here. [LB515]

BRAD EDGERTON: Okay. [LB515]

SENATOR PRICE: I'm in a irrigation district. Generally speaking, we probably (inaudible) we have a bunch of people irrigating. On one hand are agricultural concerns. What happens when a person comes in and buys up some...less than the prescribed acreage but is a large consumer of...like a factory or some...because they move out...so if they're a large consumer of water, is that a fly in the ointment there? [LB515]

BRAD EDGERTON: In order to be part of the irrigation district, they would have to be an irrigator. You couldn't use it for a commercial or an industrial use. I mean, our water right is for irrigation purposes only. [LB515]

SENATOR PRICE: Okay. As an urban...I admit it. [LB515]

BRAD EDGERTON: Yep. [LB515]

SENATOR PRICE: Thank you. [LB515]

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SENATOR AVERY: And are we talking about ground water or surface water? [LB515]

BRAD EDGERTON: Surface water. [LB515]

SENATOR AVERY: Surface water only? [LB515]

BRAD EDGERTON: Right. Diversions from the river. [LB515]

SENATOR AVERY: Okay. Any other...Senator Bloomfield. [LB515]

SENATOR BLOOMFIELD: Thank you. Not being involved in this, you have a word here that I don't understand what it is. What's an entryman? [LB515]

BRAD EDGERTON: I believe that's a tenant on government property. If you lease government land, then you don't want the government voting at the election, so I believe that statute gives that tenant the right to vote then. And I believe he's required to have 40 acres. [LB515]

SENATOR BLOOMFIELD: But that...basically, entryman is just the renter, then. [LB515]

BRAD EDGERTON: I think it's another name for a renter or tenant. [LB515]

SENATOR BLOOMFIELD: Okay. Thank you. [LB515]

SENATOR AVERY: Any other questions? Senator Lautenbaugh. [LB515]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. There are other boards and whatnot where property owners vote, is that correct, like SIDs and whatnot? [LB515]

BRAD EDGERTON: I have no knowledge of that, I guess. [LB515]

SENATOR LAUTENBAUGH: Okay. If I told you that was the case, you wouldn't have any reason to disagree? [LB515]

BRAD EDGERTON: I would believe you. Right. [LB515]

SENATOR LAUTENBAUGH: Thank you. [LB515]

SENATOR AVERY: Any other questions? You got here in time for a question. I don't see any. Thank you, sir, for your testimony. Any other proponent testimony on LB515? All right. We will accept opponent testimony, opposition testimony on LB515. Seeing none, any neutral testimony? Senator Carlson, we have no other testifiers. Do you wish

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to close? You're going to waive. Thank you, sir. That will end the hearing on LB515, and we'll now move to LB565. Senator Nelson, welcome to the Government Committee. [LB515]

SENATOR NELSON: Thank you. Thank you, Senator Avery. [LB565]

SENATOR AVERY: (Exhibit 3) Before we start, even though I've closed the hearing on LB515, I do have a letter of support here from the assistant manager of Loup Basin Reclamation District so we'll read that into the record. All right, now we're ready for LB565. [LB515]

SENATOR NELSON: Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is John Nelson, spelled N-e-l-s-o-n, and I represent District 6 in midtown Omaha. I'm here today to introduce LB565. LB565 simply prohibits a person from registering to vote and voting an early ballot on the same day. LB565 also prohibits a person from receiving an early ballot before he or she has registered to vote. It's well known that Nebraska does not allow voters to register on election day. However, we presently allow people to register to vote and cast an early ballot on the same day. When a person registers to vote and votes early on the same day, that voter's ballot will be accepted and counted even though the identity of the voter has not been confirmed. This practice presumes the accuracy of the registration and it's inconsistent with Nebraska's rejection of election day registration. The problem was illustrated during the 2011 mayoral recall election in Omaha. There a special interest group openly drove busloads of unregistered persons to the Douglas County Election Commission to register and cast early ballots. But when the ballots were cast there was no real way to confirm that the voters were who they said they were; their votes counted no matter what. LB565 will require voters to register first and then later apply for or cast an early ballot. This is a simple remedy for an existing loophole, so I urge the committee to advance LB565 and help preserve the integrity of our election process. And with that, I'm willing to answer any questions. [LB565]

SENATOR AVERY: Thank you, Senator. Questions from the committee? Let me ask you one. [LB565]

SENATOR NELSON: Yes. [LB565]

SENATOR AVERY: What is the overriding public interest that you're trying to protect here? [LB565]

SENATOR NELSON: I think the integrity--thank you, Senator, for the question--the integrity that the process...it's difficult, at best, to make sure that a person who is registering is who they say they are. The ordinary process is that they've registered well ahead of time or they've moved and then don't get around to registering. And they're

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supposed to register, I think required under law, by the tenth day prior to the election day. And if they don't get registered at that time, then they have to go through the provisional ballot process because we haven't been able to identify for sure where they live and if they were residents. So here we're trying to avoid in a sense the same thing, having someone come in and register and then ask for an early ballot because they have to be out of town and register. There's no opportunity other than perhaps electronically to see if you can identify the name or find out or verify some way that that's where they do live, where they claim their residence is. Ordinarily, someone registers, in a few days they will from the election office get a card that tells them where they should vote, where their district is, that sort of thing. And if that card comes back, then that puts a red flag there at the election office come election day. And those people that come in and the cards have been returned, they have to show that they are at that address. So it's difficult, especially in the hassle of election day, and this is a loophole that we noticed last year that there didn't really seem to be any solution in statute. It may not cover everything here, but at least it's a good start as far as I'm concerned. [LB565]

SENATOR AVERY: How do you verify the residence now? You mail out a card, the card comes back and you figure they don't live there? [LB565]

SENATOR NELSON: Mail a card...on the basis of what they filled out on the registration form, then a card goes out soon, fairly soon depending on how close the election is, and if it doesn't come back then we're in good shape. You just assume that it's been delivered and they're there and they know where they're supposed to go to vote. If it does come back, that's an indication that it might have been a fraudulent registration or somebody is trying to vote when they shouldn't be or just that sort of thing. So it raises a flag and you...the election materials are marked so when they do come in, then they have to prove their identity at that time and that's where they live by some other documents of some sort, an electric bill, things of that sort or whatever they might be able to do. Otherwise, they vote provisionally and then you follow up later to try and determine...it's...the ballot is not counted on the provisional ballot until you follow up and do the best you can to find out it's a valid registration. [LB565]

SENATOR AVERY: So they...and those people who register on the same day that they request the early ballot, are those provisional votes...ballots? [LB565]

SENATOR NELSON: No. No. No, under the present... [LB565]

SENATOR AVERY: They're automatically counted? [LB565]

SENATOR NELSON: Under present law, they're accepted and they aren't counted right at that time. I think they're probably counted after the regular ballots are counted I think in at least Douglas County election office. And...but they're there, they're in the box. I



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mean, you've got no way of retracting them, you have to go ahead and count. [LB565]

SENATOR AVERY: And there is no attempt to verify the residence? [LB565]

SENATOR NELSON: Only by sending out the card. Well, I'm not going to say that. There may be some methods of--I can't think of the term exactly here--but verifying if you could, but you can't be very accurate. I mean, you don't...you're limited in the amount of things that you can find out, I guess, unless you go on Google or something of that sort. [LB565]

SENATOR AVERY: Well, if you are mailing out a card, the card could have a one-digit error on zip code and it could come back. And you can't... [LB565]

SENATOR NELSON: That's true. That's true. If... [LB565]

SENATOR AVERY: Yeah, you can't necessarily assume they don't live there. [LB565]

SENATOR NELSON: That's true. There is a margin of error there. I do that, once in a while, I transpose numbers and it could come back for that reason. I will say it generally takes two weeks to get back to you, but that's with the post office. [LB565]

SENATOR AVERY: Because it takes about two weeks for it to be delivered too. [LB565]

SENATOR NELSON: Yeah, right. [LB565]

SENATOR AVERY: Seems to me that you probably could have these early ballots on the same day of registration be provisional ballots and can treat it as provisional votes the way we do other provisional ballots. [LB565]

SENATOR NELSON: I have...you...well, but you've still got to do the verification process. [LB565]

SENATOR AVERY: There would be time to do that. [LB565]

SENATOR NELSON: I guess you could do it ahead of time if you would have classified them as a provisional ballot type. [LB565]

SENATOR AVERY: Uh-huh. [LB565]

SENATOR NELSON: There may be testimony behind me that can tell you what the drawbacks are to that. [LB565]

SENATOR AVERY: Okay. Questions from the committee? Don't see any. Thank you,

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Senator. [LB565]

SENATOR NELSON: Thank you very much. [LB565]

SENATOR AVERY: You going to stay around for closing? [LB565]

SENATOR NELSON: I will stay, yes. [LB565]

SENATOR AVERY: Okay. [LB565]

SENATOR NELSON: Uh-huh. [LB565]

SENATOR AVERY: All right, we will now accept proponent testimony on LB565.  
[LB565]

DALE BAKER: Me again. [LB565]

SENATOR AVERY: Ms. Baker, thank you. Welcome back. [LB565]

DALE BAKER: I'll be a little bit more concise about my statement on this one. Again, Dale Baker, D-a-l-e B-a-k-e-r, I am the Hall County Election Commissioner and I also represent the Nebraska Association of Election Commissioners, Register of Deeds, Clerks, whole nine yards. Also I'm the cochairman of the legislative committee. This bill I like, and I think the inconsistency here lies within each county. Every county handles early voters a little bit differently, and I think this bill would maybe get us all on the same page. In my office, when we have somebody come in that registers to vote the same day, we give them an absentee ballot envelope and we have them fill it out like it is an absentee that is mailing in. We take their registration, we post the registration as long as it's prior to the ten-day deadline, and that ballot goes into the box with the other early absentee ballots. So if for some reason that card should come back to my office that says that it is not a resident or, you know, for some reason, error, data error, whatever, we can follow up on that and the ballot is isolated. So we can handle that. That's my county. But in the smaller counties that maybe have an M100 which count the ballots as they're cast, that ballot is marked and cast and the process of verification doesn't happen until after the ballot is already cast; again the inconsistency. So that's kind of what I like about this bill. The one part that I don't necessarily agree with is the mail-in registration with somebody who's not a registered voter. Again, we can keep track of that ballot in the voter registration envelope that comes back. If that person is not a qualified voter when we process the application, then that ballot can be isolated. And it's kind of like provisional except for there's not so much paperwork. They still have to fill out the new voter registration, but it gives us a chance to verify the voter registration information. So this bill is not perfect. I don't think that it tells us...it says that they can't vote on that day. That doesn't give us a window. I think it should go and refer back to

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32-322 which talks about the verification process that gives us the couple of days to send out the card for verification. So that's kind of how I feel about this. Yes. [LB565]

SENATOR AVERY: Let me ask you, if a person comes in and they want to register on the same day as they vote and this were to be law, they wouldn't be allowed to do that. When would they be able to vote? [LB565]

DALE BAKER: Well, this bill doesn't state that, and so that's kind of the problem. But it should be after the confirmation has been mailed in and we have confirmation that the voter is who it is. But there again, you get into the process of the mail. So if we haven't gotten the card back in four to five days...in Grand Island it's been three days--we have a processing center in Grand Island which we're going to lose--that could turn out to be four days. But as long as you're not pushing that day deadline to the ten-day prior to voter registration deadline, you've got plenty of time. We've got plenty of time to do the verification. [LB565]

SENATOR AVERY: Would you tell me again, are you with the election law committee? [LB565]

DALE BAKER: Yes. Well, yes. I sit on the...I'm the cochairman...I'm Diane's other half, let's put it that way--Diane Olmer's other half of the election or the NACO organization. [LB565]

SENATOR AVERY: Election law committee. Okay. [LB565]

DALE BAKER: Right. But I'm also the Hall County Election Commissioner. [LB565]

SENATOR AVERY: Okay. Senator Price. [LB565]

SENATOR PRICE: Thank you, Chairman Avery. Maybe to follow what Chairman Avery had been alluding to earlier, would it be a plausible solution to say anybody who registers early and wanted to cast a ballot would cast a provisional ballot? Regardless of that ten-day window, there would be ample time built into the provisional balloting process to validate and verify how authentic that registration is. [LB565]

DALE BAKER: I think so, yes. [LB565]

SENATOR PRICE: Thank you. [LB565]

SENATOR AVERY: Any other questions? I don't see any. Thank you, Ms. Baker. [LB565]

DALE BAKER: Okay, thanks. [LB565]

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SENATOR AVERY: Any other proponent testimony? Welcome, Mr. Bena. [LB565]

WAYNE BENA: (Exhibit 1) Good afternoon, Chairman Avery and members of the committee. My name is Wayne Bena, W-a-y-n-e B-e-n-a, I serve as Sarpy County's Election Commissioner. I was asked to come testify today in regards to this bill but I'm hedging a little bit. I am for the concept that Senator Nelson is...the problem that he is trying to solve. I am not in agreement with the solution to solve the problem. With that, and trying not to be negative, I do offer...I do come bearing gifts and reform of legislation that I have been working on in a couple of years, that I have not introduced yet, that would provide voters some options in this situation. So my testimony is in two parts: to talk about the problem and talk about what I feel an applicable solution is. And unlike last time, I will not ask for more time, I hope. [LB565]

SENATOR AVERY: As I recall, you were given more time. [LB565]

WAYNE BENA: You were, and I won't even ask for it. I appreciate that, Senator. The problem is this. It is the law of this land we do not have same-day registration on election day. And in essence, what voters are allowed to do is during the early voting window they can come to my office, register to vote, request an absentee...to vote in the office at the same time. Much like Commissioner Baker had stated, once that ballot goes into the ballot box there's really nothing we can do. She uses an envelope. I would probably suggest that once it goes into the ballot box, there's nothing you can do at that point. In my office it's treated like a polling site and the true ballot goes into the ballot box, there is no way of pulling that ballot. And both of those methods are allowed under state law. So what happens is that after that person has voted, we go through the registration process, send the confirmation card to the voter, and then we get the card back whether it be undeliverable, whether it be they have moved to Douglas County, whether they have moved to their college. So there's not 100 percent certainty that person might necessarily have voted illegally, but there are...that would not have flown at the polling site. If that someone voted prior or registered prior to the early voting period we'd send the card, and if we got the card back their status would be what we call NVRA. And at the polling site, the poll workers are instructed to ask the voter to confirm their address. And at that point the voter would have to confirm their address, and if they don't confirm their address, they have to go through the provisional balloting process. This is not an option in this process. I was asked...I wasn't planning on coming down but I was asked by Senator Nelson's office a few days ago, and so I pulled some things together because this is something that has been brought to me by my own constituents in Sarpy County. And so what I did this election cycle was to separate all the cards that I got back during the early voting period and after the election after we did the provisional balloting. And just on a very rough, down and dirty, I found at least 50 instances in Sarpy County in which a voter tried to register during the early voting period and cast in either an absentee or a provision ballot at the polling site and the card came

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back after the fact. Now, did in all of those 50 cases some of those were rejected provisional ballots, no harm. However, there was an attempt. We caught that. But in many instances, there were cases when people came to my office, registered to vote, and then we got the card back and there was nothing that I could do with that vote. So I believe this is an issue, a loophole in the law that I would like to see addressed. Now how do we address this? Senator Nelson's bill does...just says, well, we can't do it, it's now allowing it, providing no other option. I would suggest that what the bill is saying that the next day the person can go back and do the same thing. That doesn't help. So I worked on...in the last couple of years I've worked on a bill--one minute, fantastic--which would allow some options. The two options being--and there could be many others, much like the provisional that you have recommended, Senator Price--the first, if a person comes in wishing to register to vote and wishing to vote at the same time, we would ask for an identification. And I know some heads probably exploded behind me, but this is not different than what we do right now in election law. If a person registered to vote the first time in Nebraska by mail and doesn't provide such type of identification, then they're required at the polling site to show ID in order to vote. This would allow us to know that this person lives at that address. It could be a cable bill, a driver's license, a library card if it has their address. The second option would allow a voter...for me to mail that absentee ballot at that same day to the voter along with their confirmation card, thinking that if I got the confirmation card back then I would also get the ballot back if they did not live at that address. I'm about giving options to the voters. These are some language put in the bill that would provide those options, but I do believe that this is a loophole in the law that does need to be fixed. And please grill me with questions, I'm all up for it. Thank you. [LB565]

SENATOR AVERY: All right, thank you. Questions from the committee? This is a piece of legislation you had drafted last year? [LB565]

WAYNE BENA: And I have not introduced. [LB565]

SENATOR AVERY: Yeah. [LB565]

WAYNE BENA: To be perfectly honest, I figured I was going to have to be on defense most of the year. I didn't want to go on offense, so I wanted to wait. However, since this bill...since Senator Nelson did vote this bill I thought this was...since I'm assuming there will be opponents to this not giving any options if this bill decides to move forward, I wanted to give options that could be considered instead of just not allowing them to vote during the early voting period. [LB565]

SENATOR AVERY: Are you asking us to consider this as a committee amendment to... [LB565]

WAYNE BENA: Correct. [LB565]

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SENATOR AVERY: Okay. [LB565]

WAYNE BENA: If this bill...I would consider that these are some options that might alleviate some concerns of this committee of not providing options to those type of voters. [LB565]

SENATOR AVERY: Okay. Questions? Senator Karpisek. [LB565]

SENATOR KARPISEK: Thank you, Senator Avery. Did you get everything in, Mr. Bena? [LB565]

WAYNE BENA: Yeah, I did. [LB565]

SENATOR KARPISEK: I appreciate you come in and you lay it out. I appreciate that and want to make sure that you give your whole testimony. Thank you. [LB565]

SENATOR AVERY: I have another question. You talked about 50 cases. I presume this was a rough sample of early votes. [LB565]

WAYNE BENA: Yes. [LB565]

SENATOR AVERY: Do you have any reason to believe that there was an attempt at fraud or these were inadvertent mistakes? [LB565]

WAYNE BENA: Unfortunately, I'm not an investigative body and I have to let my sheriff's office take care of those, and some of these have been forwarded to my sheriff's office. I have not heard back on the investigation. This is not the highest on the totem pole, I believe, in crimes. One example...I mean, this has nothing to do with this but one example I can tell you...I would say some of these, no. However, I do believe there were some cases that I believe that people didn't live in Sarpy County anymore, tried to register in Douglas County, couldn't because of the deadline and then came back to Sarpy County and voted. This doesn't really have nothing to do with this but some of these, unless I have them investigated, I don't know. Some of these, they could have moved right after the election. I had people move into the county right before the election, they could have moved right after the election. Their mail may not have been forwarded yet. So I'm not saying in all these cases and I will not admit that all these cases in this kind of down and dirty analysis were fraud, but some of them would lead themselves to fraud...a fraudulent vote because...mainly because when we sent their card right after the election it was either forwarded to a Douglas County address or an address that was within Sarpy County but not at the address that they were at. So I would say even if a person wasn't allowed to vote, if they got the wrong ballot, that's the same problem. We want to make sure everyone receives the right ballot, and some

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people did not because they asked to vote somewhere that they didn't live. Could have been a parent...old parent's house but they have a new house in Sarpy County. So to me, voting a ballot that they shouldn't have is the same degree or not...shouldn't have been able to vote in the first place. [LB565]

SENATOR AVERY: So how many...you say you pulled a 50-vote sample. Out of how many votes would that be? [LB565]

WAYNE BENA: If you count all of early ballots in 2012, roughly 26,000. And that's... [LB565]

SENATOR AVERY: But not all...you didn't have 26,000 early votes. [LB565]

WAYNE BENA: Yes. [LB565]

SENATOR AVERY: Oh, you did? [LB565]

WAYNE BENA: Yes. Record year in Sarpy County, 27,000...26,000, 27,000 roughly. [LB565]

SENATOR AVERY: Yeah, I remember you mentioned that last time you were here. So you pulled 50 out of 26,000 and... [LB565]

WAYNE BENA: Yeah. I will say 20,000 of those were by mail, which there's...this law doesn't apply to. There was approximately, let's say, 7,000 that voted in our office in person, yes. [LB565]

SENATOR AVERY: In person. In person, okay. Any other questions? Thank you, and thank you for observing the red light this time. [LB565]

WAYNE BENA: No problem, Senator. [LB565]

SENATOR AVERY: All right, we are on proponent testimony for LB565. Don't see any more. All right, we'll accept opponent testimony. Welcome back. [LB565]

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 testifying in opposition, but I think it's really based on just some of the technical aspects to the bill that you've heard about today. When our board looked at it, we looked at sort of the policy and supported the policies that this bill is trying to look at. But the opposition was strictly due to the technical concerns, so I'm here in opposition but it's not strong opposition. I would be happy to answer questions. [LB565]

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SENATOR AVERY: Okay, thank you. Questions? I don't see any. Any other opponent testimony? Welcome, sir. [LB565]

JACK GOULD: Senator Avery, members of the committee, my name is Jack Gould, that's J-a-c-k G-o-u-l-d, and I'm here representing Common Cause Nebraska. And I have just some concerns. First of all I think, you know, we're all concerned about our democracy and the need for people to vote, and we want to be in a situation where we're encouraging them and not discouraging them. And in situations where people are trying to vote on the same day, there may be a lot of reasons why they want to vote on the same day. It can be--you've heard them all--people that are handicapped, people that are elderly, people who may find it difficult to get to the polls or have a variety of reasons that are valid reasons. And I've listened to some of the questions about how many people actually have violated this law that we have right now, and it's not very clear that we have a lot of proof and there's been a tremendous number of violations. And I think one of the things we've talked about is this question of mail service. I want to tell you, I live in Valparaiso and if I mail a letter to a business that's five miles from me, the mail has to go to Omaha to be processed and then it comes back. And it used to be we got pretty quick service. Now it's getting longer and longer. And so there is some concern about mailing things and getting them back to you. If you have made a mistake on the address, it can go all over the place and then come back to you again and it could be weeks before it gets back to you. I also worry about the fact that a lot of the concerns are that we have set up a bureaucracy that may be creating problems for democracy, and that in the end democracy is the most important element here. We want people to vote, we want people to be involved. And if we throw up hurdles that prevent them from voting, then we're creating a situation that hurts the democracy. Thank you. [LB565]

SENATOR AVERY: Thank you. Any questions? Senator Price. [LB565]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Mr. Gould, for testifying. Could you tell me what number of improperly cast votes is acceptable in a democracy? [LB565]

JACK GOULD: No, I can't. [LB565]

SENATOR PRICE: I thought as much. As equally in denying the vote is getting improper votes. You can't...ideally, we're to have none of that. [LB565]

JACK GOULD: Correct. [LB565]

SENATOR PRICE: So we don't really want to cast aspersions or a lie saying 50 is a good enough number out of 7,000. We're trying to get to an ideal location. [LB565]



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JACK GOULD: I agree. [LB565]

SENATOR PRICE: Thank you. [LB565]

JACK GOULD: But I also would say I would rather fail on the side of democracy than on the side of bureaucracy. [LB565]

SENATOR PRICE: But democracy is both. [LB565]

JACK GOULD: Not always. [LB565]

SENATOR PRICE: Okay, thank you. [LB565]

SENATOR AVERY: I can name a few bureaucracies that don't have much to do with democracy. [LB565]

JACK GOULD: Thank you. [LB565]

SENATOR AVERY: Senator Scheer. [LB565]

JACK GOULD: Yes, sir. [LB565]

SENATOR SCHEER: Well, I wasn't going to ask you anything or make a comment, but your last comment spurred it on to the extent that you're saying you'd rather err on the side of democracy. Having said that, previously this spring we've had different people have testimony on elections that actually have ended in a tie and very small numbers of votes were issued. And so if we have an instance of one inappropriate vote that should not have been cast, it could cost an individual an election. I consider that a pretty big deal. [LB565]

JACK GOULD: I would consider it a big deal as well except that... [LB565]

SENATOR SCHEER: Well, no, there's no except. It is a big deal. [LB565]

JACK GOULD: It is a big deal. But how do we deal with deciding about that single vote? I mean, are you telling me that the single vote would be invalid, because my assumption is that most votes that are cast are valid? [LB565]

SENATOR SCHEER: My assumption would be is if we had 50 ballots that seem to be irregular out of 7,000, although a smaller percentage, that would be a big number of votes. And if you transferred into a smaller county that maybe only has 7,000 total, that's still 50 erroneous ballots that could be issued there. And when you have elections as close as they have been in some of these areas, that truly could cost a candidate the

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election one way or the other because of some of those votes coming in. And I'm not assuming that they were done on a purposeful nature but I can see that with the flaw in the law that allows this to happen, it certainly could be done as such. And there's no way to have a revote once those ballots are counted; so consequently, it is a big deal, and it is a big deal towards the election and for candidates regardless of what political party or an independent. This is a protection of their rights as well. [LB565]

JACK GOULD: I don't disagree. I mean, I don't want to see an election fail because of one invalid vote. I mean, I agree with you. That's...there's no question about that. But at the same time, how many votes can we discourage by setting up hurdles and making it more difficult to vote? I mean, you have to weigh the one against the other, and that would be my concern. [LB565]

SENATOR AVERY: Any other questions? Senator Murante. [LB565]

SENATOR MURANTE: Hi, Jack. I don't want to belabor this point because we have a... [LB565]

JACK GOULD: No, go ahead. [LB565]

SENATOR MURANTE: ...very important bill coming up next. But Senator Nelson's goal here is to ensure that when people go to the polls or they go to an election office to vote early are really across the board, that every ballot cast by every voter is cast by a person who is who they say they are and that they live where they say they live, and whether it's fraud or just voter error, making sure that the voter has the right ballot and is voting for the right offices. Do you agree that is at least a laudable goal for Senator Nelson? [LB565]

JACK GOULD: I think that's a laudable goal. No question. [LB565]

SENATOR MURANTE: Then Senator Nelson's proposal, particularly the way Hall County does it or however we structure this in attempting to attain that goal, what I'm not seeing is how an election office if a voter goes in and votes, they put their ballot in a provisional ballot sleeve, an election office verifies that that voter is who they say they are and that they live where they say they live, how that is a bureaucracy that discourages someone from voting? [LB565]

JACK GOULD: Well, you're creating...you're talking about the provisional ballot possibility. [LB565]

SENATOR MURANTE: Or any...even in the construct we have here, I'm not really seeing how it would discourage someone from voting. [LB565]

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JACK GOULD: Well, the whole...I mean, I'm not sure when the provisional ballot is going to be cast but, I mean, I know that the day of an election when a provisional ballot is cast, it can create problems for the election commissioners as well. If you create numbers of...large numbers of people--and I don't know how many people are going to fall into this category--but if you do and you have a lot of people who have to fill out provisional ballots, in Valparaiso where I live and vote, you've got a problem because there's a lot of...you're going to have lines and you're going to have to explain things and it gets complicated. I'm not sure that that's going to solve a problem going with a provisional ballot. That may just create another problem. [LB565]

SENATOR MURANTE: Okay. Thank you. [LB565]

SENATOR AVERY: Senator Lautenbaugh. [LB565]

SENATOR LAUTENBAUGH: Thank you, Senator Avery. Thank you, Mr. Gould. Now as I understand, what we're talking about how these provisional ballots wouldn't be election day provisional ballots, is that correct? [LB565]

JACK GOULD: I don't know. [LB565]

SENATOR LAUTENBAUGH: They would be for people registered to vote before election day. We don't have same-day, election day registration, correct? [LB565]

JACK GOULD: Okay, yes. [LB565]

SENATOR LAUTENBAUGH: So these would be much earlier in the process. Are you of the belief that having them vote provisional on the day they register if they want to do that, is too much of an impediment on the election process? [LB565]

JACK GOULD: You know, I have to be honest with you. I have never filled out a provisional ballot and I don't know all that's involved in doing it. I know people who have and they sometimes get confused by it, it's not a simple process. But at the same time, is it really needed? I mean, looking at what we have now and the evidence that there haven't been really very many examples of fraud or problems, do we really need to make a new system in order to solve a problem that maybe doesn't exist? [LB565]

SENATOR LAUTENBAUGH: Well, I think the testimony was we don't know the magnitude of the problem really. And I just want to make sure we're clear on this because I think you and I have probably disagreed on these things frequently before. And my next question is, well, isn't it unfair to make these people come all the way to the election office to vote early? Shouldn't we just go to their houses with the ballot? I mean, the answer I'm getting at is there has to be a point at which people have to be a little bit responsible if we're saying, hey, we really care who you think should be the

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leader of the free world, but not enough to make you fill out the front of an envelope because that's too much, you're not up to that. [LB565]

JACK GOULD: I think we're probably both going to agree that we're heading in the direction where we probably are going to have on-line voting and they will be at home voting. [LB565]

SENATOR LAUTENBAUGH: God forbid. [LB565]

JACK GOULD: So I don't know. This is an intermediate step along the way but, I mean, that's probably the direction that we're heading, from my perspective anyway. [LB565]

SENATOR LAUTENBAUGH: Thank you. [LB565]

JACK GOULD: Okay. Thank you. [LB565]

SENATOR AVERY: Any other questions? Thank you, Mr. Gould. [LB565]

JACK GOULD: Thank you. [LB565]

SENATOR AVERY: I don't see any more. Any other opponent testimony? Good afternoon, sir. [LB565]

RICHARD HEDRICK: (Exhibit 2) Good afternoon. I'm Richard Hedrick, I live at 404 Mormon Trail, Lincoln, Nebraska. I am against LB565. [LB565]

SENATOR AVERY: Would you...excuse me, Mr. Hedrick. Would you please spell your name for the record? Spell your name. Spell your name for the record. [LB565]

RICHARD HEDRICK: Oh, H-e-d-r-i-c-k. [LB565]

SENATOR AVERY: Thank you. [LB565]

RICHARD HEDRICK: Yeah, this helps. I could not figure out why this bill was necessary. I would believe only a few people would be stopped from voting by the bill. After all, this bill was just a minor law of many, many that have been passed over the years in every state to see whitey elected. These laws to prevent the intent of a law enacted could be compared to the oriental death by a thousand cuts. The name explains the process. Conservatives used a thousand cuts to get their way. They pass laws to keep laws they do not like, to keep the original law from being effective. The right to get an abortion is the most abused law of a thousand cuts to stop the legal right for a abortion. People for this bill will not agree that getting whitey elected is the reason for the bill. I remember a BN worker who was like Romney. He could not tell the truth if

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he was being waterboarded. He told lies with a great amount of being serious. I often wondered if he believed that he was being believed by the person he was telling the lie to. When there are some 20 percent of the population who listen to propaganda Fox believe that Obama was born in...not in the USA, there is a large audience for these statements that the right will believe anything. [LB565]

SENATOR AVERY: Thank you, Mr. Hedrick. Questions from the committee? Thank you, sir. Any other opponent testimony? Any neutral testimony? Welcome back, sir. [LB565]

BOB TWISS: Good afternoon again. My name is Bob Twiss, T-w-i-s-s, and I'm from greater Sarpy County. I testify in the neutral capacity because there are some concerns about the bill, and I think I can perhaps answer a couple senators' questions as we go along here and I'll make it very brief. The 50 that Election Commissioner Bena referred to represents almost 1 percent of the lock-in votes that were cast out of the 7,000 in there. It's actually .712, and I rounded that up to favor my argument to 1 percent. And I'm the unabashed conservative here that appears in person with name and face attached. And before I got involved in the election process my hair was coal black, the same as when my daughter was born. She said, when did your gray hair appear? And I said, the moment you were born. So we'll move on for the bill. The segregation of the ballot...I happened to have been in the Sarpy County election office, this was in 2008--and I voted early, and I had an individual right by my shoulder who moved in from a county to the north and she registered that day. No identification was asked of her, and she and I walked together over to the annex and voted that day, right away, and the ballot was not segregated, it went right into the pile. So there was no way to ever recover it at all. Contrary to a previous testifier, I believe that accuracy is the most important element in a democracy, that each and every ballot, legitimate ballot, be cast and be accurately counted. And I'm going to tell you a little story some are tired of hearing, some have heard before. When my hair was coal black, I actually ran for an election 20 years ago, and I lost by that many votes to Senator Avery who was the ultimate winner in the election. That many votes. That many, for the record, is three. [LB565]

SENATOR AVERY: Not this Avery. [LB565]

BOB TWISS: And it was a different Senator Avery. [LB565]

SENATOR AVERY: Yay. [LB565]

BOB TWISS: And I know, you don't want to be associated with this unabashed conservative. But it was Senator Mike Avery, and I'll tell you very quickly about the election. Ten of us in the race, there were nine males and one female. The female used that gender issue very wisely, I might add, and even called my house. Her campaign

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called my house, asked for my daughter and my wife, and the message was always, I'm the only female running against nine guys. We need to stick together. [LB565]

SENATOR AVERY: I would remind you that the clock is ticking. [LB565]

BOB TWISS: Yes. Yeah, I will very quickly. Okay. And, anyway, very wisely. But what I'm getting at is I lost in the primary and Senator Avery went on to win that election. And there were some legal changes after that, statutory language that I would have actually been prevented from running. But what happened in that election is that there were split precincts. There were 22 precincts that I ran in. At that time, 11 of those precincts were split precincts for a legislative race which was, quite frankly, illegal. But I wasn't smart enough, I had a very poor client, a marginal client, and I had an even worse attorney because I represent myself "pro bozo." So each and every accurate vote is very important and critical to me, having lost an election by a mere three votes. And I'm going to look at my notes...provisional ballot...I've got a few moments left. A utility bill is not enough for verification. It happened that--one minute--my wife and I were in El Paso, she was going to nurse practitioner school in El Paso. I was down there that summer, and she went out in the border areas where the crates and the skids and pallets were put together for a house. And those folks were in need of a lot of medical care but they didn't have any identity either. And I happened to visit some service clubs and that's a problem down on the border as well. So I will conclude at this point, I think I've summarized reasonably well. I'd be happy to entertain any questions. [LB565]

SENATOR AVERY: Thank you for observing the light system. Senator Wallman. [LB565]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for coming. You know, we're talking about maybe voter fraud here and are you concerned about electronic voter fraud? [LB565]

BOB TWISS: I'm not sure. If you can help... [LB565]

SENATOR WALLMAN: With electric, you know, the way they count the ballots. [LB565]

BOB TWISS: Where the election commission office counts the ballots? [LB565]

SENATOR WALLMAN: Yeah. [LB565]

BOB TWISS: Yes and no, because it's the calibration of the ballots. If I may go on a little bit... [LB565]

SENATOR AVERY: Sure. [LB565]

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BOB TWISS: I did have the opportunity at that time to hand examine the ballots, which we can't do anymore. And I would hand examine the ballot and there would be--when I said split precincts and it was illegal because our election commissioners thought the senate language related to the U.S. Senate somehow--but there would be a ballot for District 39 and a ballot for District 3, which I ran in. Okay. A District 39 ballot was filled out, my name was written in, and the oval was darkened, and guess what happened with that vote. Gone. Not counted. Wrong ballot. Wrong ballot. So I'm very, very sensitive. And there were boundary issues, too, that had never been resolved, and they weren't resolved until ten years later. And I think the legal counsel is aware of some of this as we've discussed before and on the prior bills I've talked on as well. Did that answer your question? [LB565]

SENATOR AVERY: Senator Price, do you have a request? Senator Price. [LB565]

SENATOR PRICE: I just want to make more of a statement than anything. El Paso is not just crates. And being from El Paso, I just want to (inaudible.) Thank you (inaudible.) [LB565]

BOB TWISS: No, this was outside of El Paso, quite frankly, nearby. [LB565]

SENATOR AVERY: Thank you. [LB565]

BOB TWISS: Thank you very much. [LB565]

SENATOR AVERY: (Exhibit 3) Any other opponent...no, this is neutral testimony. Neutral testimony? All right. Before we go to closing, I have a letter of opposition here from Diane Olmer, who is the Platte County Election Commissioner and, I might point out, cochair of the Election Law Committee of the Nebraska Association of County Clerks. Okay, read that into the record. Now, Senator Nelson, welcome back to close. [LB565]

SENATOR NELSON: Thank you very much, Chairman Avery. I have to say that this is a great experience. It's so much more a welcoming committee than some of the other committees that we testify for. I just want to stress that this bill, if it may have a flaw or two or leave something out, it's dedicated toward the integrity of the election process and making sure just as one said, one or two can make a big difference, a complete difference to any candidate, keep them in or out of the Legislature for eight years. I appreciate especially the testimony of Wayne Bena from Sarpy County. I'm a terrible person, I don't take offense at his slipping some ideas in as possible amendments, and they sound to me like they should have your consideration. And I'd be very happy to work with you if treating things more on a provisional basis or something like that seems a better way to go. So I thank him for doing that and otherwise I will appreciate your consideration and ordering this out to the full body. Thank you. [LB565]

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SENATOR AVERY: Thank you. Thank you, Senator Nelson. Any other...thanks for the compliment to the committee. [LB565]

SENATOR NELSON: Oh, you're welcome, Senator. [LB565]

SENATOR AVERY: We always thought that about ourselves. All right, that ends the hearing on LB565. Now we will go to LB646. Senator Murante. Welcome, Senator. [LB565]

SENATOR MURANTE: (Exhibits 1, 2) Thank you, Chairman Avery. Members of the Government, Military and Veterans Affairs Committee, for the record my name is John Murante, spelled J-o-h-n M-u-r-a-n-t-e, pronounced Murante. I represent District 49 in the Nebraska State Legislature, which includes Gretna and northwest Sarpy County. I am here today to introduce LB646. Let me begin by saying that no one brought this bill to me, there are no special interest groups that were involved, I don't have any ulterior motives. I've been asked all those questions in the past couple of weeks. LB646 deals with a simple, philosophical principal of government. Should our political subdivisions elect their leaders by district or should they be elected at large? This is a state issue, and as we will discuss, this is an issue which should concern all of us. Before I introduced this bill, I contacted various representatives of the OPPD board. I want to thank them for their courtesy and patience on this issue. I appreciate that LB646 will change the way they do business and that such changes coming from the outside can be viewed with anger and hostility. I am happy to say that no such anger or hostility has been expressed to me by OPPD, and that while we agree on the substance of this proposal, we have done so respectfully. I've listened to what they have had to say, I heard out their arguments. But, candidly, I did not find their arguments particularly compelling, and we are proceeding accordingly. Currently, OPPD is an eight-member board. Three of those members are elected by district, which are named the North, South, and Suburban Subdivisions. And five of them are elected at large within an area that is generally the city of Omaha which is named the metropolitan subdivision. It's important to note that the Metropolitan Subdivision is not exclusively comprised of the city of Omaha. In fact, the subdivision reaches into unincorporated Douglas County all the way to the Washington County border. The fact of the matter is that at-large elections suppress minority vote share and limit the ability of minority candidates to be elected. This is a concept that has been affirmed by study after study. A 2008 study conducted by researchers from Princeton and Portland State concluded that "the results displayed confirm that district elections continue to aid minority members in getting elected." The research shows that minority representation is dependent upon: one, the number of minorities in the area, and two, the concentration of those minorities. The greater the number of minorities and the concentration of minorities, the greater the benefit of district election to minority groups. Such is the case in the city of Omaha. I have distributed a demographic breakdown of the city of Omaha. As you can see, only



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76 percent of the city of Omaha is white. Roughly equal proportions of the population are black and Hispanic. As is well known, minority groups in Omaha are highly concentrated, yet there is not a single person of color on the OPPD board. And we don't need to rely exclusively on research, we can look at the reality of elections in Omaha. The Omaha City Council, the Douglas County Board, the Omaha School Board, the Learning Community, the NRD board, and the Metropolitan Community College Board are all elected by district and all have at least some minority representation on their board. OPPD and MUD elect their members at large and both are all-white boards. My preliminary research shows, and Senator Chambers has confirmed, that no person of color has ever been elected to the OPPD board. The previous two points are important not only for moral and civil rights purposes, but also constitutional reasons. I'm not a constitutional lawyer, and I'm not claiming that the current construct of the OPPD board violates the constitution or the Voting Rights Act. I would, however, point to the Thornburg v. Gingles case of 1986 in which a unanimous Supreme Court of the United States ruled at-large districts in North Carolina unconstitutional. The court stated "This Court has long recognized that multimember districts and at-large voting schemes may operate to minimize or cancel out the voting strength of racial minorities in the voting population." The United States Senate lists nine objective factors the courts are to use in analyzing a claim under Section 2 of the Voting Rights Act. Among them is "the extent to which members of a minority group have ever been elected to office." I believe that we, as legislators, should employ at least as strict a standard on ourselves and the political subdivisions in Nebraska. Political subdivisions, regardless of their scope or jurisdiction, should be structured such that minority representation is both possible and welcomed. Racial and civil rights concerns are not the only reasons to support LB646. A National League of Cities' survey indicates that the more populated a political subdivision is, the more likely that political subdivision is to elect its leaders by district. In fact, of political subdivisions of a population of 400,000 or greater, as is the case with OPPD, less than 10 percent have multimember districts such as OPPD. The reasons are clear. Not only do districts in heavily populated areas result in elected officials which better represent the demographics of that area, but it also makes running for office less expensive and more accessible to the average citizen. District elections encourage the average citizen to run for office and creates an environment where grass-roots and door-to-door campaigns can be successful. Such campaigns are good not only for the average citizen seeking to give back to their community but also to the voters who will have a greater opportunity to meet the candidates and make informed decisions. Included in the distributed material is an amendment which replaces the bill and more accurately accomplishes my intent. The amendment is not perfect and we are still working through a few issues. But I anticipate a final copy to be submitted to you in short order. I included language which requires the Nebraska Power Review Board to draw the eight districts, and when doing so, to make the districts compact and contiguous, substantially equal in population, and to follow county lines wherever practicable. This language is nearly identical to the standards stated in our state constitution pertaining to legislative redistricting. I distributed a spreadsheet which

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details how many people live in each of the current OPPD subdivisions. As you can see, the deviations are large enough to be concerning. Again, I won't state affirmatively that the deviations are so large that they would not withstand constitutional scrutiny, but they certainly approach a level that violates the spirit of one person, one vote; and they are far less stringent than the standards employed by this Legislature during the previous redistricting process. I have passed out a map developed by our Legislative Research Office which will give you a visual of what the districts in Omaha could look like and what their rough geographic size will be. However, the final decision on how the OPPD districts will be drawn will be determined by the Nebraska Power Review Board. Finally, this issue is a prerogative of the Nebraska State Legislature, and there is ample precedent for us to be involving ourselves in it. Most recently, this committee and the Legislature changed the elections of the Omaha Public School Board. A few years ago, this Legislature overwhelmingly passed a bill introduced by Senator McGill which restructured the Lancaster County Board, abandoning at-large elections and replacing them with district elections. LB646 is the right thing to do, it is good public policy. I urge your support and the advancement of LB646 from committee. Thank you very much, and I would be happy to answer any questions that you may have. [LB646]

SENATOR AVERY: Thank you, Senator. Let me ask you why you chose the Power Review Board to draw these lines. [LB646]

SENATOR MURANTE: It is my understanding that that is who is responsible for drawing the lines that we have now. And I wanted to make it clear that--and I will make it further clear with the amendment that is to follow--that I'm not targeting any individual. It's not my intent to have the Legislature come in and draw the maps for them. For the most part, everything is status quo. It's just district elections is all we are seeking, and they can draw the maps as they see fit. Other than that, we aren't seeking to overhaul much. [LB646]

SENATOR AVERY: I suspect we'll hear opposition testimony to this. [LB646]

SENATOR MURANTE: I suspect we will too. [LB646]

SENATOR AVERY: And I think one of the things we're going to hear is that the commodity that is being distributed is not something that can be denied some and rewarded or given to others in different quantities. It's energy. It's available to everybody in whatever quantity they need. Of course, they pay for it. And that because of that, the nature of what it is they distribute, that it's no longer...I mean, it's not as necessary to have district representation. Well, what's your answer to that? [LB646]

SENATOR MURANTE: I would say a couple of things. First of all, just because...OPPD is a political subdivision of the state of Nebraska, and just because they happen to deal with a realm of electricity which all of us use does not mean that we as a state

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Legislature should allow a structure in which its directors are exclusively going to be white people and that minorities are, at this point, we'd have to say excluded from the opportunity to serve on that board. In light of the fact they have never--at least as far as my research goes back--they have never been elected...no minority has ever been elected before, regardless of the scope or jurisdiction of the political subdivision, I think we ought to have elections which make the process acceptable to anyone. [LB646]

SENATOR AVERY: One other issue that matters to me is citizen input in determining rate structures. [LB646]

SENATOR MURANTE: Absolutely. [LB646]

SENATOR AVERY: Is there anything in this bill that would allow for citizen input in determining rate structure? [LB646]

SENATOR MURANTE: Citizen input? I wouldn't say that directly. What I would say is rates, and the rates that they set are arguably what the public will have the most direct interest in, I guess you could say. It's the closest thing they have to a tax levy. And the rates they set are not going to impact the same people in the exact same way. And you may have different parts of the city of Omaha or different parts of the OPP District in general have different opinions about whether they have the capacity to pay for a rate increase or not. And it's important to have perspectives from every community. And I think having district elections, as far as the discussion of what the rates of OPPD should be is important. [LB646]

SENATOR AVERY: Yeah, you've got a good point there. [LB646]

SENATOR MURANTE: Uh-huh. [LB646]

SENATOR AVERY: I agree. Questions from the committee? All right. I don't think you're leaving, right? You're going to stay around to close? [LB646]

SENATOR MURANTE: I've got nowhere else to go. [LB646]

SENATOR AVERY: We'll now move to proponent testimony on LB646. Anyone wish to testify in support of LB646? Seeing none, anyone want to speak in opposition to LB646? Good afternoon, sir. [LB646]

STEPHEN BRUCKNER: (Exhibit 3) Good afternoon, Chairman Avery and members of the committee. My name is Stephen Bruckner, that's Stephen with a p-h, S-t-e-p-h-e-n B-r-u-c-k-n-e-r. And I serve as legal counsel for the Omaha Public Power District or OPPD. OPPD provides electric service in a 13-county service area in eastern Nebraska that includes the Omaha metropolitan area, as Senator Murante pointed out earlier.

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OPPD is governed by an eight-member elected board of directors who are elected by the customers in that service area. Under current law all of our public power district boards have the authority to establish election subdivisions for the district service territory. And specifically to refer you to the statute, that is Section 70-612(1) of the Nebraska Revised Statutes which states that a district's board of directors may--and it's discretionary--may amend its charter to provide for the division of the territory of such district into two or more subdivisions for the nomination and election of some or all of its directors. So it's discretionary and it's quite open and quite flexible. The charter amendment then must be approved by the Nebraska Power Review Board. So in the first instance the districts are set...the election subdivisions are set by the public power district board and then submitted to the Review Board for approval. OPPD, like many other public power districts, has established election subdivisions and there are four of them; they were referred to earlier. They are the North, South, Suburban, and Metropolitan Subdivisions. The North and South Subdivisions, which each have one director, encompass the more rural parts of the OPPD service territory. The Suburban Subdivision has one director and it consists mainly of Bellevue and Papillion and some of the other suburban Sarpy County areas. The Metropolitan Subdivision contains the city of Omaha, our largest city as we all know, and many of the Douglas County suburbs, and it is represented by five directors. Every ten years the boundaries of the OPPD election subdivisions are adjusted as required by law to reflect population changes and to achieve proportional representation. This adjustment is approved, as I mentioned earlier, first by the board of directors and then by the Nebraska Power Review Board. The most recent realignment of OPPD's election subdivisions took place in 2011 based on the results of the 2010 federal census. Now it is OPPD's understanding that LB646 was intended to split OPPD's Metropolitan Subdivision into five separate subdivisions which were each represented by a single director; and Senator Murante has confirmed that in his testimony. However, as it currently reads--as OPPD reads this--LB646 provides that the board of directors of a public power district "other than a district with the service area containing a city of the metropolitan class," may establish election subdivisions. So because OPPD is the only public power district with a service area that contains a metropolitan-class city, OPPD thus would be the only public power district that could not have election subdivisions as the bill is currently drafted. OPPD's position is that the current process should be retained with each public power district having the discretion to establish election subdivisions. Now if the intention of the bill, and it clearly is, in fact, to establish the five subdivisions within the current OPPD Metropolitan Subdivision--that's what Senator Murante has explained so well in his previous testimony--then OPPD would register opposition to that approach and would ask the committee to consider the following points: we recognize that there are benefits to having district versus at-large electoral representation, especially for cities and other tax-supported political subdivisions. With district elections in a city, a voter has one specific council or board member to contact on a given issue. This helps reduce voter alienation by bringing city government closer to the people and give a voice to parts of a city that may have very different needs than other areas. However,

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these considerations are not applicable to the service OPPD provides in its Metropolitan Subdivision. OPPD provides a single service, as Chairman Avery pointed out, and that is electricity, for which it charges rates approved by its board of directors. The electricity that OPPD supplies over its power lines is the same whether it is in north Omaha or south Omaha or any other part of the city of Omaha and its suburbs. Now each of the five directors representing the Metropolitan Subdivision must be responsive to all of the customers in the city. This means that OPPD customers have more than one board member they can contact; and conversely, the board members who represent the Metropolitan Subdivision must address the interest of all customers, not just those within a small geographic area. OPPD is concerned that having too many election subdivisions in Omaha would lead to confusion among customers as to who their elected director is at any given time, such as when a customer moves from one area of the city to another. Furthermore, because election boundaries must be redrawn every ten years, OPPD could find itself having to redraw boundaries that cut into some of the other election subdivisions, such as the Suburban Subdivision across Sarpy County lines, in order to achieve proportional representation. And this could create disruption in the election...in the existing subdivisions and confusion for election commissioners and the Secretary of State during elections. In summary, OPPD submits that the current system, which authorizes public power district boards to establish election subdivisions if they see fit, should be retained so that each public power district in the state, including OPPD, can organize its boundaries in the way that makes the most sense for its particular customer base. OPPD respectfully urges this committee to indefinitely postpone LB646. [LB646]

SENATOR AVERY: Thank you. [LB646]

STEPHEN BRUCKNER: I thank you for your time. I'd be happy to answer any questions, and I do have a copy of my testimony to submit for the record. [LB646]

SENATOR AVERY: All right. Thank you. Let me ask you, what kind of opportunities do you have under your current structure for citizen input into rate structure changes, determination of what rates would be charged? [LB646]

STEPHEN BRUCKNER: Senator Avery, there is a great deal of structure in place for citizens to have input. Every month OPPD's board of directors holds a public meeting. It's noticed in accordance with the Open Meetings Act. Two days prior to that meeting--it's typically on the first Thursday after the tenth of the month--two days before that on Tuesday there is a committee meeting where things are discussed in detail. And at every Thursday meeting, every public meeting, any member of the public can come forward and address any topic of district business that it wishes to. In addition, OPPD typically would adjust its rates once a year. It does that with a great deal of input, not only from its staff in terms of what the costs are providing electric service, but it typically will hold a series of public forums--if that's the right term--or forum for ratepayers to

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provide as much input as they wish to provide. And then at the time that the board actually acts on the rates, of course, any ratepayer can come forward and address the topic of rates at that time. [LB646]

SENATOR AVERY: Could you see some advantage...if you are a ratepayer and you want to have some input into the rate structure, can you see some benefit to having district representatives? Let's say looking at the map here, District 1, north Omaha, very much affected by rate changes, increases--I don't think you have decreases--but increases in rates paid. Those are some of the poorest people in Omaha. Would it not be good for effective representation if you have a representative from District 1 on your board? [LB646]

STEPHEN BRUCKNER: Senator Avery, it could be helpful to have that representation. But the...your question begs a question whether there is a problem with those individuals being able to make their voices heard. And that's not an issue at all because we do hear from customers who are affected by rate changes, including those who come from lower-income levels. OPPD goes to extraordinary lengths to address those issues. In fact, OPPD has an Energy Assistance Program which its customers can donate to. It also receives money from other sources so that it can help those who have difficulty paying their electric bills. We also work very closely with the Red Cross and with other social service agencies to help ratepayers deal with electric bills at any time. And finally, there could be an issue with the question that you're asking in the sense that could OPPD establish rates that are lower for one section of the city than another? And the answer to that is it probably would be very questionable under state law that you could do that, because our law has made it clear that for a given class of customer the rates have to be fair, reasonable, and nondiscriminatory across that class; so residential customers in one part of the city are paying the same rates for their service at their homes or their businesses as similarly situated customers in other parts of the city. And that's, again, really consistent with what I'm saying. It's a business... [LB646]

SENATOR AVERY: Well, you could have a situation where the proposal for a rate increase was particularly high and the residents of District 1 would have a particularly strong opinion about that, and voicing that opinion through their representative or maybe at a public forum could influence the actual development of the policy. [LB646]

STEPHEN BRUCKNER: Yes. [LB646]

SENATOR AVERY: What I'm suggesting here is that the argument Senator Murante made about the value of district elections compared to at-large resonate with me because I've seen how this works in the city of Lincoln where we have largely district representation for most of our elected bodies. And it seems to work very well. It works well in this Legislature. [LB646]

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STEPHEN BRUCKNER: And there's...yes, I understand that. Again, OPPD hears from all areas of its Metropolitan Subdivision--that's what we're focused on, all areas of Omaha--regularly. It for at least ten years running has received the J.D. Power Award for having the best customer service of utilities in its class in the entire country. It gets those kinds of awards because of what it does with all of its customers, those in north Omaha, those in south Omaha, west, east, it doesn't matter. All customers are given the best possible treatment by OPPD, and if that means they need some help with their electric bill to get through a tough time or a crises in their family, they get that help from OPPD through the Energy Assistance Program and through other means. So their voice is heard. If I may, I would...your comments trigger a response to one of Senator Murante's points which I had not addressed in my prepared testimony, and that is that there is no minority representation on the OPPD board. That's certainly true as it's currently constituted. To my knowledge, and I've been serving in my current capacity for quite a long time, I think there's only one instance in which an individual who is an African-American or from another minority group has run for OPPD board. That individual was not able to put together a very strong campaign. That was a number of years ago. But throughout its history, OPPD has had representation from all sections of the city, east Omaha, south Omaha, and so forth; so the representation has been there. Unfortunately, it's hard to disagree with Senator Murante. It would be great to have even more diversity on OPPD's board. And certainly I can't really speak for the board members but I can speak for OPPD as an organization, and it does everything it possibly can to promote diversity as members of minority groups who are officers of the company currently. And so it's really something that's a core value for OPPD but it's difficult to control the election process. [LB646]

SENATOR AVERY: Let me ask you this. I can see some benefit to the proposal. I'm a cosponsor of the bill. Let me ask you, what does OPPD lose by passage of this bill? What do you give up? [LB646]

STEPHEN BRUCKNER: I think what you do is you increase parochialism. In other words, you could create a situation... [LB646]

SENATOR AVERY: You're talking about the delegate selection process now, right? [LB646]

STEPHEN BRUCKNER: No. I'm talking if you have too many districts, what you have is parochialism. So you will have...instead of having the district members focused on what I said earlier, providing this product, electricity, this service to its customers in a cost-effective way and in a customer-friendly way, you may end up with a situation...the reason I say parochialism where one director from, let's say, south Omaha believes that I need more customer service representatives down in my district. I need more buildings down in my district. I need better power lines down in my district. You know, I don't know. And so you will pit one board member off against the other when in reality what

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you really need in running this business, and it is a business...with the brilliant step...I would...if I can offer an editorial comment of the founders of this system--the Legislature--establishing local control through a publicly elected board. But it is, at its core, a business just like any other utility business, and its job is to provide that electricity in the most cost-effective and customer-friendly way possible, which it does. And I would be very concerned and OPPD would be very concerned that you might create some of those problems where there's too much parochialism with subdistricts. [LB646]

SENATOR AVERY: Well, that's really an argument against at-large or not at-large, but the district elections. [LB646]

STEPHEN BRUCKNER: Absolutely. [LB646]

SENATOR AVERY: So you would...could you extrapolate from that to say that the same thing would be true for city council elections? [LB646]

STEPHEN BRUCKNER: Oh, no. I think cities are different, as I suggested. There are clearly benefits to district elections, and that's why I...before I... [LB646]

SENATOR AVERY: But not for you guys? [LB646]

STEPHEN BRUCKNER: Pardon me? [LB646]

SENATOR AVERY: Not for you guys. [LB646]

STEPHEN BRUCKNER: No, I don't think so. I think...what I'm trying to point out is that this is different. OPPD provides a single product: electricity, and it's the same wherever you provide it within the city. That's not true for a city that operates from a tax-supported basis, not a rate-supported basis. So OPPD generates its own revenue by providing the service that it does. There are many, many, many issues that a city has to deal with that I think district elections really lends itself better to. So I don't quarrel with that concept at all. I just think for OPPD, for a business, it is a different issue or at least...again, I don't want to step on any toes or step over my bounds because this is obviously an issue for the Legislature to wrestle with. But I would respectfully submit that businesses are, like OPPD, are somewhat different. [LB646]

SENATOR AVERY: Would you admit that business generally has a command-and-compliance culture? [LB646]

STEPHEN BRUCKNER: Oh, I think many businesses do. I think OPPD's is different. I can assure you, having worked for OPPD for a very long time, that for every decision the interest of customer-owners is always at the forefront. And the fact that we have a



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publicly elected board that keeps management accountable is very, very meaningful, and it's a very good thing. [LB646]

SENATOR AVERY: And you're a public body. [LB646]

STEPHEN BRUCKNER: Yes. [LB646]

SENATOR AVERY: And therefore, you are more political... [LB646]

STEPHEN BRUCKNER: Partly. [LB646]

SENATOR AVERY: ...at least partly political and less strict command-and-compliance culture than you would find in the private business world. [LB646]

STEPHEN BRUCKNER: It's different than the typical business, it's more of a hybrid. I would agree with you. [LB646]

SENATOR AVERY: So you operate really in a world of bargaining, compromise, and accommodation to get things done. [LB646]

STEPHEN BRUCKNER: Well, I would say most businesses have to deal with bargain, comprise, and accommodation. But certainly as a public power district, we're always concerned about being accountable to the customer-owners as I said, yes. [LB646]

SENATOR AVERY: My point here is that as a public entity, you don't lose anything by including participation by the public in your decision making. That's what this proposal, I think, seeks to do. [LB646]

STEPHEN BRUCKNER: And we believe that the public has every opportunity to participate in the decision making as it currently exists and does. [LB646]

SENATOR AVERY: I understand. [LB646]

STEPHEN BRUCKNER: And the public comes to our board members individually and comes to the public meetings at virtually every meeting and addresses whatever topics they wish. And they do a great job with it, and it's very important to us. [LB646]

SENATOR AVERY: Okay. Senator Scheer. [LB646]

SENATOR SCHEER: Thank you, Senator Avery. Can you give me a little historical information to the extent that how the other three districts were determined... [LB646]

STEPHEN BRUCKNER: The other... [LB646]

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SENATOR SCHEER: ...currently? [LB646]

STEPHEN BRUCKNER: Largely because they're a bit different than where the largest group of customers are, namely in the Omaha area, the South Subdivision is a primarily rural subdivision. So I think you could make, you know, an argument that the voters and customers in those areas have a little bit different interests than those in the city. And the same is true of the north. It's mostly the more rural areas, includes the city of Blair, for example, and counties to the north and somewhat to the west of Omaha. And then the Suburban District is largely Bellevue. So it was really to accommodate somewhat different needs and also, frankly, without those kind of subdivisions, Senator, you would--I think because of the population of Omaha--have a much more Omaha-centric public power district board. And it's better to have some broader representation. [LB646]

SENATOR SCHEER: But you basically isolated Bellevue as a district, correct? [LB646]

STEPHEN BRUCKNER: Not just Bellevue. It really goes west quite a ways. [LB646]

SENATOR SCHEER: Fairly close in proximity, though. [LB646]

STEPHEN BRUCKNER: Uh-huh. [LB646]

SENATOR SCHEER: So I'm having a hard time determining why we can isolate Bellevue--plus or minus 1, 2, 3 percent either population or area--from the Douglas County, how those two interests would be that different that one would have to stay as a whole rather than be in more equalized size such as your organization has determined that Bellevue where your Suburban District should be. [LB646]

STEPHEN BRUCKNER: Sure. Again, Senator, I think with the Suburban District, you have the advantage of having a representative from that area from the what is now really a suburban Sarpy County. So you get a representative from the Bellevue/Papillion area on the OPPD board. The reason you can only have one there is that, again, the interests in that particular subdivision are generally the same; again, it's electricity. The interests of the customers served by that one director in the Suburban election Subdivision would be roughly the same. So you're trying to achieve a balance there, that you recognize there are some differences with suburban Sarpy County--you know, Bellevue and Papillion and so on--allow some representation for that population group so that they're not overwhelmed or outvoted, if you will, by those in the city of Omaha. The same thing is true with the South and the North, you get some broader representation on the board. Currently, we have a director who is from the Plattsmouth area who represents the South, from Blair who represents the North, and from Bellevue who represents the Suburban. [LB646]

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SENATOR SCHEER: But I don't believe we're trying to distinguish...those are already distinguished. This bill has nothing to do with those three. [LB646]

STEPHEN BRUCKNER: I understand. [LB646]

SENATOR SCHEER: They stay intact. What we're actually talking about is the other hunk of population that is not district in proportionality. So I'm having a really difficult time...please let me finish. I'm having a very difficult time trying to determine how three districts, based on your information as it is right now, is appropriate and one big hunk of population all in composite. That just...I mean, you have two different forms of election. I mean, I can understand what you're saying if you left it all as a hunk. And so regardless if you're in the very south part of OPPD or the very north or the very far western part, you have eight district or eight representatives elected at-large that would represent...regardless if you lived down in south Bellevue or north Omaha or out in however far west you may go, you know Burt County or whatever the case might be. How...why is the uniqueness of exclusively the Omaha metro area that dynamic that it cannot be split in some type of divisional population way that everyone would have a representative? And I heard you talk earlier, well, there would be differences because somebody may have a different representative every ten years. Well, that happens to a lot of us. I was elected, and I've got people that were not in my district six months ago that I'm now representing. And I'm going to guess in ten years from now, whoever represents me will also have that same thing happen to them. So Omaha is not unique that you may have some representation change over the years. And so, you know, I was trying to get some legitimate reason to have that nonseparation of the bulk of the population. But I'm...I've got to be honest here, I don't think you've hit the threshold yet. [LB646]

STEPHEN BRUCKNER: Okay. Well, let me see if I can try again. Within Omaha, providing electric service within metropolitan Omaha--let's call that the subdivision we're talking about--as I said earlier, it's only one thing that OPPD does. It provides electric service. And so it's the same, regardless what portion of the city it's providing that service for. The advantage of the current system is that any individual in Omaha that's getting electric service in Omaha has not just one member of the board that it can call that represents its district, but five. So if you can't get ahold of me, if I'm on the board, you're able to call another individual and that individual will address their particular need. So it really provides an opportunity for greater representation rather than lesser representation. If you break it up into subdistricts, you only have one that you call. I'm sure the others would listen, as you would to constituents outside your district and address issues, but primarily they're going to be focused on their geographic area. [LB646]

SENATOR SCHEER: Okay. Well, I guess I would reverse that to say you have another entity within Omaha that provides one product: education. It is split up into distinct

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zones that their representatives are elected by. They sell one product. They don't sell it, but they provide one product. It's education... [LB646]

STEPHEN BRUCKNER: Well, and I think... [LB646]

SENATOR SCHEER: ...regardless if it's in that area or some other area. And the difference to me is, if I have...in the product of education, I have someone I elected in my area that is my representative. Using your format, we have a large area that has five representatives. And I would venture to say that in those areas, not one person would assume that any of those five were their representative. There is a distinction when somebody represents your area that they are then your representative. And I..I'm...I think as much as I understand that you obviously do not like this type of proposal, I'm not sure that you wouldn't benefit from it. [LB646]

STEPHEN BRUCKNER: I think your points are very fair, Senator Scheer, they really are. And I understand every one of them. The distinction that I am trying to draw, if I can continue with your comparison... [LB646]

SENATOR SCHEER: Certainly. [LB646]

STEPHEN BRUCKNER: ...to education, is this. The Omaha Public School District obviously is a tax-supported entity. And education in Omaha, in particular, has a lot of issues. There are different areas of the city that are far differently affected with regard to education than other areas of the city. So I would make that distinction because that's not the case with electricity. OPPD wants to be in a position where it's providing exactly the same service at all times in north Omaha as it is in south, west, or east. That's the point that I'm trying to say. And I think that if you fractionalize it too much, you may diminish its ability to do that because of the parochialism concerns that I was addressing in my remarks to Senator Avery. So I think that's something to be very careful about. Right now, I can assure you that really all the customers in that subdivision feel they can call any board member, and they do frequently. Our five board members for the Metropolitan Subdivision hear from all parts of the city and they're responsive to anyone in any part of the city at all times. I think the argument that we would make is that that's a better situation for OPPD, given the kind of business and product...business it is and product that it provides, than the example of the Omaha Public Schools which you provided, even though all your points are very, very valid. [LB646]

SENATOR SCHEER: Okay. Well, answer me this: Does MUD elect their people from districts? [LB646]

STEPHEN BRUCKNER: No. [LB646]

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SENATOR SCHEER: They're on a composite? [LB646]

STEPHEN BRUCKNER: That's correct. [LB646]

SENATOR SCHEER: Okay. Thank you. [LB646]

SENATOR AVERY: Senator Bloomfield. [LB646]

SENATOR BLOOMFIELD: Thank you, Senator Avery. So you made a comment during your conversation here that there was once a minority individual that ran but he didn't amass a big enough campaign war chest to be successful. Had he been running in a small, single district for that one position instead of at-large for a five-man position, would not his small campaign chest maybe gone a little further? [LB646]

STEPHEN BRUCKNER: It...my...I believe it was a woman. And I'm going by memory, Senator. [LB646]

SENATOR BLOOMFIELD: Yeah. [LB646]

STEPHEN BRUCKNER: So you'll have to forgive me. I'm not even 100 percent sure of that situation. But I'm going on if memory serves me. And sure, you know, it's certainly cheaper for a smaller area than a larger one. I would agree. [LB646]

SENATOR BLOOMFIELD: I think we opened this up...representation on the board to allow more people, probably, if we go to the smaller district. I came into this not being real impressed by this bill, but I'm getting to like it better all along. Thank you. [LB646]

STEPHEN BRUCKNER: Thank you, Senator. [LB646]

SENATOR AVERY: Well, I don't see any more questions. Maybe it's time to go to the next person. [LB646]

STEPHEN BRUCKNER: Okay. Thank you very much. [LB646]

SENATOR AVERY: Thank you. Thank you, Mr. Bruckner. Any other opponent testimony? All right, we'll move to neutral testimony. Welcome, Mr. Gould. [LB646]

JACK GOULD: Senator Avery, members of the committee, my name is Jack Gould. That's J-a-c-k G-o-u-l-d. And I'm here representing Common Cause Nebraska. I was reluctant to testify on this bill largely because I don't feel adequate when discussing all the inner workings of OPPD. However, I find Senator Murante's arguments about the need for subdivisions as a compelling argument in light of the fact that at-large membership is not really...when you have a population as big as the one that is being

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addressed in this bill, it would seem reasonable that it should be broken up and there be small representation, as Senator Scheer has mentioned. And I also believe that what you...the question that Senator Bloomfield has raised is an important one. How do we address the fact that that represents a large group of people, many of whom may not be able to afford to run against someone of wealth and power. So by breaking up the districts, you certainly give a better opportunity for all people to serve on a board. I was also rather moved by the fact that Senator Murante brought up that there has never been a person of color or a minority group represented on this board. And to me that speaks to the same fact that you've raised, that the question of poverty and the question of racial differences isn't really addressed. And the only way that that can be done is by creating subdivisions. So it sounds like I'm maybe for it, but I'm testifying in a neutral capacity. Okay. Can I take any questions? [LB646]

SENATOR AVERY: Thank you. Questions? Don't see any. Thank you, Mr. Gould. Any other neutral testimony? Welcome, sir. [LB646]

BOB TWISS: (Exhibit 4) Good afternoon. My name is Bob Twiss, that's B-o-b T-w-i-s-s. And Senator Murante and I have not talked about this bill. I didn't realize that it had, quote: the minority focus or racial focus. However, I did have a conversation with Senator Council last year on that very aspect. And I think Senator Murante would prefer that I didn't testify today. However, with Mr. Bruckner--and I will compliment him--I've had some interchange with Mr. Bruckner as well as Mr. Gates and some others of their top administration, including Tim Burke and some others. And Mr. Bruckner has always been polite and informative on that. I happen to have run for the south district in 1998, and I know that Senator Murante does not want me to dwell on that. I will say that outside and it included a portion of Sarpy County but then Cass, Otoe, Johnson, Nemaha, Pawnee, Richardson, those counties south of Sarpy have NPPD and OPPD in the same territory. And I didn't realize that election was going to be that confusing, nor do I want to dwell on it. I will offer myself as a resource if you want to talk about it further. The legal counsel is also aware that there was a bill in the Legislature before to try and correct some of these difficulties with OPPD, NPPD in that south district. For example, if you're in Johnson, Nebraska, and the light switch comes on it when you flip it, you're pleased. However, you'll get both an NPPD ballot and an OPPD ballot--both big power companies--and you get your power from neither one of them. You get your power from Auburn, Nebraska, for example. So there are about 30 percent undervotes in many of these counties and other problems. But, again, I don't want to dwell on that. I didn't plan any handouts until Mr. Bruckner got into--as a result of questions and other things--on some other things. And I would like these handed out. For example, do I have to be a farmer to run in the South district? I reside in that South district. I did, I have ever since I've resided in Gretna. And do I have to be in ag? And then if you'll notice that...I don't know what maps you have, but I'm going to call Lincoln's top hat for that metropolitan cluster of the five board members. If you look carefully...and I apologize. You can all go on the Web site and find this. This came off of their Web site

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today as well, and one's in color and one's not. Okay? And I apologize for not having adequate numbers in there. But thanks to Senator Murante for bringing the bill. I would say that the government is closer to the people with eight districts rather than the current five districts. And I think I come from at least an experienced background as well. Mentioned Lincoln's top hat in the five-member metro district. The Suburban District he's talking about is the one that was just recently filled by the Governor. Director Thompson passed away and Tim Gay was appointed to that position. I'm very familiar with that because a friend of mine thought he was running for that district when, in fact, he filed for the district that I'd run in. So in '98 and then it would have been 2004, they're six-year terms, 2004 he ran but he thought he was running in the Papillion/Bellevue/La Vista area. He got into that whole mess south of Sarpy, as I did. The 2010 census, OPPD unfortunately did not have their things done by the statutory deadlines. And that's how I happened to meet Mr. Bruckner because--I've got to speed this up--because I wanted to see what the deviation was in there. What was the deviation? What was the tolerance? And it's plus or minus 10 percent, is what that standard is. And as some of you know, I argued for plus or minus 2 percent on the legislative districts. I think the Legislature--and I know this won't fly--should draw the boundaries or the election commissioner should draw the boundaries of any governmental body that is a multicounty entity, such as this. Power district elections are a challenge throughout Nebraska. Legal counsel as well as--I forgot his name--the Deputy for Elections, Neal Erickson, is well aware of this. There was a previous bill to attempt to address these things. There is a culture, as well, that does exist. Mr. Bruckner mentioned the Thursday meeting, but he did not mention...he mentioned the Tuesday meeting as well. But if you go to the Web site--I probably should include this as a handout--the Tuesday meeting is not even mentioned. The Tuesday is where the important meeting happens. And I showed up one day for that. And there was a culture that almost said, what public meeting? And the Tuesday meeting involves all of the board members for the committee. So it has a majority of the board--it shall be a public meeting. And I did insist very politely that day that it was a public meeting, but I wasn't welcome. Culture... [LB646]

SENATOR AVERY: All right. Thank you. [LB646]

BOB TWISS: Omaha Metro ratepayer has more than one director. [LB646]

SENATOR AVERY: You have no more time, Mr. Twiss. [LB646]

BOB TWISS: May I have a little more time? [LB646]

SENATOR AVERY: Maybe it'll come out in questions. Do we have questions? [LB646]

BOB TWISS: Okay. If I might just say this one statement and then...if I might, please? [LB646]

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SENATOR AVERY: All right, one statement. [LB646]

BOB TWISS: Okay. The Omaha Metro ratepayer has more than one director, I think is a hollow argument. And I make that comparison because of Sarpy County and how many legislators we had. Before 2011, we had three full legislative districts in Sarpy County and we had four pieces. But when it came time for very contentious legislation--could be Learning Community or other things--the people that had just a portion of Sarpy County didn't have the time, quite frankly, or the interest to follow it as closely as those full legislative state senators that represent Sarpy County. That's what I wanted to compare. [LB646]

SENATOR AVERY: Okay. Thank you. [LB646]

BOB TWISS: Thank you. [LB646]

SENATOR AVERY: Thank you. Questions? I don't see any. Thank you, Mr. Twiss, for your testimony. Any other neutral testimony? [LB646]

BOB TWISS: Thank you very much. [LB646]

SENATOR AVERY: All right. No more neutral testimony. Senator Murante. [LB646]

SENATOR MURANTE: I'm happy to be the state senator who brought Jack Gould and Bob Twiss together in neutrality. [LB646]

SENATOR KARPISEK: Good job. [LB646]

SENATOR MURANTE: Thank you. A few points. First of all, I want to thank Mr. Bruckner for coming. I certainly hope in my opening testimony I didn't imply any sort of discriminatory intent on the part of OPPD. I think that problem that we have with OPPD is structural, and I think it's something that we have to take care of. But with respect to Senator Scheer's questioning, I think OPPD is in a little bit of a tricky situation. They have to come here and argue that we shouldn't elect the Omaha members by district because district elections cause parochialism while, at the same time, almost half of their district is...almost half of their board is elected by district. That's a challenging argument to make. And I think as a result, we get arguments like political subdivisions that are elected by districts causes confusion for the voters and they don't know who their representatives are and they don't know who to contact. In my humble opinion, I'm not sure that argument carries much water. I think the voters figure out who we are and who the representatives of political subdivisions are all the time. The one thing that we found in our research was that every time a legislative body attempted to make...to transition a political subdivision from at-large to by-district elections, the argument was



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always the same. That they're all different, that every board that wanted to get...that opposed being made by district said that they were different from any other type of political subdivision and that's why they should be elected at large. I'd submit to you that OPPD is a political subdivision. And at the end of the day, we know the record of the election results of the OPPD board. We've seen the demographics of the people who have been elected. And if someone comes to us and says, why did you allow that system of election to perpetuate itself when you knew what the results of those elections were? I don't think the argument that because the political subdivision only deals with electricity is a sufficient argument as to why we should allow that form of election to take place. Senator Bloomfield, with respect to your question, my office actually did a pretty good research on the difference between the cost of running an election by district and the...versus the cost of running for the same office at large. One of the nice things we have in Nebraska is the city of Lincoln has...their city council is elected both ways. So you can look at both and just...we used a rough comparison. What was the difference? How much money did it take to win when you're running for the city council by district versus at-large? And it was over three times more expensive to get elected at large than it was by district. And I think there are members of the city council who were elected by district that maybe wouldn't have been...that couldn't have gotten elected. They ran a grass-roots campaign, got to meet the voters, and they didn't have the money to run a full citywide campaign. And I think you're absolutely spot-on on that. We will have a different kind of...well, district elections allow for a different kind of representation. And so I think you're spot-on on that. But I do want to point out that this is an issue that I'm very passionate about. I think it's a very important issue. I'm considering this bill as one of my priorities...as my priority. I hope you will give it your full consideration, and thank you for your time today. [LB646]

SENATOR AVERY: Thank you. Question from Senator Price. [LB646]

SENATOR PRICE: Thank you, Senator Avery. Senator Murante, notwithstanding the argument on the makeup of the board on racial divisions and lines, did you or your staff look at the impacts of parochial behavior in other similar boards in other similar metropolitan areas? [LB646]

SENATOR MURANTE: Yes and no. That's very difficult to measure. I think the first thing that we can do is just observe the political subdivisions that are around us and see how they operate. I believe that in terms of parochial interests, that that's not all bad. I don't think that having a representative that's looking out for a specific segment of a city and having each segment of the city ensured that they have representation is something that we ought to avoid. [LB646]

SENATOR PRICE: So in support of that argument, can you bring forth where there has been a noted degradation of the support provided because of parochial issues? In other words, are you trying to intimate in some way that certain sections of the city have not

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received the same level of available commodity in the same amount, in the same capacity throughput? Are their uptime ratios different? Are their service records worse? [LB646]

SENATOR MURANTE: Are you talking specifics of OPPD? [LB646]

SENATOR PRICE: Yeah. [LB646]

SENATOR MURANTE: Hmm. Senator Price, as I said in my opening, I didn't come here...I could bring up some of the shortcomings of the OPPD, some of the mistakes that I think that they've made over the course of the past few years. There are current members who ran campaigns on the shortcomings. I don't think this bill is about that. To the extent that those...that the problems that they've faced over the past few years, whether it's Fort Calhoun or anything else, would have been mitigated by having by-district elections, I'm not sure about that. I don't...but that's not my point, it really isn't. I think the people on there are good people, and this isn't a statement about them. And the amendment that I'm going to have for you all is going to be structured such that each member of the board will have their...will be forced to run for election when they naturally would have been if this bill never would have been introduced. I'm trying to make it very clear that this isn't targeted at a specific person or specific actions that they made. This is just, again, a very philosophical question. How should political subdivisions be elected? [LB646]

SENATOR PRICE: So having five votes out of eight in one area is not going to lead to any parochial behavior? [LB646]

SENATOR MURANTE: Well, they're going to have that anyway. As the population sheet points out, it is based on...the construct of OPPD right now is based on population. I can't fault them for that. When this district is broken up as the amendment is drawn up, it's just the Power Review Board draws eight districts, they have to follow county lines, they have to make them relative...equal in population, they have to be compact and contiguous. So that should be taken care of. Everyone...there is a one-person, one-vote principle that is applied through all eight districts. [LB646]

SENATOR PRICE: Well, and I do applaud you on that. I can see that. But I'm gravely concerned that a board's duties to provide the service amongst the service area can be compromised. I've seen...I anecdotally couldn't point to it, but in New Orleans and Detroit and places where this happens, you see certain areas clamoring for something that is making an issue out of something that hasn't been there because you put the power tower up, you put the power plant where you put it, through all the processes. So I'm concerned that a system that isn't broken--notwithstanding the racial component that you talked about--but notwithstanding that, that it's going to be thrust into a situation where the rest of the service could be jeopardized because someone says, I don't

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believe I have enough dollars being spent in my district. And that's not what it's about. It's about...right now, they do what's best for the whole district based on their acquisition plan and (inaudible) implementation for the whole system. And then that parochial thing in this element can throw that off. And that's...I'll listen to it and we'll debate and discuss, but that's my concern. I wanted you to know that up front. [LB646]

SENATOR MURANTE: Okay. Thank you, Senator Price. [LB646]

SENATOR AVERY: Any other questions? I don't see any. [LB646]

SENATOR MURANTE: Thank you. [LB646]

SENATOR AVERY: Thank you, Senator Murante. That ends the hearing on LB646 and our hearings for today. I will give the committee a five-minute break and ask you to come back for a very short Executive Session. [LB646]