

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

KELLY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the eighty-second day of the One Hundred Eighth Legislature, First Session. Our chaplain today is Pastor Zeke Pipher from the Heartland Evangelical Free Church in Central City, Senator Lippincott's district. Please rise.

PASTOR PIPHER: Let's pray together. Our Triune God, remind us of this day who you are as the only true God, the King of kings and the Lord of lords. Father, I am thankful for the men and women that serve our state as representatives. I pray that they would faithfully fulfill their calling from you to uphold what is good and to punish what is evil. You tell us in your word that you raise up leaders for the good of the society and for our welfare so the rule of law will be upheld. So I pray for your blessing, wisdom, and provision for these men and women. I also pray, Father, that you would protect their hearts and keep their motivations pure. Help them not to be driven by irritation or anger toward those who disagree nor engage in debate merely with the goal of winning. Rather, I pray that, by your enablement, they would be motivated by the good, the true, and the beautiful that is found in you and in your ways. Holy Spirit, we thank you for how you give us understanding of God's holy word. I pray for the men and women of the Nebraska State Legislature that the word of God would be their highest source of truth, direction, and authority. Lord Jesus, our Savior, thank you for your faithfulness and your holiness. We thank you for living a holy, perfect life for us and for dying on the cross to pay the price for our sins. I pray for the salvation of each representative. And if they already experience eternal life through faith in you, I pray for their continued growth and sanctification by your word and your spirit. And finally, Father, I pray for all of us in the state of Nebraska that we would, as your word instructs in 1 Peter 2, be subject for the Lord's sake to every human institution. Help us, the ones being represented in these halls, to honor these men and women and uphold them in prayer for your namesake. And it is in the name of Jesus that we pray. Amen.

KELLY: The pledge today will be offered by a guest of Senator McDonnell: Jeffrey Lampe, an Omaha fire captain for 28 years, former U.S. Marine for 4 years. And his wife is under the balcony-- south balcony. Please-- please proceed.

JEFFREY LAMPE: I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

KELLY: I call to order the eighty-second day of the One Hundred Eighth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: There's a quorum present, Mr. President.

KELLY: Thank you. Are there any corrections for the Journal?

CLERK: I have no corrections this morning.

KELLY: Are there any messages, reports, or announcements?

CLERK: There are, Mr. President. Bills presented to the Governor: LB574e. Presented to the Governor on May 22, 2023 at 7:56 a.m. Additionally, amendment to be printed: Senator Linehan to LB754A. That's all I have this time, Mr. President.

KELLY: Senator McDonnell has a guest under the south balcony: Nikki [PHONETIC] Lampe, wife of Jeff Lampe. Please stand and be recognized by your Nebraska Legislature. Mr. Clerk, first item on the agenda.

CLERK: Mr. President, first item up this morning: LB514. First of all, Senator Machaela Cavanaugh would move to indefinitely postpone the bill pursuant to Rule 6, Section 3(f).

KELLY: Senator Machaela Cavanaugh, you're recog-- Senator Brewer, you're recognized to open.

BREWER: Thank you, Mr. President. Good morning, colleagues. As Chairman of the Government Committee, one of the things that we must do is an annual elections cleanup bill. That is what this bill is and that is why there are 42 pages to LB514. That is also why it is the Government priority bill. It contains mostly minor Election Act updates and tweaks that were requested by the Secretary of State. In this bill, the changes include petition procedures, electronic engineering rules, voter registration, public notice of elections, recall procedures and processes. Besides the Secretary of State's Office on this hearing, we also had support from a number, number of others, to include the Douglas County Elections Commissioner, Brian Kruse; the Hall County Commissioner, Tracey Overstreet; Nebraska Association of County Officials; and the League of Nebraska Municipalities. Colleagues, this is our job in the Legislature, to make this process for government run more smoothly. That is what LB514 was designed for. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

KELLY: Thank you, Senator Brewer. Senator Machaela Cavanaugh, you're recognized to open on your motion.

M. CAVANAUGH: Thank you, Mr. President. Well, this is one of my proactive motions. And as much as I love talking, I am going to yield the remainder of my time this morning to Senator Conrad.

KELLY: Senator Conrad, you have 9:40.

CONRAD: Thank you, Mr. President. Good morning, colleagues. I-- thank you. I want to thank my friend, Senator Cavanaugh, for the time this morning. As a member of the Government, Military and Veterans Affairs Committee, I have really appreciated serving under the leadership of Senator Tom Brewer and working with an incredibly energetic, bright, dedicated, and politically diverse committee on a host of critical issues-- perhaps amongst the most important thereof: to ensure and to protect our right to vote. The right to vote is fundamental in a democracy and clearly protected under our federal Constitution, our Nebraska Constitution, a host of supporting statutory frameworks in our federal law and our state law and further delineated and supported by a host of compelling judicial decisions to ensure that the right to vote, which is sacrosanct, will remain protected. So as we take up one of the most important issues before the Legislature this year, I think it's important to just take a quick step back and remember a few things. For about a decade, the Nebraska Legislature has stopped, quote unquote, voter ID measures because they found them to be a, a solution in search of a problem, for, for one way to put it. We have no documented cases of voter fraud impersonation. We have policies and procedures in place to ensure that our elections remain fair and free and free of fraud. And knowing that without a compelling reason to restrict the right to vote in any manner, we should not do so. We also know that voter restriction laws have impacts on rural Nebraskans, on young Nebraskans, on Nebraskans who are differently abled, on seniors, and on voters of color. That being said, my friend, Senator Slama, and others that she was working with decided to go to the people of Nebraska and wage a campaign to change our state constitution in regards to voter ID or voter restrictions. I vehemently and firmly disagree with voter ID. However, I equally find as sacrosanct our duty to facilitate and carry out the will of the people even when we disagree with it. That being said, the question before us, my friends, is actually quite narrow and quite simple. When you look at the ballot language that the campaign presented to the voters, you look at the text, you look at the ballot title, you look at the explanatory pamphlet that they put forward-- it is very clear. The key issues that I anticipate will be part of the debate today will be surrounding vote

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

by mail. Vote by mail does not occur in the constitutional text. Citizenship. Citizenship does not appear in the constitutional text. The question before us is how to implement the will of the voters to ensure that we honor the will of the people so that qualified voters present photographic identification in a manner as specified by us. And we have to do so in accordance with existing federal law, existing state law, and a host of decisions from our courts which tell us how to chart this narrow path. The good news is we don't have to guess. We have sound models from our sister states that show us where the problems may arise and the problems may lie so we can utilize that information to ensure that we carry out the will of the people, we do not restrict the rights of eligible voters unnecessarily, and we're clear about what Nebraskans want and what Nebraskan's hardworking election officials need to do their job, which I think we can all agree they do very well. The committee amendment that will come before you under Senator Brewer's name has the support of 92 out of 93 hardworking election officials across the state, representing a diversity of geographies and political perspectives. The amendment has the broad support of the Government Committee, which, again, if you look at our membership, you can see that we probably find spirited disagreement on a host of issues. But we were able to come together and find consensus on this critical issue, as is appropriate for our legislative process, and should help to guide your decisions before us in our debate today and in the remaining days of the session. No matter what people may have wanted to read into the constitutional text, that is not relevant. What is before us is a simple, textual argument about how to implement this measure. And if you look at the Nebraska Constitution, which we all swore an oath to uphold, the original language and as amended by the constitutional amendment could not be more clear. All elections shall be free. There shall be no hindrance or impediment on the right of a qualified voter to exercise an elective franchise. Before casting a ballot in any election, a qualified voter shall present valid photographic identification in a manner specified by the Legislature to ensure the preservation of an individual's rights under this constitution and the Constitution of the United States. Colleagues, the other thing that's important to remember as we embark on this debate together is-- I know Senator Slama and other members of the body, other members of the public, feel strongly that this debate should center upon issues related to vote by mail and citizenship. Those measures, those words do not appear in the constitutional text and are highly governed by other aspects of existing state and federal law. So we need to remember that we're not occu-- working within a vacuum as well. There are, as it is appropriate to be, serious, serious criminal penalties for voters to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

cast a vote if they are ineligible for any reason. There are serious criminal-- criminal penalties on the books for those that would aid and abet illegal-- ineligible voters from participating. We have to remember that these issues are already governed with significant and serious penalties throughout our statutory, legal, constitutional, and case law framework. The measure before you in the committee amendment is the most thoughtful approach to ensuring we facilitate the will of the voters, we ensure that our hardworking election commissioners have a path to implement this measure in enough time before the 2024 elections to train and educate election workers--

KELLY: One minute.

CONRAD: --and our citizenry in an appropriate way about these changes-- thank you, Mr. President-- and to ensure that we do not spark costly, lengthy civil rights litigation that have plagued our sister states and that would impede the implementation of this important measure. The path before us is clear and it is narrow. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Senator Raybould, you're recognized to speak.

RAYBOULD: Thank you, Mr. President. Good morning, colleagues. Good morning, fellow Nebraskans out there watching us on TV. I think Senator Conrad did a, an excellent job summarizing the work of the Government Affairs Committee. And it is such a true statement that seldom did we agree completely on anything except putting forward this voter identification bill that will not impede voters from exercising their constitutional right to vote. So I do want to thank Senator Brewer and his leadership. Most importantly, it was established right from the very beginning of the hearings that we were going to stay however late it took, however long it took, to make sure each and every individual that wanted to testify had the opportunity to do so. And that is something I am certainly proud of our committee. No one was turned away. Because every voice matters, just as every vote matters. And I want to thank Senator Brewer for guiding the discussion, the dialogue and making sure that that was implemented to allow everyone the opportunity to testify. I want to thank the committee because I know that we worked hard. We stayed late. We listened to all the concerns from so many people of a broad spectrum of, of folks from all across our state of Nebraska. We heard impassioned pleas from those who felt that there is a lot more work to do with our elections to make sure that they're safe and secure, free and fair. They presented ream after ream of concerns about the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

integrity and fraud that they were seeing in our, our voting system. We had the same group except-- expressing that we are proud of how we have delivered on our voting rights in our state of Nebraska. We heard from election commissioners. We've heard from clerks. We heard from the Secretary of State in their efforts and outreach. We heard mostly from the polling workers who shared with us how proud they were. They felt it was their patriotic duty to make sure anyone who came in the polling place had that opportunity to vote, and they wanted to make sure that they abided by all and every single one of the rules and regulations. So I want to thank all of those folks that came out with their impassioned pleas and their data. But the one thing that I can say working with the Secretary of State, we are so proud of the lack of voter fraud in our state of Nebraska. We heard so many concerns and suggestions about how to make voting even better. We heard from-- a great suggestion: let's make the Election Day a holiday so everybody gets the day off. We heard other suggestions saying we need to have cameras in every single polling place all across the state of Nebraska. We heard up-- we heard suggestions: let's make an upgrade so that the polling places are readily accessible and ADA-compliant. I do have to say a special thank-you to 92 of the counties who spent the time, their election commissioners or their county clerks, providing their comments, making suggestions on all of the amendments put forward on voter identification so we can make it the best and the safest in our state of Nebraska. They worked--

KELLY: One minute.

RAYBOULD: Thank you, Mr. President-- they worked tirelessly to dig down deep into the logistics and details of implementing something like this, from-- to the actual size of the provisional envelopes to make sure that those provisional envelopes can still fit in the ballot box. So they deserve a tremendous amount of credit for their very important input on how to make this voter ID program acceptable. And I want to say that we're very proud that this will have a robust educational outreach, not only training for all the counties to execute on this, but for our voters themselves. How do they go about voting, vote by mail or voting at your favorite polling place? So the one element I'll leave you with: there is a dramatic difference in the cost. We know that voting is precious and we should do everything we can to make--

KELLY: That's your time, Senator.

RAYBOULD: Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

KELLY: Thank you, Senator Raybould. Senator Slama, you're recognized to speak.

SLAMA: Thank you, Mr. President. And good morning, colleagues. I rise today opposed to the voter ID amendment that will be proposed later on in this debate. And I just want to take a brief moment to give a lay of the land of where I expect this debate to go today. You should each have a binder on your desks outlining where I'll be with my arguments and comparing the Evnen Amendment, which will be brought for your consideration later, and also my own amendment, which is a bit later down on the agenda, but I'm hoping to get to it as well. AM1777 is the original number of this amendment. It's slightly of my own amendment. It's slightly different now given that we're on not my own bill, LB535, but LB514. But it is my amendment that you can see online if you're looking for the exact number. I believe it's, like, AM1802. As you're aware, the voters of Nebraska passed Initiative 432 to require a photo ID to vote. Nebraskans have spoken and it is now our responsibility as legislators to ensure that only the votes of eligible voters are counted and to protect public confidence in the integrity and legitimacy of our representative government. This puts us in line with 35 other states in the United States. Just to be clear: my amendment is the document that lays out the provisions of LB535 that I am asking the Legislature to consider and adopt. First and foremost, I understand the importance of ensuring that all eligible voters in Nebraska have access to the necessary identification. It is also important that everyone who has the right to vote can vote. With this said, LB535 defines the forms of currently existing photographic identification, including a Nebraska's drivers-- a Nebraska driver's license or state ID card. The state ID card, if you're wondering, would be issued for free. This is true across both amendments. This also includes a receipt for a state driver's license or ID, which the DMV is now required to put photographs on. And this also includes expired IDs, a U.S. passport, an ID issued by a state agency or a political subdivision, including colleges and universities that complies with the bill's opt-in process. The bill requires these entities to offer this. An ID issued by the United States Department of Defense, the United States Department of Veterans Affairs, the VA, or a Native American Indian tribe or band recognized by the United States government, nursing home IDs for those on Medicare and Medicaid, a certificate issued by the Secretary of State for those who have no other means to get an ID. Additionally, religious exemptions required on-- required by case law are also considered in LB535. Even if Nebraskans do not already have these forms of identification, we have worked with the Secretary of State's Office to provide a free

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

option for obtaining a photo ID and ensuring that information about these options is widely available to the public, including any provisions that include the requirement of the Secretary of State to designate an individual to help voters who do not have IDs obtain IDs and help get the necessary documents to obtain the ID. The Secretary of State's Office must pay any fees associated with this process to ensure it is free to the voters, including the documentation necessary to obtain a state identification card. Furthermore, my amendment to LB514 also lays out the increased responsibilities of the Secretary of State's Office, including the new provisions relating to voter identification. This includes various public awareness campaign-related provisions, such as a dedicated website and a mailing postcard to every registered voter who does not have valid photographic identification. This is crucial to ensure all Nebraskans are made aware of these changes. In addition to what qualifies as a form of valid photo identification and how one may obtain a free valid photo identification, I will go into the process of how this--

KELLY: One minute.

SLAMA: Thank you, Mr. President. I'll come back to that later on my next turn on the mike. And if you can't tell, I will be taking time today. I'm not going to set the world on fire because I'm on doctor's orders to not have a large adrenaline rush, or I could end up back in the hospital. But the lay of the land is this: those who have opposed voter ID and done everything they can to block photo ID-- block voter ID and the implementation of voter ID are now in control of voter ID. Look at the groups supporting the Evnen Amendment. Look at the groups who are now opposing this amendment. I'm the person who was a spokesperson for Citizens for Voter ID. I stand opposed to this amendment for constitutional concerns that I will outline during my turns on the mike today. And I am asking you to listen to my arguments and vote against cloture on this with your heart. Listen to my arguments. Listen to my constitutional opposition to this amendment. I'm going to lay out the process and procedure and how this process and procedure has failed Nebraskans and how you can stand up for the--

KELLY: That's your time.

SLAMA: --voters of Nebraska by voting against this. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. And again, good morning, colleagues. I want to extend my gratitude to Senator Slama for providing this significant body of work in regards to supporting materials to advance her position. I know that she has been working very hard to bring forward a variety of different amendments and proposals to the members of the Government Committee, and I don't want that to, of course, go unnoticed. And we're all very grateful to see her back with us today and want to ensure that we each operate as thoughtfully as possible in regards to when any member is facing a medical hardship or issue. So, having started my family when I was a member of this body before, I definitely appreciate and understand some of the additional challenges that Senator Slama is, is facing in the remaining days of our session. And I think that hopefully also goes to show that even if we have diametrically opposite viewpoints on a host of different political issues, we can and we should continue to recognize each other's humanity, which binds us together in society and, of course, here within this legislative body. So the one thing that I want to reiterate and-- my friend, Senator Raybould, just ran out of the little bit of time in regards to some of her opening comments as a member of the Government Committee. But we have to look at the legal issues, the policy issues and the practical issues of any measure before us and-- particularly on a measure as critically as important as carrying out the will of the people and protecting the fundamental right to vote, which is the bedrock upon which all our civil rights and civil liberties rests in many, many sense. As one factor that the Government Committee looked at-- of course, not dispositive-- but one measure that, that Senator Raybould just ran out of time to talk about was looking at the overall price tag and cost in terms of the different options and proposals before the Government Committee. So the amendments that Senator Brewer is carrying on behalf of the committee estimated, I think, approximately about a \$2 million price tag to implement. And that includes getting the materials together, a-- training components, and a, a robust voter education campaign, which is very important as part of implementing these changes. Senator Slama's proposal had a fiscal note of, I believe, approximately about \$20, \$20 million or so. I know her latest version attempted to address the fiscal considerations in consultation with committee counsel and other stakeholders. I think rather than removing that significant fiscal note, it seemed to shift it from prior versions from the counties back into the state. So, of course, the fiscal note itself should not be dispositive in terms of anybody's vote in regards to the approach moving forward because we're talking about the right to vote, which I think Senator Slama and myself and others would agree is, in fact, priceless. But that is one component that, that we do need to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

make sure is clear for the record. The other thing that I think it's really important to note, again, is that we don't have to and should not embrace a--

KELLY: One minute.

CONRAD: --novel approach-- thank you, Mr. President-- when it comes to something as important as honoring the will of the people and ensuring no eligible voter is turned away. So we have to carefully set the boundaries which exist in our constitutional law, in our statutory law, and in our case law, and that is a careful and delicate balance. But that path has been charted in the committee amendment to ensure that we stay within the bounds of the law, we honor the will of the people, and we do not, we do not put up hindrances or impediments to eligible voters being able to cast a vote. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Senator Slama, you're recognized to speak.

SLAMA: Thank you, Mr. President. Good morning again, colleagues. I'm grateful Senator Raybould and Senator Conrad mentioned the cost associated with my amendment because it really gives us a chance to talk about the procedure and what has happened in negotiations on my amendment for voter ID. The language that the Secretary of State used to point to my amendment costing \$23 million or whatever it ended up being was language that they demanded had to be in my amendment of the bill. Now, of course, this was pointed out during an Executive Session in which I was not invited and which the Deputy Secretary of State for Elections, Wayne Bena, was inappropriately present. That Executive Session and the vote taken there was actually thrown out because of the inappropriate presence of the Deputy Secretary of State and the interference with the legislative branch in that Executive Session. So they pointed at that language saying that it would cost \$23 million. I took out the language, and now somehow my bill-- like, honest to God, if somebody can point to the line where this bill costs \$20 million, I'll take it out. Like, it's not a problem. But it just goes to the moving targets and lies that I've had to put up with when negotiating this bill. Like, this end result of Civic Nebraska pointing at this as being the least worst option and the Democratic Party endorsing this amendment and those opposing voter ID getting on board with this amendment was always planned to be the end result, and that cost discussion really drives home that point. But I think it's important that we talk about the Legislature's task given to it by the people of Nebraska. In Initiative 432, the people of Nebraska passed a new requirement for voting in Nebraska. That requirement was added to the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

Nebraska Constitution with the following language: Before casting a ballot in any election, a qualified voter shall present valid photographic identification in a manner specified by the Legislature to ensure the preservation of an individual's rights under this constitution and the Constitution of the United States. A qualified voter clearly means that requirement applies to all qualified voters. The Legislature only gets to decide the manner in which voters show their ID, not whether or not they, they have to. Like, let's be clear about that. The amendment being presented before us is voter ID without voter ID. The U.S. Supreme Court has said there are certain groups that must be exempt from showing an ID or have accommodations to help them get ID. They are: people who cannot get a birth certificate to get an ID, people who cannot afford to pay for a birth certificate to get an ID, homeless individuals who do not have an address to get an ID, and people with religious objections to being photographed. So when we combine the task given to us by the people of Nebraska with the voter ID accommodations required by the U.S. Supreme Court, a Nebraska voter ID law may only include certain exceptions and accommodations for those four groups. And the Legislature's task is to determine how everyone else will show their photo ID. Secretary, Secretary Evnen's amendment violates the constitution by going well beyond that and exempting many, if not most, voters from actually showing an ID when they come in to vote. My own amendment is well-drafted after consulting all United States Supreme Court holdings related to voter ID law, after consulting many experts in the area of voter ID law, and after comparing similar voter ID laws in other states. Simply put, my amendment doesn't reinvent the wheel, and it doesn't try to. My own amendment does exactly what the people of Nebraska intended this Legislature to do. And I'd like to take a moment now to shift my attention to the Evnen Amendment that you all will be considering, I assume, before my own, and just hit on some of the constitutional issues with this amendment. And you can also see--

KELLY: One minute.

SLAMA: --a better-- thank you, Mr. President-- you can also see a better clarification of these constitutional amendment-- constitutional issues in your amendment. And just to preview-- I won't actually be able to flesh these out-- Section 5, Sections 10 and 11, Section 12, Section 17 through Section 19, and Section 23 all have constitutional issues that I will examine and dig deeper into on my next turn at the mike. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Machaela Cavanaugh, you're recognized to speak.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

M. CAVANAUGH: Thank you, Mr. President. I actually-- would-- Senator Slama, would you like more time? I yield my time to Senator Slama. Thank you.

KELLY: Senator Slama, you have 4:50.

M. CAVANAUGH: Thank you, Mr. President. And I, I think it's important to note that, as I'm talking through this, I'm not blaming anyone on the Government Committee at all. I consider a lot of members of the Government Committee on both sides of the aisle to be my very close and very dear friends. However, this process left a lot of them out of the loop, and several of them actually came up to me afterwards wishing that they had been able to have more information for me on my own amendment, which, given the circumstances, I completely agree with. So I'm taking this opportunity not to go after the Government Committee or go after any one person in particular. But I am referring to this as the Evnen Amendment because the Secretary of State drafted it. Like, the Secretary of State was the one who gave the Government-- the committee, committee the language to get it drafted. So that's, that's why I'm framing this the way I am. It's important to note the executive branch's involvement in this amendment and how it was drafted. So, first off, Section 5 of the Evnen Amendment, it violates the National Regi-- Voter Registration Act, the NVRA, which-- you've got a handy glossary at the end of your binder which defines the NVRA. And I can give you a little bit more information if you'd like to search on that more later. So, Secretary Evnen said that he would use Section 5 of AM1748-- AM1748 is the previous version of the Evnen Amendment as attached to LB535. We're now on LB514. I'm not sure what number amendment it actually is now-- when people register to vote so as not to prevent noncitizens from getting on the voter rolls in the first place. However, that is not what his amendment does. Section 5 of AM1748 states: The Secretary of State shall develop a process to use the information in possession of or available to his or her office to match and verify the citizenship of the corresponding registered voter. Now, the key words here are "registered voter." This use of the term "registered voter" rather than "applicant" or some other term clearly shows that it only applies to somebody that is already registered to vote. Removing someone who is already, already registered to vote without a conviction is a clear violation of the National Voter Registration Act. 52 U.S. Code 20507(a)(3) indicates that a registered voter can only be removed from the voter rolls in four situations: the voter requests to be removed, the voter died, the voter moved and certain criteria were met, or the voter was convicted of a crime that disqualifies them from voting. A simple citizenship check using DMV data prior to removing a person from the voter

registration rolls does not meet any of these situations. That is why my amendment requires investigation and prosecution. The Secretary's amendment is a clear violation of the NVRA and represents a huge threat to our voters to be taken off voter rolls without their knowledge, without notification, and without the ability to express their rights under the NVRA. Sections 10 and 11 place undue burdens on the fundamental right to vote. Sections 10 and 11 of Secretary Evnen's amendment is unconstitutional because the affidavit requirement is confusing and ambiguous-- and that's relevant. Like, that's not just a subjective assessment. Like, this is relevant for the court case I'm going to talk about-- and couldn't even pass rational basis review, which any second-year law school student could tell you is nearly impossible to do, which is kind of impressive. Under both the United States Constitution and the Nebraska State Constitution, voting has been found to be a fundamental right. And I think everybody on this floor would agree that it is. Burdens on the fundamental right to vote are subject to two--

KELLY: One minute.

SLAMA: --different levels-- thank you, Mr. President-- two different levels of scrutiny depending on the burden imposed. The level of review relevant here is the rational basis review. In a case directly on point, the Missouri Supreme Court found that a confusing and ambiguous affidavit failed rational basis review and was therefore unconstitutional. AM1748 on the affidavit says that a voter who has a reasonable impediment to voting does not have to show an ID, but it does not define what a reasonable impediment is. The voter has to fill out an affidavit claiming a reasonable impediment. And I'll come back up to this on my next turn on the mike. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Hansen, you're recognized to speak.

HANSEN: Thank you, Mr. President. Well, I've-- I think since I know Senator Brewer and Senator Slama very well, I also know not to get in between both of them when they're debating about something and caught in the middle. So, I'm going to do my best to be as even-keeled as I can. But I do have a question for Senator Slama if she would yield.

KELLY: Senator Slama, would you yield to a question?

SLAMA: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

HANSEN: Thank you, Senator Slama. I'm just trying to actually get some clarification, probably from each of you, about the validation of the voter.

SLAMA: Yes.

HANSEN: And so-- from my understanding, in your amendment, it's a registered voter who validates the ID or, or the person--

SLAMA: Yes. So when you're talking about vote by mail, the person who validates the ID needs to be either-- so, witness attestation is one option. That has to be a registered Nebraska voter. On the other hand, you can use a notary, and that's an issue that we use to address the problem with out-of-state voters, military voters. And the great part about the notary side is every uniformed person in the United States military, whether reserve or active duty, qualifies as a miller-- military notary and fulfills that requirement.

HANSEN: OK. Perfect. I'm, I'm asking these questions because these are some of the questions I'm getting from constituents a little bit but-- because they're trying to listen to both sides of debate and where both of you are coming from. Thank you, Senator Slama.

SLAMA: Thank you.

HANSEN: Senate Brewer, would you yield to a question?

KELLY: Senator Brewer, would you yield to a question?

BREWER: Yes.

HANSEN: So, likewise, kind of the-- very similar-- or, same kind of question-- with, with your portion of the bill, who validates the ID of the individual as opposed to a registered voter?

BREWER: All right. We, we probably need to understand the issue of this attestation. So, otherwise, signature. You have someone who looks at your ballot and says, yes, this is you, and signs that. And so you have-- we have the signatures. As opposed to the committee amendment, which has the use of the identification number to identify that that person is who they say they are and are eligible to vote. The challenge you have with the signature part of that is you-- well, for one, you have to find someone that is going to be willing to sign off on that. You're going to have to be able to verify a signature. Imagine how difficult that is, to, to validate signatures, as opposed to simply looking at a number that then is in a database. You go to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

that database and it says, this is the individual. And then it's, it's in that database, the picture or the name. And it, it's just a, a much cleaner, a much easier way to validate that that person has had someone show the ID when they send in the mail-in ballot.

HANSEN: OK. Thank you. Actually, I appreciate both-- responses from both senators, not just for my own mind, but from my, my constituents' mind, as well as the difference between the, the thought process from both Senators, which-- I wholeheartedly trust both of them, and they're both very smart individuals when it comes to this topic. And so I'm actively listening to both sides. And as we move along here, I'll do my best to make up my mind. So, thank you, Mr. President.

KELLY: Thank you, Senator. Senator Brewer, you're recognized to speak.

BREWER: Thank you, Mr. President. I got to tell you, I did not look forward to today. We have been working voter ID since almost the very first day. I consider General-- General-- Senator Slama a very good friend. And we have worked back and forth to try and come to a solution. Please understand, this is, this is not a Bob Evnen Amendment. He has helped us. He has showed us what we need to do to make sure that, for one, he can execute what we're being tasked as far as voter ID. But this is a committee bill. And you're going to see a lot of titles put to it. I just ask that-- please understand that we had an exec. It was voted out. I did ask a representative from the Secretary of State's Office to come in because we had serious questions. And shame on me if I don't consult the, the Attorney General. Shame on me if I don't spend some time understanding the impact on the Secretary of State's Office of a bill that we write. We're going to go through a lot of debate today. And I'm put in a horrible position because I'm going to have to go and retrieve all of the history of what we've gone through in the 109 days between this bill being presented to committee and us voting it out a second time in two days. But please don't doubt that this is a committee bill. It was voted out on LB535, 8-0. We did it two days in a row. If there was issues, we talked about them. We worked through them. We tried to figure out the best solution. And I'm not saying it's a perfect bill, but I think it is a better bill. And it is, it is what we have to do in order to fulfill our obligations to the people in Nebraska. And whether we like it or not, we're out of time. And if we decide that this is such a horrible bill that we can't deal with it, then we will be in special session. There is no way around that. We are out of time. And part of that's my fault. I should have forced this issue sooner. I kept believing that we would find a solution, that we would be able to come to a compromise. And we had long meetings. The, the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

Speaker was very generous in offering his office and his time and, and, and to kind of help coach and work through with the Secretary of State, the Attorney General, a representative from the Governor's Office, and all the parties involved to try and figure out what right looks like and how we can get there. Unfortunately, we didn't get there and we ran out of time. The committee made a decision, a hard decision, and that's what you see before you in LB514. So, I would ask that you understand the difficulties and the complications that went into this and not to look at it as a bill from any one particular group or anything else. This is the committee process. This is how you, you get legislation crafted. It should not be one person's thoughts or emotions. It should be what's best for the state. So I will ask that-- as we go through today, we're going to go into more detail with the bill. Please listen, but keep in mind that we have some very limited opportunities here to move forward with this bill and prevent a special session and meet the requirements that the people gave us in the constitutional amendment. Thank you, Mr. President.

KELLY: Thank you, Senator Brewer. Senator Slama, you're recognized to speak. This is your last time on the motion.

SLAMA: Thank you, Mr. President. And before I hop back into constitutional issues with the, the Evnen Amendment, I, I do think of Senator Brewer as an amazing friend. When I was appointed, he was literally the first person to take me under his wing and show me the ropes. And I don't look forward to this day any more than he does. This is not a fight I wanted to have publicly. But at the end of the day, this does come down to process. 109 days of negotiations ended up being done-- ended up being thrown away in one fell swoop with an amendment that was not worked on in consultation with anyone who worked with Citizens for Voter ID, any group focused on election integrity. So, yeah. We, we can talk about process and I can come back with all of the times that the Secretary of State was giving me amendments and slow-walking me on issues that ultimately ended up with us being here today. And I will be the first person to say I'm just as committed to not doing a special session on this issue as anybody else. And here's my thing. We have the choice to either block cloture on this bill today, which you might not choose to do, and fix three things. And I'm going to outline-- with the Evnen Amendment-- fix three things. I'm going to be very clear about what I'm asking for here. Or we can vote for cloture, take the easy way out on this one. And we will be back in a special session because I'm telling you right now, if you listen to the constitutional objections I have to this bill, it does not follow the plain language of the constitutional

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

amendment. It will end up in court and it will lose. And we will be back here again in special session because unlike everything else besides the budget, we are constitutionally obligated to put together a framework in this session that fulfills the will of the voters, and that's something I take really seriously. So, for me, from my perspective, I'm asking for three simple things, three simple changes to be made to this Evnen Amendment. First and foremost, strengthening the citizenship check requirements. Under this current AM, the Secretary of State is only requiring citizenship checks of the voters with data that they already have access to. This is through the DMV Motor Voter Program. This only covers a slight majority of those voters in the system. Moreover, the language that I talked about in my first constitutional objection on Section 5, the process of removing voters off the registration rolls without any due process, that needs to be fixed. And I think that's just a good governance change that needs to be made. So that's point one. Point two is we have to include witness attestation or notary on mail-in ballots. The argument that this language somehow doesn't include mail-in voting is bogus. Mail-in voting is voting. Like, to even claim that mail-in voting somehow gets a special exemption because it's a different type of voting-- it doesn't hold up in any of the 35 other states that have voter ID. I'm asking that you include witness attestation and the notary combo, which is used by over a dozen other states. Nebraska has adopted strict language when it comes to voter ID, and we have to look at the states that have strict voter ID. We can't look at the states that have nonstrict language. To Senator Hansen's point, when it comes to verification of those IDs, my amendment has that language with witness attestation and notary. The Evnen Amendment does not verify those IDs as being valid. It doesn't. You can say they do. You can say the Secretary of State's going to develop a process, but that specific language is not in the bill. So it's just a hope and a prayer that he's actually going to do it. Now, third, and I think most importantly, we have to address the "reasonable impediment" language. Right now, a voter can walk in on Election Day--

KELLY: One minute.

SLAMA: Thank you, Mr. President-- and say, well, I have a reasonable impediment to voting. And their county election clerk will hand them a sheet with at least three reasons. They can include an "other" box that can be all-encompassing. And as long as they check one of those boxes, they don't have to show an ID in order to vote. If a person has a religious objection to being photographed, we're going to take it on a hope and a prayer that they're telling the truth. And moreover, we're not going to make them show any ID. And this breaks from every

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

other state that has strict voter ID language. I'm saying we need to clean up that "reasonable impediment" language, clean up the language that says we can only get birth certificates and help Nebraskans vote with documents if they were born in Nebraska, because that is a clear violation of the Fourteenth Amendment and the Equal Protection Clause. I'm asking for those three things. So until we get movement on those three things, I'm not moving. Y'all might decide to go around me, and that's OK. But I'm telling you--

KELLY: That's your time.

SLAMA: --right now, we're going to be in a special session. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Blood, you're recognized to speak.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I stand opposed to Senator Cavanaugh's motion and will likely be in support of Senator Brewer's bill with his amendment, which I won't refer to as the Evnen Amendment. You know, friends, if you've listened to this floor, since I've been here, I've always said that I, I think we need to make it easier for people to vote, not harder for people to vote. So I'm going to have a really difficult time listening to this debate and some of the things that are going to be said because I believe that voting is a fundamental right. And what's really unfortunate is, for some reason, it does not have clear constitutional protections, and I think that that's just truly unfortunate. But when I say right, it also suggests the ability to-- that vote has been given to us without a fight. And that certainly is not true, especially for minorities, especially for women, for people of color, for people who have immigrated to our country. But when we say words like "privilege," it makes it sound as if we should only be-- we should only enjoy the right to vote if you are worthy-- you're worthy of this privilege-- and not others. And now we're going to have this weird patchwork election rules that are blanketed from state to state. And unfortunately, whether you believe it or not, we are going to disenfranchise millions of possible voters across the country. And we have already seen this in other states. But that's not going to change the fact that the voters have asked us to address this issue. But how we address this issue has to be that we do the least amount of harm as possible. I hope we use the word "responsibility" instead of "privilege," instead of "right," because it is our responsibility as Americans to vote. In Australia, they've instituted mandatory voting. But, based on this definition, for some bizarre reason in the United

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

States, we look at this as an opportunity to allow irresponsible people to vote who don't care enough about voting. And they're going to go to the polls anyway and they don't care because they're not going to get fined or anything. And that's just kind of silly. I think about how we got to this point. You know, many of you read the Omaha World-Herald article quite a while ago where I was literally walking to Bed, Bath and Beyond, and a young man came up to me and says, I work for the state of Nebraska and I have this petition that I need you to sign that's going to make it easier for people to vote. So the person lied to me twice. And I found out in that same article that he lied to another previous senator at their door who was, by the way, a different party. So the fact that we're to this point through deception sticks in my craw. And I'm going to just talk about it one time-- and I'm not going to get back on the mike and talk about it. But any other petition drive, be it medical marijuana or something that would have given people more rights to vote, had those people-- had somebody been deceptive and lied to the petitioners, that page would have been eliminated from the petitions because that's how it works in Nebraska. To my knowledge, that never happened, that all of those signatures were accepted. So I want you to be thinking about these things, about how we got to this point. There's never been any fraud proven, but we're trying to address that. But the way this legislation's-- legislative session's going, I'm not surprised that we're trying to fix something that's not broken. Do I believe that we should be-- have guardrails in place? Sure.

KELLY: One minute.

BLOOD: Do I believe that only citizens of the United States should vote? Absolutely. But I just again want to remind you of how we got to this point and what's at stake. And I feel that the Government Committee worked hard together, keeping that in mind and trying to make sure that people have the ability to vote without creating unnecessary hurdles, without making it harder than it needs to be. Thank you, Mr. President.

KELLY: Thank you, Senator Blood. Senator Bostelman, you're recognized to speak.

BOSTELMAN: Thank you, Mr. President. Good morning, Nebraska. Good morning, colleagues. Just want to talk about one thing that Senator Slama said before just so I understand, I think so we all understand, if this would carry through how that would be addressed. When I was on active duty, I was a federal notary. I worked in the JAG Office, the Judge Advocate General's Office. Not always where we were at or where

we were deployed or where different service members were deployed was there a notary, was there someone who could notarize a document for a, for a military member. So with that, I, I guess that's one question I would have with this to address that challenge that we may have. As you deploy-- when we deploy, folks, we do go through a deployment line. We do things such as power of attorneys, we do things as wills, those type of things. It-- possibly then, but if you're deploying out for a year or more into an area-- and then you go to-- and, and maybe Senator Brewer or maybe Senator Holdcroft can speak to this more-- you get deployed to a certain area. But then from there, you get deployed again. And so you get sent out as, as a unit into another area, another place in that country, and you don't have that same access to notaries that are there. I'm only bringing this up just as a concern as what we've seen. Being overseas, being at remote locations, that might be an issue for some of our military members, that they would not have access to a notary public in order to have their signature, their request notarized and sent in. That might be a challenge that we have that we may need to address. Thank you, Mr. President.

KELLY: Thank you, Senator Bostelman. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. And good morning, colleagues. I rise today just generally trying to better understand LB514 as well as the various amendments we have. Obviously, we're coming off of a very long and stressful week, and I don't think a lot of us have had as much time maybe as the Government Committee has had to review this. And so I'm trying to get up to speed based on conversations I've had with folks about the Government Committee's amendment as well as Senator Slama's amendment. I wanted to take a step back, though, and, and talk a little bit about the process. You know, we heard from Senator Slama; the process here is part of the issue she has with it and I think some of the, the things she's been concerned about. Based on the conversations that I've had with folks from both parties in the Government Committee, I think that, thus far, I've been really, I think, excited and generally optimistic that the amendment that we see hypothetically presented here soon as the committee amendment really does show a bipartisan effort to both enact the language of the law that the citizens of Nebraska voted on as well as do so in a way that's responsible for our elections to ensure that as many people have the opportunity to vote as possible. Regardless of how individuals felt or feel about the ballot initiative that we had to deal with this last time with regards to voter ID, the fact of the matter is we find ourselves in a situation where that voter ID law has to be enacted. And so I think the question before the body today is

whether or not we're going to enact that in a way that is exclusive or inclusive. And what I mean by that is we have to make a decision as to whether or not we want such stringent requirements that people who would otherwise be eligible to vote are excluded by virtue of a bunch of hoops that you have to jump through. Or do we want to ensure that we adhere to the language of the law and create a law that, so long as you meet the minimum requirements to vote, you are included in such a way that you are able to continue to participate in the elections? I would rise also to echo the sentiments of many of my colleagues who have spoken and those who have not, that voting is a fundamental right. And I am of the fundamental belief that we should be doing everything we can to encourage more people to vote. Election after election, we look at the numbers of people who turned out, whether it's presidential, whether it's local, and we see news story after news story about how sad it is that more people aren't voting. We lamented amongst ourselves. The news laments it. People are curious why more people didn't turn out. And if that is a consistent concern we have, voter turnout, I think we should be doing everything in our power to ensure that more people can vote and do vote rather than create incentives to get them to stay home. I know from speaking with friends of mine who are generally political people that even they can, from time to time, forget to vote in a primary because they got busy. Or they can say they wanted to vote but there was enough of a line at the election-- at the polling place. Or they just got so busy they weren't able to do it. And so when you start to talk about introducing additional requirements, especially when you're talking about things that take extra proactive steps, like requiring a notary signature or things such as that, the fear that I have is that we are creating further disincentives for individuals who otherwise would participate in the democratic process to actually follow through. Voting is good. We want more people to vote. We want the voices of more people to be heard. And so I believe that whatever law we enact should be done with the spirit and intention of being inclusive rather than exclusive. Now, the argument that we hear oftentimes with regards to why we need to enact these laws is voter fraud. And that's a conversation that was had quite a bit in this last election cycle. But what we also know is that, based on every empirical study that's been done, voter fraud is incredibly rare. The specific kind of voter fraud that's addressed by voter ID, which is in-person voter impersonation, is even rarer. Two studies I know that were done in Washington--

KELLY: One minute.

DUNGAN: Thank you, Mr. President-- Washington and Ohio back in the, the 2000s revealed that voter fraud rates that they studied were

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

0.0009 percent. And a subsequent study was 0.00004 percent. I mean, at that point, we're talking about almost infinitesimal numbers. And so when you weigh the consequences of implementing requirements that are going to "de-incentivize" otherwise eligible voters versus these infinitesimal numbers that we've seen with regards to studies of actual in-person voter fraud, the benefits and the costs become unbalanced. And so I absolutely think that we should be including more voters. I think voting is important. We should be hearing the voices of more people and finding ways to bring folks who are disenfranchised into the system rather than creating red tape for them to cut in order to access their ballot. And so, generally speaking-- again, I'm, I'm listening to these amendments. I want to find out more about what's being included, but I--

KELLY: That's your time, Senator.

DUNGAN: Thank you, Mr. President.

KELLY: Thank you, Senator Dungan. Senator John Cavanaugh, you are recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Well, I guess I don't know where I stand yet, colleagues. I'm sitting here reading what I assume is the committee amendment. Let's see. AM1801. That's being presented by the committee and Senator Brewer. And I haven't gotten a chance to read Senator Slama's proposal yet. I have looked through the, the binder Senator Slama provided, and I appreciate it being broken down in an easily digestible way. But, you know, as Senator Dungan was talking about, this is an important issue and we want to do it the right way. And some of us haven't had as much time to think about these particular proposals and digest them. And I did particularly appreciate Senator Bostelman pointing out the hurdle to getting a notary for some of our deployed military personnel. And I think we certainly want to be sure that we're not creating a structure that's going to disenfranchise our service people while they're serving. I don't know, honestly. Senator Bostelman, I appreciate you raising that issue. I don't know where that comes up in either one of these amendments at this point, but I'll be on the lookout for where that issue is raised. I'm-- just as I was sitting here reading it, I did have a question. I guess I'll ask it rhetorically because I don't wanna put anybody on the spot because I don't fully understand it. But it's in AM1801. Section 10 talks about filling out provisional ballots. And it, it does set out some nice, clear criteria for how someone can still vote if they don't have an ID on them when they go to their polling place on Election Day and-- or to the election

commissioner for an early vote-- and how they can cure that by showing their ballot-- or, showing their ID at a later date. And then also the attestation they have to give for, you know, saying they're not voting in any other way, they're not voting at other places. But one of my concerns about it is-- and it may-- I might be wrong about this. Like I said, I just started reading this. But my understanding is, currently, if someone shows up at a polling place, you know, at a particular precinct maybe where they used to vote and then the lines got redrawn and they're now in a different precinct, if they show up at the wrong precinct, they'll still be able to vote a provisional ballot at that precinct even if they don't show up as a registered voter there. And this would seem to require that for someone to vote a provisional ballot, they have to be on the voter rolls at that particular precinct. So I don't know if this-- I don't think that's an intentional change and I don't know if it actually supplants that other language. I don't know where that language is. I'll continue to look at it. But these are the types of concerns, maybe unintended consequences, because this is really just creating one mechanism under which someone would file a provisional ballot, which is that they didn't meet the requirement of showing their photo ID yet. But it maybe doesn't-- it inadvertently eliminates an option for somebody who is mistaken about where they're registered. You still fill out a provisional ballot. You still have to be registered. They'd have to, you know, check and actually confirm-- you'd fill out the for-- you know, the provisional ballot and the, and the envelope and everything, and they would still check on that. This seems to say that you're-- wouldn't even be offered a provisional ballot unless you are on the voter rolls at that particular precinct. And as we all know, any one of us who has-- all, all-- I think almost all of us have campaigned and run for office here. I think-- actually, there's a few of us who were appointed, but you'll find out soon enough. But informing people, just-- people have misunderstandings about when Election Day is, how long the polls are open, where they can vote, how-- what the methods are. And-- so making sure that we are not erecting unintentional hurdles to--

KELLY: One minute.

J. CAVANAUGH: --voting-- thank you, Mr. President-- is really important and why that's-- this is really very important that we be deliberative and thoughtful about what rules and regulations we're putting in place because the voters did approve the constitutional amendment and we are charged with implementing that in the way that it states in the constitution and-- but we need to do it in a thoughtful and effective way. So, I appreciate the work of the committee. I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

appreciate the, the conversation that everybody's having today. I'm going to continue to sit here and read everything I've been provided and see what other questions I can come up with and other ones that maybe we can-- people can answer for me as we go along. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senator Raybould has guests in the north balcony: 60 fourth graders from Everett Elementary in Lincoln. Please stand and be recognized by your Nebraska Legislature. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I really don't know where I'm at with this either because I-- voter ID and the history of voter ID laws have disproportionately affected my community. And, you know, we can start at the beginning. When the U.S. Constitution was ratified, there was no such thing as voter registration, no register-- no registered voters cast a ballot for George Washington or John Adams. The concept did not exist. When voter lists did arrive at the beginning of the 19th century, they were mostly limited to New England, and adding eligible names to rolls was the government's responsibility. Yet, even these unobtrusive attempts at registration proved controversial. That controversy came to a head in 1831 in Boston when a man named Josiah Capen arrived to vote and discovered he'd mistakenly been left off the list. He sued a local election official and attempted to have Massachusetts' voter registration system overturned. Capen lost. Most importantly, his case set a precedent that lasts to this day. Even when the right to vote is protected, the complicated logistics of voting are up to lawmakers to decide. In practice, this means that long as politicians believe or can plausibly claim to believe that they're protecting the integrity of our elections, they can pass laws making it harder to vote, sadly. Where is it? And my biggest thing is I foresee that, although I represent a district that doesn't have the greatest turnout, it probably will continue or be worse with voter ID laws because people, I would say, from my district, they don't really have faith in the political process for mo-- many reasons. And the history of voting hasn't been the best towards communities like north Omaha-- not even just in the state of Nebraska, but across the country. So, I'll listen to the debate on this and the conversation and listen to what are the-- what are in the amendments and things like that, but it's going to be interesting. Because, as Senator Blood stated, when people were going around with these petitions, the petitioners didn't even know what the law or what the petition would actually do. They couldn't give you a great conversation about it at all. And a lot of them weren't from Nebraska. They just were paid to come in and be black faces in a black community and convince black

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

people that voter ID was a good thing. That is literally what they were doing. Standing in front of grocery stores and Wal-Marts and things like that. And it's-- I don't know-- it's interesting to-- where this body is going, where this state is going, and where this country is going. It feels like the work of the Civil Rights Movement and, and the work of Martin Luther King and others is getting pulled back year after year and we got to stand up and fight for things that, you know, men and women bled for, walked and marched for. So, that is my struggle. I understand that the voters last election voted to do voter ID and we have to craft something that works, I guess. But it's still hard to sit and think about it, honestly, because when you look at the data--

KELLY: One minute.

McKINNEY: --there's not, if any, election fraud in our state or across the country. It's not really found. I mean, you might find a case or two there, here or there, but fraud is not the reason why people are getting elected into office. I would say it's money. So, with that, I'll listen and, you know, I'll probably get back on here and talk about it more in depth. But I just wanted to set the tone for the conversation that-- really not in favor of voter ID laws because of the historical context in which they've been implemented throughout the history of this nation. Thank you.

KELLY: Thank you, Senator McKinney. Senator Raybould, you're recognized to speak.

RAYBOULD: Thank you, Mr. President. You know, maybe a little bit of background in, in what the Government Affairs Committee had to deal with. I, I, I also want to say that we-- this is not just the Secretary of State or the Attorney General's bill. It really is a bill from the Government Affairs Committee. We have-- and, you know-- if y'all remember, I was reading letters from physicians. I have letters from the county clerks, the election commissioners because they dived-- really took a deep dive in and dissected all the amendments that were in the legislative bills that were presented to us. But here's some of the issues that we had to face. And I don't know if everybody realizes this or not, but 11 counties out of our 93 counties in Nebraska conduct all-mail elections, only by mail. And that's, like, Boone, Cedar, Cherry, Clay, Dawes, Dixon, Garden, Knox, Merrick, Morrill, and Stanton. There are eight more counties that conduct-- some of the precincts in that county vote exclusively by mail: Cuming, Hamilton, Harlan, Nance, Phelps, Richardson, Thayer, and Wayne. And some of the reasons why they do it by mail: it's, it's more

cost-effective, it's hard to find poll workers. The distance that a voter would have to travel to get to the closest polling place would be extraordinary. And what we've learned in our state of Nebraska, counties that use all-mail elections have the highest turnout rates. So it's, it's no surprise. We heard from so many senior citizens, senior citizens who are still living at home, senior citizens in nursing facilities. I'm just going to read one really quick, short letter that I thought was really-- so cute. She says: I'm Lois McDaniel [PHONETIC] and I'm 105 years old. I would like to continue to be able to vote via the mail. I have to use a wheelchair and I have trouble hearing and seeing. Also, weather is difficult for me, as I can't stand the cold, making it hard to get out and about. A paper ballot is easier for me to be able to get at my own-- or, to go at my own pace and use my visual assistance. So we had to really craft a voter ID bill that wouldn't disenfranchise all those counties that are already voting by mail, disenfranchise some of the best voters, as we all know, are our senior citizens. We didn't want to disenfranchise them. We didn't want to disenfranchise those seniors in nursing homes or assisted-living facility. We wanted to make sure that they had full access to being able to exercise their voting rights. So we were juggling with a, a lot of these concerns express-- expressed by so many different people. But the only way we could get to where we're at is because of the input from the county clerks and the election commissioners because they're the ones that are going to be on the-- in the field being able to execute it. And they came up with so many suggestions on how to make it better. We, in turn, took those suggestions. We bounced it off the Secretary of State. But more importantly, we worked with the Attorney General to make sure that we are not violating anyone's rights or the voter-- national voter ID requirements, and to make sure that everybody did have that opportunity to vote. And I could spend a lot of time reading some of the great letters that all the clerks sent to me. And I asked questions about, what about college students? You know, what type of ID do they have to show? And they said the reason why they liked our proposal that came out of the committee for students, college students, is because, you know, it didn't have to have their address--

KELLY: One minute.

RAYBOULD: Thank you, Mr. President-- which was so important to make sure that we don't disenfranchise college students who are not the best at registering to vote and are not the best at-- you know, they're hopping around from different location to different location. So that's a voting group that we didn't want to disenfranchise. And to try to make sure that it was free, fair, and accessible for everyone

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

was a challenge. But the good news is we had input from so many groups to make this better, to give us good guidance. Thank you, Mr. President.

KELLY: Thank you, Senator Raybould. Senator Jacobson, you're recognized to speak.

JACOBSON: Thank you, Mr. President. I rise this morning and opposed to the floor amend-- MO613. And I too am somewhat undecided at this point how I'm going to vote on the amendments going into LB514. I, like so many others in this body, have a great deal of respect for Senator Brewer and for Senator Slama. That said, if you were going to pick the two people not to get between, those would be my top picks. So, both are tough, tough people that, that feel very, very strongly about what they believe in. And so I'm digging through the pieces of this and trying to figure out just where I want to end up on this issue. I will tell you that the voters have decided. They sent a very clear message what they wanted. So, arguing against voter ID, which-- I tend to agree with the voters. I voted for voter ID-- think it's important. And now it's a matter of the Legislature doing their responsibility of carrying that out. And so I'm going to work through the pieces to figure out exactly where I want to be on the amendment. The other reason I wanted to rise is I did want to address-- there was a lot of discussion over the weekend by so many people about what happened here last week. And what I want to make clear to people that are listening and watching and wondering how this group of 49 people interact with each other on a regular basis-- it's probably important to put some of this into context. Every one of us are down here because we do feel strongly about various issues. We are advocates for our constituents, and we're going to express that on the floor. But I can tell you that there are some really good people in this body, and that was evident Friday. And I want you to know that on Friday, as contentious as that debate was, as contentious as that vote was, we saw the best come out in those here on the floor. And what I mean by that is many people realized that Senator Slama was very ill on Friday and should not have been here. In fact, I'm also going to add she should not be here today, but that's a side note. But she was very passionate about being here then and being here today. And sitting right in front of me, it was clear that she was not feeling well. The TV cameras and the cameras are over on the left side, so several of us decided it was appropriate to get up and shield her-- the view that they would have of her and not have that out on TV. So what happened is Senator Fredrickson, Senator DeBoer, Senator Kauth, Senator Blood all were involved in helping shield that view so that Senator Slama could have some protection. That happened on Friday. That doesn't get reported a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

lot, but that happened on Friday. And it speaks to the quality of the people that, that are here in this body and who they are as people. And with that, I promised Senator Slama I would yield her at least 30 seconds. And so, I'm guessing I left you a little more than that, so I'll give you the chance for the rebuttal. Thank you, Mr. President.

KELLY: Senator Slama, that's 1:36.

SLAMA: I know. And thank you so much, Senator Jacobson, and thank you so much to everybody who helped out on Friday. I get that the Legislature is a public place and sometimes private battles become public. And everybody I talked to and thanked about this, they said, it's OK. Don't mention it. Like, I would do the exact same thing for any one of you. And that's something I take seriously. At the end of the day, the 48-- well, 49 of us might be on different sides of an issue, but we're all on this crazy trip together. And I'm just grateful y'all had my six. Just a quick note. I've gotten some questions about the witness attestation and notary requirements. First off, witness attestation.

KELLY: One minute.

SLAMA: Thank you, Mr. President. Any registered voter in Nebraska can verify that a person showed them an ID to sign off on their ballot. Over a dozen states use this system. It's commonly used for, like, spouses can sign off on each other's, friends, family members, somebody at your coffee shop. It literally doesn't matter. And it's worked well in states like Iowa. Rhode Island actually requires two people to sign off and be verified for a valid ID. We also-- when it comes to the military on the notary requirement-- so if you don't have access to another registered voter in the state of Nebraska-- so say you're deployed. The thankful-- I'm thankful for 10 U.S. Code 1044a, which gives all of our uniformed men and women in the military, whether--

KELLY: That's your time.

SLAMA: Ah, dang it. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Brandt, you're recognized to speak.

BRANDT: Thank you, Mr. President. Thank you, Senator Brewer and the Government Committee for bringing this bill. Generally, I am against notarizing, particularly on a, on a ballot. And I will use my small town of Plymouth, which is about 400 people. We have one notary in the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

entire town, and she works at the bank from 9:00 to 3:00, Monday through Friday. And in order to get something notarized, if you're a customer of the bank, you get it for free. If you're not a customer of the bank, you have to pay \$5. So I'm concerned that if, if we have any language of requiring a notary in a bill and you have to pay \$5, that would be construed as a poll tax. The other situation I have in my district is Thayer County. Thayer County is typical of a small, rural county in Nebraska. One-half of the county is mail-in ballots and one-half of the county has polling places. And this is because to have a polling place, you have to have half the people from one particular party and half the people from another particular party. We can't find enough people from one side that are willing to work the polls. Therefore, those small towns and communities now are required to have mail-in ballots. They really would like to keep their polling places, but it's a public obligation out there. If we want to keep our polling places, people have to step up and, and be willing to work the polls. So I wonder if Senator Slama would be willing to answer a question.

KELLY: Senator Slama, would you yield to a question?

SLAMA: Yes, sir.

BRANDT: Senator Slama, in regards to notarization of ballots, is that included in your proposal?

SLAMA: Notarization is included, but it's just one of two options voters have. Any Nebraska-registered voter can also sign their name attesting that that person showed them a valid ID. So it's one of two options, yes.

BRANDT: So what are the consequences if I sign somebody's ballot?

SLAMA: The consequences if you sign somebody's ballot and that proved to be a falsification of that document?

BRANDT: Yes.

SLAMA: OK. Yeah. That would fall under our falsifica-- falsification of government document statutes. That would be a felony, which is pretty fair across the board for all other states that have this system.

BRANDT: But how would you prove-- it would have to be intentional, would it not?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

SLAMA: Yes, and that's why it would be so difficult to prove. You'd have to look at a pattern of behavior. My witness attestation system also uses a backend audit from the Attorney General's Office. So if somebody in just a one-off, looks at an ID, says, OK, this looks all right, and they in good faith believes that they were attesting correctly and signed off, they're fine. It's that person who has malicious intent who goes off signing off on a thousand witness attestation signatures without verifying ballots with in-- invalid photo IDs. So those bad operators that will be caught up in the witness attestation system, not the one-off people.

BRANDT: So to be clear: on a mail-in ballot, that individual would have to provide a ID number, like my driver's license?

SLAMA: Not under my amendment, no.

BRANDT: The witness would have to provide an ID number?

SLAMA: No.

BRANDT: OK. Thank you, Senator Slama.

SLAMA: Thank you.

BRANDT: I guess I'm going to listen to the debate today to see where we're going. I think it'll be interesting. Thank you.

KELLY: Thank you, Senator Slama and Brandt. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Well, I appreciate colleagues that-- had a couple of folks pull me off to help answer my question that I raised the last time on the mike, which was about provisional ballots. So, this is again on AM1801, talking about-- well, now I can't find the part I highlighted before-- but basically talking about provisional ballots, if a person shows up at the polling location and they don't have an ID and they can fill out a provisional ballot and then have opportunity to cure. And part of it specifically states that the person has to be registered at that location. And so I was concerned that that would supplant the current provisional ballot protocol, which is where somebody is-- has moved within the county and they go to the wrong place or something along those lines. But it was clarified to me that there's the separate section that pertains to that, that opportunity for a provisional ballot, where somebody shows up and is at the wrong polling location, it would still be in effect. And so I asked, obviously, if you show up and you're at the wrong

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

location and you don't have an ID that you would then still be able to do a provisional ballot on both grounds. And then, of course, the ballot wouldn't be accepted until you, the individual voter who filled out the provisional ballot, had cured at least the ID portion, meaning that they had shown up-- let's see. I think it's-- I found it here-- Section 10, which is page 11, and says the voter-- they have to fill out the form stating all of these things: their name, that they're a registered voter at-- and to put their address-- that they didn't provide voter-- photographic identification as required by law, or I have a reasonable impediment. And then they have up to seven days to come to the election commissioner to cure, meaning that they can show their ID or provide the attestation that they do not have to fill out a, a ID, which includes for thing-- or, do not have to have an ID, which includes things like a religious objection, which-- so, I appreciate that and that thoughtfulness of this amendment. And I would point out-- so there is a portion about the religious objection. So a person can-- this is subsection (11) [SIC-- Section 11], where the Secretary of State shall provide a standard certification about a person's impediment and what their applicable impediment is. And so there's (a) inability to obtain a photographic identification due to: disability or illness; or lack of birth certificate or other required documents; or religious objection. And then under Section 12, a voter's religious objection to being photographed may inform-- they may inform the election commissioner or county clerk of the county in which the voter resides of such objection in writing prior to the election. If the election commissioner or county clerk receives written notice no later than 6:00 p.m. on the second Friday preceding the election, the election commissioner or county clerk shall place a note-- notation on the precinct list of a registered voter for a polling location that the voter has a religious objection to being photographed. And then it goes on to state that that objection shall then be noted going forward in subsequent elections. So a person has to do that the one time and then it would continue on. But I guess my concern about that particular objection is that somebody who-- like I said before, we've all spent a lot of time trying to inform voters about time, location, methods of voting when, when you're in the middle of a campaign. And it is a lot of one-on-one conversations with people explaining their specific situation about voting. And I would be concerned about somebody not meeting the deadline for that-- getting that objection noted. And so I guess I wonder if that would be part of the curing process for a provisional ballot--

KELLY: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

J. CAVANAUGH: --somebody shows up without an ID and it's not noted in there that then they could-- thank you, Mr. President-- if it's not noted in the-- in, in the voter roll, that they have a religious objection to an ID, that they'd be able to vote a provisional ballot and then they'd have to then provide the attestation as to their religious exception through the form within the seven days to make sure that their provisional ballot is counted. I think that's how those two sections would read together. Not 100 percent certain because, like I said, I'm still sort of reading this on the fly here, but I do appreciate getting answers to people who are listening and explaining this to me as we go. But like I said, I'm still working my way through it to see where I stand on this, this amendment and any other potential amendments as they pertain to this bill. Thank you, Mr. President.

KELLY: Thank you, Senator Cavanaugh. Senators Riepe and Kauth have some guests in the north balcony: 75 students from Millard Central and Andersen Middle School in Omaha. Please stand and be recognized by your Nebraska Legislature. Senator Dorn, you're recognized to speak.

DORN: Thank you, Mr. President. Thank you for the conversation this morning and the discussion on this bill, this very important bill that we have before us today. I was wondering if Senator Brewer would yield to a question.

KELLY: For Senator Brewer, would you yield to a question?

BREWER: Yes.

DORN: Yes. Senator Brewer, a lot of discussion on the two amendments, but I want to do some assuming here for a little bit. If this bill would pass this year, when would this take effect? For what election?

BREWER: Well, the intent is that if we can pass this here at the end of the session that then this would be in place and available to use for the 2024 election.

DORN: OK. So in our next, I call it, basically statewide election. But suppose someone-- right now, we're all registered voters. We just show up to polls and vote. What will they have to show if your amendment passes? What will they have to do when they go to vote that's different than right now the first time?

BREWER: Well, right now, there, there isn't that requirement. But what they would be required to do is to provide an ID, and the bill kind of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

specifies what that ID needs to be as far as the options. But, of course, the primary would be your DMV driver's license.

DORN: Driver's license. What about a mail-in ballot? If people are used to-- in any county-- used to mail-in or even-- wherever they are-- what do they have to do to get-- to comply with the law then for a mail-in ballot?

BREWER: Good question. So everyone kind of understands, which is kind of a fundamental difference here, is, is, one, you would be putting that ID number on there, and then that is going to correlate to a database that they can go to to find the picture and your name. The, the exception, of course, is that we have in there for those that are, say, in a senior home or assisted living, because the situation where they have to have their, their information already in a database for that facility, then you can do a-- essentially a group verification on individuals and save each individual from having to go through that process.

DORN: So the nursing home could do a-- kind of a-- with the county election clerk, they could do a group thing for that?

BREWER: Well, it's a-- yeah. It's an internal photo ID that the facility has that then they can share so that, that way, it takes less burden upon the senior citizens in order to go through the voting process.

DORN: OK. Because-- thank you, Senator Brewer. One, one of the things that I've had while, I call it, the Government Committee and everybody else has been working on this with Senator Slama, probably the most emails I've gotten about the voter ID bill is, what happens in a nursing home? How do we, how do we make sure that those people yet still have a process whereby it doesn't stop them from getting the ability to vote? Because one thing that is very important, I call it, generally, to our senior population is the right to vote. As we look at many of the elections and as you visit with people, especially when you're running and knocking door to door, the more senior they are or whatever, they have a very, very strong record of voting, and that that's something that comes with them over time and ability to want to vote and their interest in what all goes on. Sometimes some of them--

KELLY: One minute.

DORN: Thank you very much-- sometimes some of the younger ones don't vote as much. And then as they go through life, then they pick that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

more up. But, very interesting to listen to some of the comments today, some of the discussion going on. And, thank you for the debate.

KELLY: Thank you, Senators. Senator Albrecht, you're recognized to speak.

ALBRECHT: Thank you, Mr. President. I'd like to yield my na-- my time to Senator Slama.

KELLY: Thank you, Senator. Senator Slama, you have 4:52.

SLAMA: Thank you very much, Mr. President. And thank you very much, Senator Albrecht. I promise I'm not trying to block discussion of the amendment itself. I'm just trying to build up a record before I end up not feeling well, which I absolutely will at some point today. We're well on our way there. So I just wanted to hit on a few of the questions raised about witness attestation and notary. So my big problem in this section of the Evnen Amendment is that there is no verification of mail-in IDs. So right now, it's a system in this amendment that says you either give a copy of your ID or you give your ID number. The problem is is that their lists of acceptable IDs are so expansive that there's literally no way to verify that that ID number is legitimate because you're saying any, any political subdivision can issue these IDs. There's no set system in place that requires a coordinated numbering system to verify that that person's a registered voter, that they're a citizen. And there's also no sharing of that information besides the DMV Motor Voter Program. So we've got witness attestation on one side of my proposal, and that's any registered Nebraska voter. Any registered Nebraska voter. It could be your spouse, your friend at your coffee shop-- like, whatever. If you don't have access to that, like if you're an out-of-state voter or you're in the military-- and I'm grateful to Senator Bostelman for raising this point because it gives me the chance to nerd out on a U.S. Code. If you're in the military, a, a really cool part of our code is 10 U.S. Code 1044a, which actually says that, as a military notary, any, any uniformed service member, whether they're a reservist or active duty, can serve as a notary. And states are required to recognize those military notary services just the same as they do any other notary public. So I'm referencing 10 U.S. Code 1044a-- say our military members would be fine. I'm, I'm really grateful to Senator Dorn for bringing up seniors in nursing homes because that is a big step in the right direction. I think both sides of us-- both sides of whether you're talking the Evnen Amendment or my own amendment, we had a great communication, great dialogue with the nursing homes about what could work to give our seniors access to voting because so many of our

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

seniors have served our country and fought for that right to vote. And they should have just as much ability as anyone to get out and vote. So that's why we crafted nursing home IDs-- as Senator Brewer noted, that Medicare or Medicaid ID with a photo. We also included expired licenses in that. A lot of our seniors have expired licenses. Witness attestation is also very easy to fulfill if you are in a nursing home surrounded by other Nebraska voters that are registered to vote. But there is this really cool program that some of our counties do, where they actually send election officials to the nursing homes and have them vote. And it's not mail-in voting. It's not absentee voting. It's, like, actual-- considered to be in-person voting. So that's where-- not only do we have access, we have an extra layer of access for our senior citizens, and that's something that I've really focused on and fought to include. The biggest difference when it comes to the student IDs, which I'm grateful Senator Raybould brought up student IDs-- and the discussion we had is it gets back to my first point about verifying--

KELLY: One minute.

SLAMA: --these IDs. Thank you, Mr. President. The big difference between the Evnen Amendment and my own amendment is that there is no requirement for these political entities to share citizenship data or verification data with the Secretary of State's Office to verify these IDs. So we do include student IDs in my bill, but only if the higher education institution opts into the citizenship checks and shares their information-- like, those, those number systems-- of how you can verify how that is a valid ID. Those data points all go to the Secretary of State's Office. Most other states that use valid student IDs have this opt-in process, and it's simply so you can verify it to add that additional layer of security to your votes. So it's really a common extra-- commonsense, extra layer of security for our elections. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Bostelman, you're recognized to speak.

BOSTELMAN: Thank you, Mr. President. I'm only going to have a comment on Senator Slama's-- what she just stated about any military member may be a notary. That may be what statute says, but that's not practicality and that's not reality. Nothing negative against what Senator Slama has to say. It's that you have to be specifically billeted or placed into a position to where you can receive a notary. And that has to be authorized, and it has-- there's certain things that you must do. So not anyone or everyone in the military will have

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

that ability to be a notary. Only certain positions and certain people in the military do have that authorization in order to be a, a notary, a federal notary. Those are usually kept within the JAG Department or within a command structure itself very specific to that, and there's not a, a great deal of those. You can have civilian notaries, people who do pay for that and do that on their own, that have civilian notaries. We would have those in our offices. But usually, there's a very narrow number of people that have those on any installation. So, again, it's just one of those things to think through. It's, it's one of those things that need to be considered. As people deploy around the world and then get redeployed around the world, you don't always have that opportunity to have that notary position in place to be able to do those documents. I don't think that there would be a large, a large number, but that risk or that opportunity or that situation could very well arise. So again, it, it's not that everyone is a notary or could-- they-- maybe they could be by statute. But practicality, that doesn't happen. Function within the military, that doesn't happen. It's certain people within the military and certain positions will have that notary authority. Or if the military member doesn't, then within that office or that directorate, there may be a civilian that's sitting there that has that notary authority. That-- I just want to provide that back for the record. Thank you, Mr. President.

KELLY: Thank you, Senator Bostelman. Seeing no one else in the queue, Senator Cavanaugh, you're recognized to close on your motion. Senator Conrad has been authorized to close on her behalf. Senator Conrad.

CONRAD: Thank you, Mr. President. Good morning, colleagues. I think we've had a very thoughtful introductory debate and deliberation in regards to one of the issues of paramount importance for the Nebraska Legislature this session, and that includes carrying out the will of the voters as expressed at the ballot box in regards to the constitutional amendment to impose voter restrictions that was put before the citizenry in November 2022. So as you've heard from our adept and able Chair, the Government Committee has been working very, very hard, hat-- as has our friend Senator Slama, to figure out how to, to really put in place a measure that honors the will of the people. And to be clear, those voting rights groups and civic engagement groups that have been monitoring these processes have not changed their position, nor have those members that oppose voter ID. I will be clear: I voted against the voter ID measure at the ballot box and I have worked against similar measures in the Legislature for I think about a decade because I see them as unnecessary and costly and needlessly risking the fundamental right to vote for too many,

particularly in the absence of fraud or other compelling government interest, as is the case in Nebraska and across the country. That being said, I think that we all want to take to heart our duty to uphold the constitution. And if that includes implementation of a measure that even we vehemently disagree with, that is part of our duty. That is part of our duty. And so we have to figure out a thoughtful way to give expression to what the voters asked us to do. So I've already spent some time reminding the body exactly how narrow the measure was that was put to Nebraska voters. I've already talked a little bit about the boundaries that exist in terms of constitutional law on the federal and state level, statutory law on the federal and state level, and corresponding relevant court decisions that show us the path when it comes to implementing the voter ID measures that we need to take to ensure that the voters' rights is upheld and to ensure that we do not spark costly, lengthy civil rights litigation. So let me also take a step back here and provide members with a little bit more context. And I'll be happy to track down the specific statistic from the Secretary of State's Office and the election officials who weighed in on these measures to the Government Committee. But as I understand it, approx-- well north of 90 percent of eligal vo-- eligible voters in Nebraska, maybe even up to 95 percent or, or higher than that, are going to have access to a standard driver's license or a state ID or other forms of acceptable photographic identification as is contemplated in these various measures. So the real question before us is then, how do we ensure a safety net for a small percentage of voters that aren't going to have access to these traditional forms of identification to effectuate their right to vote? So that's kind of, you know, where the, the devil's in the details, I guess, would be one way of explaining it, and perhaps helps to illuminate the different policy options before Senator Brewer's amendment and Senator Slama's amendment. And I think that what we looked at carefully in the Government Committee was ensuring that that safety net, that catchall for those-- that very small percentage of gov-- of voters that aren't going to have access to that traditional ID really meets best practices. So there's really, I think, no disagreement amongst the parties that there is a small subset of eligible voters that may have religious objections to the prohibition against graven images. So they may not have access to a photo identification. Actually, that case is a very--

KELLY: One minute.

CONRAD: Thank you, Mr. President-- an old ACLU case that emanates from Nebraska and went all the way up to the Supreme Court of the United States. So that's one component which I think there's a fair amount of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

agreement on. And I know that we're running out of time here, so, Mr. President, I'll go ahead and withdraw this motion.

KELLY: It is withdrawn. Mr. Clerk.

CLERK: In that case, Mr. President, Senator Machaela Cavanaugh would move to bracket LB514 till June 1, 2023. I understand Senator Conrad's authorized to open on this motion.

KELLY: Senator Conrad, you're recognized to open.

CONRAD: Thank you, Mr. President. And just timingwise, it, it seemed like a, a better way to continue some of my thoughts in regards to this measure. So, I would ask members ultimately to vote against this motion. It was filed as Senator Cavanaugh, Hunt, and I moved procedurally to structure debate in the wake of the rules change that was effectuated without a public hearing earlier this year. And that's why this measure is on the board. So again, there's a very small percentage of Nebraskans who may have deeply held religious beliefs that look at the prohibition on-- against graven images as something that would prohibit them from securing a photo on their driver's license, what have you. So there's a, a curing provision. There's an opportunity in these implementation measures to recognize that important First Amendment concern for those with deeply held, sincerely held religious objections. There's also, I think, a recognition and an understanding of perhaps just some practical matters that happen in the course of our daily life, where people who do have access to traditional forms of ID, like a driver's license or a state identification card, may accidentally lose it leading up to Election Day. And so trying to figure out for those kinds of instances how we can have a curing process for people who accidentally misplaced or lost their driver's license to ensure that their right to vote is not hindered. So that's another area that, that we've looked at. We also recognize and understand that some people will not be able to afford identification documents or other forms of vital statistics in order to access a driver's license or a state ID so that there is a recognition that we need to provide access to those documents for those who cannot afford them so, so-- in order to not institute what would be effectively a poll tax. So we have to also have an opportunity for financial resources and support so that people who are unable to afford the identification are not unnecessarily denied a right to vote. We also have to recon-- recognize and understand that there is a, a set of Nebraska voters who are not in Nebraska during the early voting period or on Election Day-- of course, our military voters, our oversea voters, and some students who, who may be at a

campus out of state. So one thing that I think is really important to note in this regard-- and Senator Slama talked about this a little bit, so I just want to make sure to provide some clarity. I understand that she was looking at a model from our sister state in Wisconsin in regards to the attestation provisions. So, she did a great job of laying out how this might work for our military members overseas. But it didn't take into account a couple of things, and I think that is distinguishable and want to note that for the record. The Wisconsin model does not require the witness to be a registered Wisconsin voter. That is an inapposite approach to what Senator Slama's approach is, which would require that the attestation provision is a registered Nebraska voter. So think about this from a practical perspective, colleagues. If you're a Nebraska-- a Nebraskan who's registered to vote in Nebraska and you're attending college out of state, it may not be feasible for you to identify or access a registered Nebraska voter out of state to give you an attestation to ensure that you can participate and your right to vote and have your vote, your vote, your vote be counted. So that's one area that I just lift up by way of example about how we can and should utilize models from other states that have implemented voter ID measures, but we also have to learn from those models as we adopt our own to make sure that we don't create legal, policy, or practical barriers that would infringe upon an otherwise eligible Nebraskan's right to vote, and I think that's something that's also important to remember. Our Secretary of State, our election commissioners across the state, our poll workers across the state take their duty seriously, and we need to do the same. We need to divorce this dialogue and this debate from politics and from personalities. We need to keep it focused on policy. And the election commissioners and the Secretary of State who are charged with implementing these measures have brought forward technical information about how we can best ensure that we facilitate the will of the voters and ensure that hardworking election officials and poll workers can do their job without chaos or confusion. So we look at the playbook from other states. It tells us this is not going to be a problem for the vast majority of voters. However, for folks that are going to face some barriers, we need to figure out, we need to figure out some solutions proactively together for how to address voters who have religious objections, voters who are out of state due to military service or otherwise, students, those who lack IDs, those who lack resources to secure IDs, and those that perhaps misplace or lose their ID accidentally prior, prior to the voting period. So, taking into account all of these different models and the existing legal framework, I believe that the Brewer Amendment does the best job possible to ensure that we are not otherwise infringing upon an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

eligible person's right to vote. And I think Senator Slama, myself, Senator Brewer, every single member of this body wants to ensure that eligible voters have the right to vote. There, there's no disagreement there. And it's also important to remember that we have a host of safeguards in place and significant penalties as well when ineligible voters attempt to vote. We have criminal penalties. We have list maintenance activities that happen. These matters are already governed outside of the measure before you. So you, you can rest easy in understanding and knowing that if you're concerned about ineligible voters voting, that is already governed by other aspects of law and it already carries significant penalties with it, as it should. Because we all can agree that ineligible voters should not be voting. But we, we must also agree that eligible voters should be afforded the right to vote. So I think that's best expressed through Senator Brewer's amendment. And I'd be happy to answer any questions. And, thanks, Senator Brewer and Senator Slama, for their thoughtful approach to this important debate. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Mr. Clerk.

CLERK: Mr. President, I inadvertently did not read the title. LB514, introduced by Senator Brewer. It's bill for an act relating to elections; amends several sections within Chapters 16, 18, and 32; changes the provision relating to the remonstrance petition; changes provisions relating to the Municipal Initiative and Referendum Act; changes-- defines a term; changes provisions of the Election Act relating to voter registration, duties of political subdivisions, candidate filings, name changes, petitions, notices, ballot, secure ballot drop boxes, recall procedures, initiatives and referendums, and electioneering; provides a penalty for false swearing; harmonizes provisions; repeals the original section. Bill was read for the first time on January 17 of this year and referred to the Government, Military and Veterans Affairs Committee. That committee placed the bill on General File with committee amendments. Mr. President, pending is still the Machaela Cavanaugh bracket motion.

KELLY: Thank you, Mr. Clerk. Senator Slama, you're recognized to speak.

SLAMA: Thank you, Mr. President. And good morning again, colleagues. I am grateful that Senator Conrad hit on some of those limitations outlined to us by the Supreme Court-- the religious objection to being photographed, loss of ID, not in Nebraska, money. Those are all key elements that we considered in our own amendment and address differently than the Evnen Amendment, so I think it's critical that we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

do outline those and the constitutional problems that I have with the Evnen Amendment on those fronts. If you look at my AM, AM1833, Section 7, on page 9-- questions have been raised about fees that might be paid as being a poll tax. We've got that covered. If you read that section, the Secretary of State shall be responsible for the payment of all administrative fees associated with procuring the documentation necessary to obtain a state identification card. We also have other lines in this amendment that specifically cover not only costs to voters, ensuring they have no costs, but ensuring that there are no unfunded mandates on our counties. I love fighting unfunded mandates, and the last thing I wanted voter ID to be was an unfunded mandate on our counties. So we were very explicit in that the Secretary of State or the state cover all of these costs related to voter ID. And it's just so important we be thoughtful on that front to not put this cost on our counties. And I'm going to be clear again. I'm going to ask that you vote against cloture as the Evnen Amendment gets attached to this bill. LB514 is our elections omnibus bill. It's a noncontroversial bill we should pass. However, the voter ID amendment that's going to be attached to it is the Evnen Amendment as introduced by Colonel Brewer, who I have all the love and the respect in the world for. I wholeheartedly believe it's unconstitutional. I'll be taking more time on the mike this time around to get through my document with my constitutional concerns. But I'm asking for three main things. Like, I'm not hiding the ball here. I am not moving my negotiations. One, we need citizenship checks covering 100 percent of the voter rolls. Right now, the only thing the Secretary of State is explicitly authorized to check in the Evnen Amendment is the DMV motor voter registration data. Now, that's entirely different from those who just happen to have a license. It covers only about 50 percent-- 55 percent of voters rather than the 90 percent, 95 percent that have a valid driver's license right now. We're talking about two different sheets of music here. Two, we have to have some way of verifying mail-in voting-- mail-in ballots. The language of the constitutional amendment makes it clear-- like, voters include mail-in voters. Like, they are, they are equal. They are equal in the eyes of the law. We need to treat them equally in the eyes of the law. My system for a verification uses what other states have done, which is a combination of witness attestation and/or notarization. Whatever a person has more access to, they can use at no cost to them. Third, we have to remove the "reasonable impediment" language. It goes so far beyond the language of the constitutional amendment. It's voter ID without the voter ID. It means any voter can come in and check one of at least three boxes that we outlined. If you look at that "reasonable impediment" language in the Evnen Amendment, it says "shall include"

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

and then three different reasons that you just check a box for. But it can also include a box that has any other reason on it. It sets the floor. It doesn't set the ceiling for what can be asked. It sets the bare minimum of what can be asked. So this needs to change because it's voter ID without the voter ID. And I'm going to get more into each of these three changes that I need to see happen. But otherwise, I'm telling you right now, if you choose the easy way out and to just go ahead and vote for cloture-- and, you can feel free to. Like, I'm not--

KELLY: One minute.

SLAMA: Thank you, Mr. President-- I'm not going to hold you to it. This is not anything personal. This is entirely based in policy. But look at who is leading this debate on the Evnen Amendment. It's those who have traditionally opposed voter ID. And I'm the person who literally helped lead the charge on getting voter ID across the finish line. I'm saying the Evnen Amendment is unconstitutional. I'm asking you stand with me on that. Otherwise, we are going to be here in a special session, and I'm the last person on the floor who wants that. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Slama, you're recognized to speak.

SLAMA: Outstanding. Thank you very much, Mr. President. So I'm going to get back into my document here with all the constitutional issues of the Evnen Amendment. I am going to turn my light back on again. But I've already covered Section 5, which is that this Evnen Amendment violates the National Voter Registration Act. It goes beyond the limitations that the National Voter Registration Act puts in place for how a registered voter can be removed from the rolls. It removes their due process. My amendment takes the legal approach to doing that. I'd encourage the committee amendment to be amended with my language towards that end in the bill. Sections 10 and 11 place an undue burden on the fundamental right to vote. Sections 10 and 11 of Secretary Evnen's amendment is unconstitutional because the affidavit required is confusing and ambiguous. Again, this isn't just, like, a subjective wording that I'm throwing from the sky. There's literally a case on point noting confusing and ambiguous language and couldn't even pass a rational basis review, which, again, anybody who's even a novice in this could tell you that's, like, really impressive. Under both the United States Constitution and the Nebraska State Constitution, voting has been found to be a fundamental right. Burdens on the fundamental right are subject to two different levels of scrutiny depending on the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

burden imposed. The level of review relevant here is rational basis review. And I'm not just pulling this out of the sky. Voter ID is one of the most litigated subjects, short of, like, abortion and gun rights. So everything I've done in my amendment and my analysis of this has been analyzing case law, analyzing what other states do, and analyzing what the courts have said we can do in crafting this language. So in the case that I'm talking about with Sections 10 and 11 that's directly on point, the Missouri Supreme Court found that a confusing and ambiguous affidavit failed rational basis review and was therefore unconstitutional. The Evnen AM on the affidavit says that a voter who has a reasonable impediment to voting does not have to show an ID. But it does not define what "reasonable impediment" is. The voter has to fill out an affidavit claiming a reasonable impediment. The affidavit restricts the voter to three possible reasonable impediments, but a voter may legitimately believe that their circumstances qualify as a reasonable impediment under the amendment language but is not listed on the affidavit. If the amendment wanted to limit reasonable impediments to those listed on the affidavit, it should say so both in the text of the amendment and on the affidavit. Because it does not, the affidavit is ambiguous and confusing to the voter. Under the logic of the Missouri Supreme Court, then it fails rational basis review. While the Missouri Supreme Court case is not controlling, a Nebraska court or a federal court would analyze the amendment under that same standard. Therefore, we can be confident that this amendment places an undue burden on the fundamental right to vote under both the United States Constitution and Article I-22 of the Nebraska Constitution. Section 10 and associated sections of Secretary Evnen's amendment violates Article I, Section 22 of the Nebraska Constitution by failing to actually implement the voter ID provisions required by that article. And it's important we get to that language. So the language of the actual amendment approved in Initiative 432 by voters in November 2022 is: Before casting a ballot in any election, a qualified voter shall present valid photographic identification in a manner specified by the Legislature to ensure the preservation of an individual's rights under this constitution and the Constitution of the United States. It requires the Legislature to pass a law that says how, how somebody shows an ID, not whether they show an ID. The courts have been so clear in what your exceptions need to be when it comes to voter ID. If we go beyond that with the "reasonable impediment" language we're running directly afoul--

KELLY: One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

SLAMA: --of-- thank you, Mr. President-- the constitutional amendment language. At the same time, hierarchy of laws demand that this provision passed by the voters be interpreted as consistent with the U.S. Constitution. And I'm going to talk about Crawford v. Marion County Election Board. And that's relevant here on my next turn at the mike. Thank you, Mr. President.

KELLY: Thank you, Senator. You're next in the queue. And this is your third time on that bracket motion.

SLAMA: Thank you, Mr. President. And if anybody has any questions whatsoever, feel free to ask me on the mike. I love nerding out on voter ID. This is something that, over the last few years, I've learned a lot of different aspects of. My own amendment is crafted in a way that's thoughtful. It doesn't reinvent the wheel. And the objections that I'm raising here are extremely legitimate. So I'm asking for three changes to the Evnen Amendment. Three changes, three basic changes. I'm not hiding the ball at all here. I'm trying to prevent a court case where this gets taken up and we're stuck in a special session because the courts laughed our bill out of the room. OK. So back to my constitutional objections with Section 10 and 11. In Crawford v. Marion County Election Board, the United States Supreme Court found that under the United States Constitution, there are only select groups of individuals that may receive special accommodations under voter ID laws. So again, this language doesn't say the Legislature shall prescribe whether we can show an ID in a strict voter ID state; it says how somebody can present that ID. And this Crawford v. Marion language is very relevant. They include elderly persons born out of state who may have difficulty obtaining a birth certificate; persons who, because of economic or other personal limitations, may find it difficult either to secure a copy of their birth certificate or to assemble the other required documentation to obtain a state-issued identification; homeless persons; and persons with a religious objection to being photographed. Taken with the Nebraska constitutional amendment, what this means is that the Nebraska Legislature must pass a law implementing voter ID that only, one, makes an exception for those with a religious objection and, two, makes accommodations for all other groups outlined by the Supreme Court. If we cannot make accommodations for those groups, then they too would be exempt. However, the text of the constitutional amendment requires that anybody outside of these groups must show a valid ID, which is where we fall on that "reasonable impediment" language because it's overly inclusive. Evnen AM's Section 10 and related sections go far beyond this by allowing somebody to vote if they're sick or don't have a birth certificate. The last category is very

concerning because the United States Supreme Court has explicitly said that having to go acquire the appropriate documentations to get an ID is not an undue burden on the right to vote. Therefore, the Evnen AM violates the Nebraska Constitution and betrays the will of the voter that everyone should show an ID in order to vote. My amendment, on the other hand, makes accommodations for all of these groups while requiring an ID for those who are not included. The Secretary of State is to aid these individuals in obtaining the necessary documents to get an ID. If they cannot, the Secretary of State can provide them an exemption and provide an ID for them. Now, you might have a question of, well, when we see an influx of people looking for the documentation necessary to get an ID, how many people is that going to take? Well, we have the same language that Missouri uses. And in working with the Missouri government, I found out that they have one person that's able to handle all of the documentation requests that come in their office's way. As you know, Missouri is larger than the state of Nebraska, so I'm confident that one FTE could be able to handle this. Section 12 of the Evnen Amendment, it violates the religious objector's fundamental right to vote as outlined by the U.S. Supreme Court. Any infringement upon a person's sincerely held religious belief is analyzed under strict scrutiny. Requiring those who have religious beliefs against being photographed to recertify that religious belief would be a burden analyzed under strict scrutiny. And it is--

KELLY: One minute.

SLAMA: Thank you, Mr. President-- and it is not the least restrictive means of achieving that. A voter could simply be required to notify the Secretary if their belief changes. Therefore, the recertification would fail strict scrutiny and be an unconstitutional right on the right to vote. So Section 12 says that during every election cycle, a person with a religious objection to being photographed would have to recertify that with their county clerk. Not only does this create more work for our county election officials, it also puts an undue burden on a person exercising a valid religious objection and violating their fundamental right to vote. And I'll keep going on Section 17 to Section 19 on my next turn on the mike. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Machaela Cavanaugh, you're recognized to speak.

M. CAVANAUGH: Thank you, Mr. President. I was going to yield Senator Slama time if she-- I will yield my time to Senator Slama.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

KELLY: Thank you, Senator. Senator Slama, you have 4:50.

SLAMA: Y'all are being really too kind. I appreciate it. Thank you, Senator Cavanaugh. Thank you, Mr. President. So, going on-- I swear I'm on, like, the last front-- backpage with my constitutional objections to the Evnen Amendment. But I'm building a record here. I'm building a record-- one, that everybody was able to hear these constitutional objections; and two, that they were noted on the floor of the Legislature during our discussions. You can take them or leave them. Again, I'm asking for those three changes to be made to the Evnen Amendment and I'll back off. I might even vote for the thing. So, back to Sections 17 through Section 19 of the Evnen Amendment. So this either vi-- violates the fundamental right to vote or violates the Equal Protection Clause as articulated by the United States Supreme Court. So we have case law directly on point. It also violates an amendment passed by voters allowing nonexempt-- as defined by the United States Supreme Court-- persons to vote without showing a valid ID. So if you look at Sections 17 through 19, there are two pers-- possible interpretations. On one hand, one interpretation is that no one's going to check to see if a voter actually had a reasonable impediment to vote, thus not actually requiring anybody to show an ID. So all a voter would have to do is say, I have a reasonable impediment to vote. Check a box and you're good to go. So that's interpretation one. So as we've already discussed in my objections to Sections 10 and 11, this would not only fly in the face of the voters who approved the constitutional amendment, it would fly in the face of the voters and violate the plain language of the constitutional amendment. So, on the other hand, the other interpretation would be that the election officials in each county would be left to interpret and verify whether an individual has a reasonable impediment to obtaining an ID in order to vote. So with the fact that Nebraska's 93 counties-- at a minimum, 93 different election officials would be making separate determinations of whether a reasonable impediment existed. An election commissioner in Scotts Bluff County might interpret somebody's cold as a reasonable impediment, while an official in Otoe County might say that it's not. Such a possibility would violate the Equal Protection Clause of the Fourteenth Amendment as outlined in Bush v. Gore. In other words, if this is the correct interpretation and people's reasonable impediments have to be checked, this amendment will turn all of our elections into the fiasco that was Florida in the 2000 presidential election. And I was only four at the time, but I've read a lot about it. It didn't seem like a good time for anybody involved. However, it doesn't just stop there. Since Sections 17 through 19, when looked at a whole, require three different election entities: the

election officials, the receiving board, and the counting board to make potentially separate decisions on an individual's reasonable impediment, there is a possibility that we would have 279 different interpretations of whether a certain claimed reasonable impediment counts. So, just to summarize: on one hand, when you're talking reasonable impediment, it's either everybody has one or we're going to have 279 different standards and you run into a Bush v. Gore problem. Both run into constitutional issues, and it's important to get those objections on the mike. I've outlined that we can tighten this up by using the language used in my own amendment that simply keeps the groups of those who don't have to show IDs limited to what the courts have said we have to include. So, Section 23, taken with the rest of the Evnen Amendment, Section 23 violates the Privileges and Immunities Clause of the Fourteenth Amendment. The United States Supreme Court has held that a state cannot discriminate against a person based on where they're from as it relates to exercising a constitutionally protected right. Voting, as--

KELLY: One minute.

SLAMA: --I've already stated-- thank you, Mr. President-- voting, as I've already stated, is a constitutionally protected right. Evnen's amendment only pays for documents required to get IDs for people born in Nebraska. Let me repeat that. Evnen's amendment only pays for the documents required to get IDs for people born in the state of Nebraska. If you're born out of state, it doesn't pay for the documents you need to vote. This is a clear burden on a fundamental right based on the, on the state a person was born in. Thus, Evnen's amendment violates the Privileges and Immunities Clause of the Fourteenth Amendment of the United States Constitution. That wraps up my constitutional concerns. I'm happy to answer anybody's questions if they have them. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Senator Machaela Cavanaugh, you're recognized to speak. And this is your last time before your close.

M. CAVANAUGH: Thank you, Mr. President. I did have a question, actually, because I was listening. So I will ask the question then ask you to yield to the question. So what you were just-- what Senator Slama was just saying about only those born in Nebraska. And I'm curious if we could amend the amendment that you're talking about to expand it to include non-- by birthed Nebraskans. Because that does actually take out a large population of people, I would imagine. Would Senator Slama yield to a question?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

KELLY: Senator Slama, would you yield to a question?

SLAMA: Of course.

M. CAVANAUGH: So could we amend that?

SLAMA: Oh, God. We absolutely could. We could address any of the constitutional objections I have noted very easily. And that's what I'm actually asking and encouraging the body to do. So, great question.

M. CAVANAUGH: You have some floor amendments filed?

SLAMA: I have not only floor amendments, but also amendments with my own amendment on them. I'm also happy to negotiate if somebody wants to get around a table with me and cuss and discuss the Evnen Amendment with the amendments that I've recommended be added to it.

M. CAVANAUGH: This might surprise you, but I haven't paid as close of attention to this bill as some others, and so I am sitting here listening and learning and having some very serious binder envy right now. That's, like, next level right there on your, on your podium. Would you like any more time or are you looking for a break?

SLAMA: No, I think I'm good now. I actually do want us to get to the committee amendment and discuss the Brewer Amendment. I'm not trying to block it, getting added on at all. I just want to get my objections on the record, and I think we're there.

M. CAVANAUGH: All right. Then I will yield the remainder of my time to the Chair. Thank you.

KELLY: Thank you, Senators. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. Good morning, colleagues. I wanted to provide just a few additional thoughts in regards to some of the case law that governs these matters and some of the broader legal principles that Senator Slama appropriately mentioned. We should absolutely, in this instance and in all instances, be concerned about potential violations of our fundamental right to equal protection when it comes to government action, whether that's distilled in our federal Constitution or in our state constitution. But let me take a step back and kind of explain equal protection perhaps in more of a-- well, let's call it a law school 101 kind of, kind of manner. So, at first blush, you would think equal protection means everybody has to be

treated, treated equally 100 percent. That's not quite how it works. So, of course, we have equality before the law, but recognizing that different groups are not similarly situated, we can't have a one-size-fits-all approach when it comes to equal protection. And I'm sorry if I'm not explaining this very clearly. But what the courts have said in interpreting these provisions, as has other area of our, our case law, et cetera, and statutory framework, is that you need to treat people equally and the same if they are similarly situated. You do not have that same sort of lens if the groups or individuals are not similarly situated. So when courts start to look at some of these issues, they may provide appropriate distinctions or distinguishable approaches for different groups of people under the same umbrella. So, for example, we might be looking at in-person voters. We may be looking at mail-in voters. We may be looking at in-person early voters. And the question will really come down to whether or not these groups are similarly situated. And I think just as a practical, commonsense perspective, it's clear that they are not in terms of the technical aspects and method in terms of how they are casting their vote. So from a broad perspective, we need to treat all eligible voters in an equitable manner. Absolutely. No disagreement. But when it comes to ensuring equal protection for different types of voters in terms of the method in which they cast their vote, that broad, equal protection provision doesn't look the same because we have-- because the voters are not similarly situated. They have a different method to effectuate their fundamental rights. And so when you look at the case law that is specifically on point-- and Senator Slama already talked about this. There's really no disagreement as to the controlling case law here. But one of the, the primary-- one of the paramount Supreme Court decisions governing this measure is Crawford v. Marion County Election Board. And this was decided in 2008 by the United States Supreme Court. And it ended up being a plurality opinion, so that's important to note. But what it was was really one of the first and most comprehensive looks at how one of our sister states implemented a voter ID provision. And the sister state that they were looking at was Indiana. And what the court found was that the Indiana law that they were looking at, they found that voter ID was permissible, but--

KELLY: One minute.

CONRAD: --they also-- thank you, Mr. President-- they also found that that was because the Indiana law made exceptions for absentee ballots submitted by mail. They made an exception for people who lived and voted in nursing homes and other congregate living facilities. They made exceptions for voters that were indigent. They made exceptions for religious objections. And they had an opportunity for provisional

ballots to be cast and for voters to execute an affidavit attesting to some of those reasons why they may not have access to a photographic identification otherwise. So when the court looked at this Indiana law, it said, we're going to uphold this voter ID measure because you have a thoughtful approach to implementation and not a one-size-fits-all. That's what the Brewer Amendment does, and that's what we need to keep in mind. Thank you, Mr. President.

KELLY: Thank you, Senator Conrad. Seeing no one else in the queue, Senator Machaela Cavanaugh, you're recognized to close on your bracket motion.

M. CAVANAUGH: Thank you, Mr. President. Well, I think, as Senator Slama said, let's get on to the next amendment. So, I will-- well, let's just go to a vote anyways. Why not? It's fun. It's Monday. We haven't voted on it yet, something of mine yet today. It's almost noon. Let's, let's go bananas. Thank you, Mr. President.

KELLY: Thank you, Senator. Members, the question is the bracket motion. All those in favor vote aye; all those opposed vote nay. Mr. Clerk.

CLERK: 0 ayes, 32 nays on the motion to bracket, Mr. President.

KELLY: The motion fails. Mr.-- Senator Brewer, you're recognized to open on the committee amendments.

BREWER: Mr. President. All right. We are now on AM5-- AM853. AM853 was heard on the second day of February with no opposition in the bill hearing. Committee advanced the bill, AM583 [SIC-- AM853], with the amendment on a 6-2 vote. The committee amend-- amendment makes several changes to the bill. First, the amendment makes a few tweaks and changes to this bill to clarify information required on certain candidate filing forms to define how, how to make changes in certain work issues defining to delete old provisions, allowing a wife to sign petitions using the husband's name. Let's see. Additionally adds provisions to Senator John Lowe's LB313, updating the procedures for filing vacant congressional seats. Third, it has Senator Halloran's LB269. This bill would restore the restriction-- restricting timelines that had been established in 2021. Those of you who were here at the time may remember that we ended up with a delay in the 2020 census and the, the numbers and the process there was somewhat challenging and scrambled. This bill was designed to fix that. There was no oppositions to either LB269 or LB313 in the hearings. Colleagues, I'd ask that you move forward AM853. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

KELLY: Thank you, Senator Brewer. Mr. Clerk for items.

CLERK: Mr. President, I have AM1801 from Senator Brewer with a note that he wishes to withdraw and substitute for-- or, excuse me-- Senator Conrad's AM1013 with a note that she wishes to withdraw for Senator Brewer's AM1801.

KELLY: No objections. So ordered.

CLERK: In that case, Mr. President, Senator Brewer would offer AM1801.

KELLY: Senator Brewer, you're recognized to open on the amendment.

BREWER: Well, I just got the amendment handed to me. All right. Well, let's just go back for a second and get everybody in the right mindset. I opened originally on LB514. LB514 was the original committee priority, one of two priorities-- one being LB535, which was voter ID; LB514 was our election reform bill. And, of course, the AM was part of that election reform. As a result, we have had to gut LB514. So there will be no election reform on those issues that I talked about. What we will now do is substitute LB-- or, AM1801. Let's go back and understand how we got here with AM1801, which is voter ID. We started this process literally the first day of session hearings on-- starting on 1 February. We had three major bills. We had Senator Slama's, we had Senator Day's, and we had Senator Erdman's. All three of those received incredible participation from the public. Some of the comments that Senator Conrad made are, are spot on, that we had a, a very challenging situation just because of the sheer volume. When you fill the entire hearing room and you fill the overflow room and you still have people in the hall, that's an indicator you got a long day. But that's good. That's the second house. That's what this place has been designed to do, is to hear that second house. So we did, and we stayed late. And we heard folks with a lot of different opinions when it comes to voter ID. But we had to kind of stay focused on the very limited mission at hand: how do we move forward with voter ID in a manner to give the people what they asked for and not to make it so restrictive that we are going to burden some from being able to vote? That challenge is what we worked on for about 109 days. The primary tool was going to be LB535. And LB535 went through a lot of motions to get to what you see in the black binder there. [INAUDIBLE] the green copy, the original bill was traded out, essentially, on the day of the hearing. And looking back on it, it was probably my fault that I didn't stop the hearing there and reset it for a different day. Because everyone who came to that hearing came to hear that bill, that green copy bill. And to do the change as the bill was about to be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

heard wasn't fair to them, and it wasn't fair to the committee, quite frankly. But you cannot take hundreds of people and tell them to go back into the winter in Nebraska and come back on another day. That's not fair to them. They had come that day. And we still had a very active discussion about voter ID. What happened then is there were elements of the white copy that was dropped that day that were not going to go anywhere. The, the idea of having to have a notary was going to be too cumbersome, especially for the rural counties that had only voter ID that-- in-- sorry-- mail-in ballots. So we started a process to try and sort through that. That included addressing the issue of whether or not the IDs need to be current or not. And at a point, I made the decision. This is not Bob Evnen making a decision. I made the decision that we needed to have a committee bill. We need to have an-- a plan B. I felt it was just wrongheaded for us to move forward and have only one option. And that's when we started to try and figure out how can we build something that isn't too restrictive, that does everything we need it to do, that the Attorney General can defend and that the Secretary of State can implement. And it has been a very long and difficult process. You've heard a lot of discussion today. Is it a perfect bill? Probably not. But I think that we have had a lot of reviews by a lot of good legal minds that have looked at it and have made a determination that we have something that can be made into law here in Nebraska and not violate any constitutionality. And that's essentially what you're being told right now, is that you, you got my way or the highway on this with constitutionality. I don't believe that to be true. There was-- there is no reason for us to have some of the legal minds that we have in this building and have them look at this and not run up a red flag if there was one. And, and we haven't had that. Now, on the details of the bill, as you've seen from this morning, we're going to get a chance to go into them in more detail. I think the issue of the actual ability to vote and who can and can't vote is, is a legitimate issue. But I think if you dig into both bills, you'll be surprised to find some of the things that are in there. And that ultimately is the burden that you have on you this afternoon. Our, our challenge is going to be this: if we make changes to this amendment, it is a, a ripple effect that we have to be careful of in other parts of the bill. And I believe we've got a good bill that can move forward and that we will be allowed to finish our time here in this body and not go into a special session. And I know that's being threatened as something that you're going to have to deal with. You don't have to deal with it. If there's something about this bill that's unconstitutional, I invite the Attorney General or any legal mind who is, is being fair and open in their look at this to come and, and allow us to hear that. Because I think that's the bottom line, is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

if we get around the issue of whether or not it's-- the constitutionality. But the rest of it is simply the Secretary of State being able to execute the plan that we have given him. And I have worked with him. I do not deny it. But I believe it is part of our responsibility to work with him. And I have invited him to meetings that we've had with the Exec Committee because, again, I think we have done a disservice to the people of Nebraska if we burden them, whether it be financially with a bill that is not necessary or if we put burdens on them that also limit who can vote. And again, it's threading the needle. It's, it's not easy business. I would have probably be willing to give this job away to any of the other Chairs at some point during this because there, there may not be a perfect answer in this. But what we have, I think, is going to allow us to have voter ID come to the people of Nebraska in this session. Thank you, Mr. President.

KELLY: Thank you, Senator Brewer. Senator Slama, you're recognized to speak.

SLAMA: Thank you, Mr. Brewer-- I mean, thank you, Mr. President. I'm so sorry. It's been a long day and it's not even noon yet. And thank you, Chairman Brewer, for your thoughtful comments. And again, I don't envy your position. And I still consider you to be a good friend. And you've had my six when I've needed you, and I appreciate that. If we're going to talk about process and procedure and what happened behind the scenes, I'm more than happy to have that discussion. I find a far more convincing argument to be the constitutional issues with the Evnen Amendment and the ways that we can address that through the three simple changes I'm proposing. This isn't my way or the highway. This is, I'm on board with the Evnen Amendment if you make these three simple changes that address my concerns and ensures that we're not implementing a voter ID framework without the voter ID. I don't care who gets the credit. I want to pass a constitutional bill that does right by the voters. So if we are going to talk about process and procedure, I will touch on that because I think it is important. So it's important to note that the Evnen Amendment was dropped-- and it didn't have the same amount of review, clearly, that my amendment had. And the negotiations-- the reason why there were so many iterations of the bill is that we were taking those small changes that we needed to make between the different departments, from DMV to the Secretary of State's Office, that we thought-- and they were mostly being made in good faith. It's been analyzed by the Attorney General's Office and everybody else in this building that has a vested interest in the outcome of this. So what's different about the Evnen Amendment is this was crafted between the Chairman of the Government Committee and the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

Secretary of State's Office without the input of the committee, without the involvement of the committee-- unless other people were involved. And I think they might have been without me knowing-- in meetings that happened without me knowing, without it being vetted by these different departments, without anything. And it was sold that this amendment is a clean amendment. And that's because the Secretary of State, Bob Evnen, told you that it was. There is a reason that this amendment is 30 pages compared to my own amendment, which is 72. And it's because there are very clear, very obvious constitutional issues that, when you have a strict voter ID law and constitutional framework that you have to take into account, and the Evnen Amendment simply doesn't do that. So I'm encouraging a red vote on this amendment because it's going to force us all to come to a table and iron out these differences and iron out the core constitutional issues that I see with this bill. When I'm saying these three issues, are those all the issues I have with the Evnen Amendment? Absolutely not. But I'm highlighting these three as the things that need to be fixed. Otherwise, we've just staggered our way into a special session because the courts will throw, throw this out. Like, get up and tell me that Section 5 does not violate the National Voter Registration Act and tell me why. Tell me that Sections 10 through 11 don't place an undue burden on fundamental right to vote when we have a case directly on point. And it also violates the amendment passed by voters allowing nonexempt persons to vote without showing an ID. It's far too expansive and flies in the face of the constitutional amendment language. Argue that I'm wrong when I say that the "religious objection" language in Section 12 isn't only too expansive and that we're saying anybody can say they have a religious objection and they don't even need to show an ID, much less a photo ID in order to vote, but also that they have to reregister in every single election cycle. Get up and tell me that somehow Sections 17 through 19--

KELLY: One minute.

SLAMA: --don't violate the fundamental right to vote or the equal protection law when you have one of the most famous election law cases in our country's history, Bush v. Gore, exactly on point, with the problems you have when you set different standards when it comes to "reasonable impediment" language. And tell me that Section 23 somehow doesn't violate the Privileges and Immunities Clause of the Fourteenth Amendment when we're creating two different classes of citizens: those who are born in Nebraska and get to use the Secretary of State's services to get them the documentation-- documentation they need to vote or those who are-- happened to be born outside of Nebraska that now have to pay a poll tax in order to vote. I am asking to address these

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

three simple issues, address these constitutional issues so that we can move forward. But until then, I'm going to ask you to vote no on the amendment on the board. It is the Evnen Amendment. Thank you, Mr. President.

KELLY: Thank you, Senator Slama. Seeing no one else in the queue, Senator Brewer, you're recognized to close on AM1801.

BREWER: Thank you, Mr. President. I-- again, I need to stress to you that we have a committee process here. And this has been a longer committee process than any other committee in the Legislature. If you look at the number of hours that we have spent in hearings on voter ID, you look at the hours spent in review of, of the voter ID policy, the working lunches, the, the, the, the time over lunch that we just spent in discussion, and then the final two votes, we have-- we will nullify a voter ID process that the committee has gone through and gone through tremendous pains to find the way to thread things and get it right. If, if we didn't have a legal counsel, if we didn't have a Secretary of State, if we didn't have an AG to look at these things, then I would say, yeah, let's be concerned. But we do. And, you know, I, I, I'm-- I am wore down from this process and, and would like to see us move forward with AM1801 and, and get voter ID to the people that have asked for it. With that, thank you, Mr. President. And I ask you to vote for AM1801 and ultimately LB514.

KELLY: Thank you, Senator Brewer. Members, the question is the adoption of AM1801. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: 32 ayes, 3 nays on the adoption of the amendment, Mr. President.

KELLY: The amendment is not adopted-- is adopted. Excuse me. Excuse me. Mr. Clerk for items.

CLERK: Mr. President, some items. Your Committee on Enrollment and Review reports LB531A, LB562A, LB705A, LB727A to Select File. Additionally, amendments to be printed from Senator Briese to LB243A; Senator Sanders to LB583A. Finally, Mr. President, a priority motion: Senator Albrecht would move to recess the body until 1:00 p.m.

KELLY: Senators, you've heard the motion to recess. All those in favor say aye. All those opposed, nay. We are in recess.

[RECESS]

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

DeBOER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Record, Mr. Clerk.

CLERK: There's a quorum present, Madam President.

DeBOER: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I have no items at this time. Madam President, returning to LB514. Senator Slama would move to withdraw FA137 and substitute AM1883.

DeBOER: If there is no objection, so ordered. Senator Slama, you're recognized to open on your amendment.

SLAMA: Good afternoon. Thank you, Madam President. And thank you, everybody, for not objecting to that. What I did there was I simply replaced a placeholder floor amendment to replace with my own voter ID amendment language. I think you'll find, as you consider this amendment, the language is far cleaner and it's far more vetted. I think a point that may have gotten confused on the previous vote on the Evnen Amendment is that the Attorney General has not reviewed or signed off on the Evnen Amendment. I think that's an important point to flesh out, especially as we're talking about the legal nuances of the-- especially the constitutional problems I see of the Evnen Amendment which was just attached to the Government Committee amendment. So I'd like to dive into the details of my own amendment and invite your consideration and green vote on this. AM1883 is the white copy amendment replacing the text of the Evnen Amendment. As you're aware, the voters of Nebraska passed Initiative 432 to require photo, photo ID to vote. Nebraskans have spoken decisively, and it is now our responsibility as legislators to ensure that only the votes of eligible voters are counted and to protect public confidence and the integrity and legitimacy of our representative government. This puts us in line with 35 other states in the United States. Just to be clear, AM1883 is the document that lays out all the provisions of LB535 and represents months of negotiations between executive branch departments and other various stakeholders in this debate. First and foremost, I understand the importance of ensuring that all eligible voters in Nebraska have access to the necessary identification. It is also important that everyone who has a right to vote can vote. With this said, LB535 defines the forms of currently existing valid photographic identification, including Nebraska driver's license or state ID card. This is a state ID card issued specifically for voting

purposes, which would be issued for free. This also includes a receipt for a state driver's license ID, which the DMV is now required to put photographs on. So remember back in the day how you used to get a paper copy of your ID and it was simply, like, a copy of your driver's license along with your pertinent information on it? Now the DMV gives you a copy without your photograph on it. This would just return us to where we were at about 10 years ago, where you get that copy with your photograph on it and it's a valid ID to use. This also includes expired IDs, a U.S. passport, an ID issued by a state agency or a political subdivision, including colleges and universities that complies with the bill's opt-in process. The bill requires these entities to offer this. An ID issued by the United States Department of Defense, the United States Department of Veterans Affairs, the VA, or a Native American Indian tribe or band recognized by the United States government, nursing home IDs for those on Medicare and Medicaid, certificate issued by the Secretary of State for those who have no means to get another ID. Additionally, religious exemptions required under case law are also included in this amendment. Even if Nebraskans do not already have these forms of identification, we have worked with the Secretary of State's Office to provide a free option for obtaining a photo ID and ensuring that information about these options is widely available to the public, including adding provisions that include the requirement of the Secretary of State to designate an individual to help voters who do not have IDs obtain IDs and help get the necessary documents to obtain the ID. The Secretary of State's Office must pay any fees associated with this process to ensure that it is free to voters, including the documentation necessary to obtain a state identification card. Furthermore, LB535 also lays out the increased responsibilities of the Secretary of State's Office, including the new provisions relating to voter identification. This includes various public awareness campaign-related provisions such as a dedicated website and mailing a postcard to every registered voter who does not have a valid photographic identification. This is crucial to ensure all Nebraskans are made aware of these changes. In addition to what qualifies as a form of valid photo identification and how one may obtain a free photo identification, I will go into the process of how this new requirement will affect the actual process of voting, such as mail-in voting and in-person voting. Moving on to the specifics of in-person voting, which includes the following: the voter must present a valid photographic identification-- which is defined in Section 4. There are exceptions for those who have a religious objection to being photographed, as this can be done through a signature verification process. In the event that a voter forgets their identification, they can fill out a provisional ballot and show

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

a form of valid photo identification at the election office within seven days. As many of you are aware, initially the language included the mail-in voting provisions that required a notary. However, through various rounds of compromise, it has been since reduced to either a notary or a witness attestation requirement. The witness can be any Nebraska-registered voter. The notary can be any-- from any state, territory, U.S. consular office, or pursuant to 10 U.S.C. 1044a. That's that previous discussion we had about military IDs. They're reco-- military notaries. They're recognized the same in their notary services as notary publics. As far as remedial steps, if the voter fails the witness requirement, they can come in and show an ID up to seven days after the election. Instructions for the voter and the witness come with the ballot but are also available on the Secretary of State's website. To address concerns related to citizenship verification, LB535 assigns the initial and ongoing responsibility to the Secretary of State to verify the lawful status of individuals on the voter registration list. However, it is crucial to emphasize that the Secretary of State can only remove someone from the voter registration list if they ask to be taken off or are convicted of registering to vote while not being a U.S. citizen. The goal of the bill's process is to prevent noncitizens from ending up on the voter list on the front-- on, on the first place. And this is a very different approach than the Evnen Amendment, which takes away due process rights and automatically removes somebody from the voter rolls if they're found not to be, from what the Secretary of State believes, a citizen. We eliminate those due process rights under Evnen Amendment. Mine keeps those in place and follows federal law on that front. In order to ensure voter integrity and the mail-in voting process, LB535 includes an audit process. The Attorney General is tasked with conducting an audit of witness signatures on a meaningful sample of witness-verified envelopes. This audit serves as a safeguard to verify the authenticity and accuracy of the signatures, reinforcing the trustworthiness and reliability of mail-in voting. This amendment reflects a collaborative effort and compromise between different stakeholders, including the Attorney General's Office and the Secretary of State's Office. Their expertise and input have been instrumental in shaping a bill that strikes a balance between protecting the integrity of our elections and ensuring accessibility for all eligible voters. The, the legislation acknowledges the concerns and interests of Nebraskans who have expressed their desire for a photo ID requirement while taking into account the need to protect access to voting for all eligible citizens. Thank you for your time, and I ask for your green vote on AM1883. And I would like to quickly address the conversation that's been had about the fiscal note

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

related to this amendment. From what I can tell-- and the Secretary of State's Office has yet to point me in the direction of any definitive language other than the language that they asked to be included in this amendment, that once they pointed to saying it would be very costly, we took out-- pointing out any language in the bill that actually justifies their fiscal note. On this bill, I genuinely believe this is an attempt to have a death by fiscal note for this amendment. I would very much encourage your green vote on this so that we can get an official fiscal note on this amendment and adjust whatever language we need to adjust. This amendment, it goes into what I was discussing all morning. In addressing all of the constitutional issues I see with the Evnen Amendment, I'd really encourage your green vote on this. I think this gives us a far better and far more conservative starting point that we can actually negotiate from. And I would really encourage your green vote on this amendment. If you do vote green on this amendment, I will let this bill go. But I, I, I do want to give us every opportunity to avoid a special session. And if we fail to address these constitutional issues with the Evnen Amendment that's now been adopted onto the bill, I will have to go eight hours. I think everybody on this floor knows that I'm, like, the last person--

DeBOER: One minute.

SLAMA: --that wants to do that today. So, please, I'd encourage your green vote. It gives us a far better position to negotiate a conservative voter ID bill that actually reflects the framework approved overwhelmingly by Nebraska voters. I'm asking that you stand with me and the voters of the state of Nebraska who overwhelmingly approved voter ID by voting for AM1883 and approving an amendment that actually requires voter ID. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. Senator Bostelman, you're recognized.

BOSTELMAN: Thank you, Madam President. I caught part of your opening here, Senator Slama, on this. But one question I do have-- and you can probably answer it as we come up through discussion on this amendment-- is, how does the Secretary of State confirm or identify your U.S. citizenship? And to-- could I-- Madam President, I'd like to ask Senator Slama a question.

DeBOER: Senator Slama, will you yield?

SLAMA: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

BOSTELMAN: So could you answer that question? How is it that the Secretary of State-- what, what vehicle-- what is it that, that he or she would use to verify the citizenship of every person on the tax roll-- or, voter roll?

SLAMA: I'm grateful-- thank you very much, Senator Bostelman. I'm-- I am very grateful you asked that question because it is a key difference between my amendment that's up right now and the Evnen Amendment. So the Evnen Amendment only uses data that's available to the Secretary of State now through the DMV Motor Voter Program. It's a federal program where a person can register to vote when they renew their license. That data is already shared with the Secretary of State's Office. Covers about 55 percent of voters registered in Nebraska. The language of the constitutional amendment of qualified voter indicates to me that we need to have a coverage of 100 percent. So not only are we using the motor voted-- motor voter data in my amendment, we're also requiring that any ID that is allowed to opt into this process be required to share that citizenship language offered-- that citizenship information with the Secretary of State's Office. So you do have to have 100 percent compliance. If it does pop up that a person might not be a citizen, they're not lined up, they're notified at least three times of, we've been-- you've been pinged that you're not a citizen or you're not eligible to vote. And there-- from there, an investigation is conducted. They are not removed from the voter rolls. It's only after that person fails to cure, that fails to provide evidence that they're a citizen-- which we anticipate may happen-- and convicted--

BOSTELMAN: My question to you then with that, and that's fine--

SLAMA: Yes, sir.

BOSTELMAN: The question would be is, what are those other forms of ID that you're speaking about? Who controls those and, and where is the language? Is there language in there so that they can share that information with DMV? And then how does DMV have to protect it?

SLAMA: There is, yes. We do have this very clearly outlined. It's between a few different departments. So, like, say, driver's license information. That'd be the DMV. The DMV's already greenlit, working with us to share the information. DHHS would cover, like, the Medicare and Medicaid information. Other states who have already done this have used similar language, and it's just simply an opt-in process. The DMV is going to be the one with the overwhelming amount of that data, and it's done through a secure process.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

BOSTELMAN: So the-- but you said it's an opt-in. So if there's someone who has an ID that's allowed that doesn't opt in, what do we do with that?

SLAMA: It's not an individual opt-in process. The opt-in process I was referencing is, like, if you're in a higher education institution, right now we're saying that if you decide to opt in and make your student IDs eligible for a person to be able to vote, you, as opting into that process, must share over that citizenship data so that we can use that citizenship data to verify that you are who you say you are and eligible to vote.

BOSTELMAN: And then if they don't opt in, what's the-- what, what's the next-- what has to happen?

SLAMA: Then that ID would not be eligible to be used in elections.

BOSTELMAN: OK. So what's that person supposed to do?

SLAMA: That person can use any other form of the licenses offered, from driver's licenses to-- and the state ID card that's free for voting.

BOSTELMAN: If they don't have those and can't obtain those, what do we do?

SLAMA: If they don't have those and can't obtain those, they can reach out to the Secretary of State's Office. We have language that they are to work with voters--

DeBOER: One minute.

SLAMA: --in getting those documents, whether it's a driver's license or-- especially, our main focus is those free vote-- voter ID cards that are intended only for voting.

BOSTELMAN: OK. Thank you.

SLAMA: Thank you.

BOSTELMAN: So I-- appreciate the answers. That's, that's the question I have as I look at the committee amendment and compare that to Senator Slama's amendments that she has. I, I appreciate that information. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

DeBOER: Thank you, Senators Bostelman and Slama. Senator Brewer, you're recognized.

BREWER: Thank you, Ms. President. OK. I am in opposition to AM1883 because it would-- what it would do would replace the committee amendment. Understand again that we have worked a very long time in committee to get to where we're at with this. And I understand this is not Senator Slama's amendment, and that is why we're going through this process right now. But we've got 35 other states that have voter ID that we have looked at to try and figure out what our left and right boundaries are in doing it. And I think that was some good guidance because that has been tested through the constitutionality process. Now, I just got off the phone with the Attorney General, and his point is that, I have not reviewed in entirety either of these bills, and we're not-- and have not blessed off on either of these amendments. So I understand that's where he's at. And what he does is he addresses specific issues that are being addressed. So if we, if we want to take the, the three that have been brought up as [INAUDIBLE] Senator Slama's three demands. First one is changing-- change the citizenship checks performed during the voter registration. All right. During the, the-- an investigation of citizenship before the registration when the applicant has signed a voter oath would violate the, the National Voter Registration Act. We have provisions in AM1801 to give the Secretary of State additional taskers related to voter maintenance and citizenship-- or, voter list of, of ongoing maintenance issues. And to, to have to gin up a whole new system for voter ID, as far as the verification of it, is an, is an expense, and it is a big expense. And I will have them work up where in her bill this expense is. But, depending on the, the figures you want to work with, it's in the \$20 million range. It is, it is a major expense, and it's not needed. Our system is not broken. And what we're trying to do now is figure out how to get voter ID and not to have the additional expense or the burden on the Secretary of State's Office. If there-- if the-- if it's not broken, I'm at a loss on why we're trying to reinvent this process of, of voter ID that we currently have. We're trying to work through the issues so that we have in-person voting on election day, that early voting and elections is done efficiently and effectively, that we don't affect the early voting by mail. And, and from the rural folks, we have to figure out how to make sure that the mail-in election part of it's done efficiently and effectively. Now, we've talked a lot about the attestation earlier-- and, and this is where you need to try and visualize what we're talking about. If you have that ballot and you simply are putting down that ID number that then you can correlate to an individual, which has a photo and a name,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

that is much different than trying to do that through a process of signatures. And the other part of the-- getting the signature, of course, is that you're trusting that person to look at the ID and understand whether it is a valid ID or not. The other system--

DeBOER: One minute.

BREWER: Did you say time?

DeBOER: One minute.

BREWER: One minute. Thank you-- with that, what you're doing is you're taking the ID and you have a direct correlation to a person and, and not trying to verify signatures. And, and you're-- the person who is trying to validate that signature has no base of knowledge like a government official, state official would have, to make sure that that is a valid ID that they're signing an oath into. So just remember these things as we go through this. This is a major, major change from what the Government Committee bill is. Thank you, Ms. President.

DeBOER: Thank you, Senator Brewer. Senator Erdman, you're recognized.

ERDMAN: Thank you, Madam President. And good afternoon. Listening to the debate today and the different proposals or ideas that are presented, there was another voter ID bill that was submitted to the committee. It was LB230. I submitted LB230. And in my opinion-- of course, it's a little prejudice-- I think that was the best bill submitted. It didn't catch any traction there. We had several people testify in favor. I didn't arrive at the committee or stay at the committee or contact the committee and work that bill because I thought it was a commonsense approach and people would see that it was that and would decide to use part of that or all of it as their choice. That didn't happen. I understand that's how things work. There's another issue that I don't think we've even discussed today, and that is voter integrity. Whether you believe our elections are fair and whether there is any kind of discrepancies or not, that's up to you. But if there is, if there is, I introduced a bill that would have solved that whole problem. Now, it was a very commonsense approach. And as I've said numerous times, commonsense is a flower that doesn't grow in everybody's garden, so it didn't catch on. It was very simple. You voted on Tuesday, a Tuesday in May and November. You showed an ID. You voted on paper. That paper ballot was then counted at the precinct level by hand. And then the vote number was totaled, placed in the box, and taken to the courthouse or the clerk. And then they recorded it. No connection to the internet. No messing with how

the vote was counted. And it would give a provisional "balloter" an opportunity for people who were disabled or couldn't make it to the polls an opportunity-- with verification that they couldn't get to the polls-- that they could get a mail-in ballot. That solves all of the voter integrity issues. All of them. And I got many emails about that, that people couldn't make it to the polls. And when one of the testifiers testified about LB228, he related this story. He said, 2,300 years ago, there was a couple that was required to go to their hometown for a census. She was nine months pregnant. She rode on a donkey. He walked beside her and they made it. You may remember those people. Their names were Joseph and Mary. So my attitude was, in this modern day and age, with the convenience that we have-- there is occasion-- there would be occasions people couldn't make it, but the majority of them would find it more easier than Joseph and Mary did. That bill didn't advance either. But if you want to fix any kind of opinion about voter integrity, that's how you do it. We used to do it that way, and it worked quite well. But that bill is dead in the water and it's not coming back. But having voter identification is very important.

ARCH: One minute.

ERDMAN: But if, in fact-- and I'm not saying there is-- but if there is an issue with voter integrity, this voter ID thing won't fix that. Now, I'm not saying there is. I'm just telling you that that's a separate issue. And so we will pass something. I don't know whether it's Senator Brewer's Government Committee amendment or Senator Slama's, but we will pass something because we have to complete this before we go home. This is not an issue that we need to come back for a special session. Thank you.

ARCH: Senator Ballard, you are recognized.

BALLARD: Thank you, Mr.-- thank you, Mr. President. Would Senator Slama yield to a few questions?

ARCH: Senator Slama, will you yield?

SLAMA: I would love to.

BALLARD: Perfect. Senator Slama, I think you talked a little bit on your opening, but can you kind of rehash the, the audit process?

SLAMA: Absolutely. So under our audit process for the signatures of witness attestation, we're aiming not to get the one-off who signed a form not knowing which ID a voter could use and they happened to fail,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

did not know the law. We're not looking for that at all. What we are doing is a backend process on this audit through the Attorney General's Office in which the Attorney General will take a statistically significant number of signatures-- which, in this case, on an average voter roll, it'd be about 1,000 signatures at the backend of an election-- run them, run them through checks and make sure there are no widespread issues with, with the witness attestation signatures. If it warrants further investigation, my understanding is that the Attorney General will then move forward, going into more detail and analyzing more signatures.

BALLARD: Perfect. Thank you. And then one more question.

SLAMA: Absolutely.

BALLARD: The exceptions. Can you, can you kind of highlight the exceptions in your, in your current amendment?

SLAMA: Absolutely. Two of the major exceptions we have-- and a key difference between the Evnen Amendment and my amendment is that we actually delineate and specify the exact groups of voters that the Supreme Court says that we have to have exceptions in some way, shape, or form to photo ID for. First off is those with a religious objection to being photographed. The key difference between the Evnen Amendment and my own amendment is that those people, in my own amendment, with a religious objection to being photographed would notify their county election official. And they would go through a process in which they're given an ID with a picture of their signature. So you're still presenting a photo ID without invalidating that person's religious exemption. On the Evnen side, you simply have to call in every single election cycle to your county clerk and reaffirm that you have a religious objection to being photographed. Then you don't even have to show any form of identification, photographs aside. The second group that we specifically target as being covered in my amendment are those who are absolutely, no matter through effort of Secretary of State, come hell or high water, cannot get the documents they need to show that they are a citizen to get the IDs presented. There, the Secretary of State in that extremely rare instance-- I can see that only happening after a reasonable investigation and a reasonable effort by the Secretary of State's Office happening in maybe one or two cases. In that case, the Secretary of State would create an ID with that person's photo through their own office confirming that they are eligible to vote.

BALLARD: Perfect. Thank you. Thank you, Senator Slama.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

SLAMA: Thank you.

BALLARD: Thank you, Madam President.

DeBOER: Thank you, Senators Ballard and Slama. Seeing no one else in the queue, Senator Slama, you're recog-- recognized to close on your amendment.

SLAMA: Thank you, Madam President. So I'm, I'm really grateful for the discussion this morning and this afternoon on voter ID. I respect this process and I also respect the voters of the state of Nebraska. Every single one of us took an oath when we came in here to uphold the constitution of the state of Nebraska. And after November 2020, our constitution reads-- sorry. Let me bring up the actual constitutional amendment language. This kind of ruins the drama of my point, but I will get there. Getting my binders confused. That, before casting a ballot in any election, a qualified voter shall present valid photographic identification in a manner specified by the Legislature to ensure the preservation of an individual's rights under this constitution and the Constitution of the United States. With the amendment I'm presenting to you today, I'm asking that you greenlight an amendment that's received months of consideration, that's far more ready for prime time than the Evnen Amendment that was just recently passed. I ask that you put us in a stronger position as a Legislature to stand up in court against any challenges that this voter ID bill may bring. I'm asking you to address clear constitutional hurdles that I've outlined several times in the Evnen Amendment. I'm asking you to stand on the side of the voters of the state of Nebraska, who overwhelmingly voted in favor of voter ID. I'm asking that you stand with them in supporting an amendment that says that you have to show a photo ID in order to vote. The Evnen Amendment is voter ID without voter ID. And I'm asking that you stand with me in voting in favor of AM1883 to give us-- the voice of the voters of Nebraska back in this place, to give us a constitutional footing to move forward and negotiate and to be in a conservative place where we can move forward with negotiations that are rooted in the language that voters overwhelmingly approved in November, not simply the path of least resistance. Thank you, Mr.-- Madam President. And I would like a call of the house.

DeBOER: Thank you, Senator Slama. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

CLERK: 22 nays-- 22 ayes, 2 nays to place the house under call.

DeBOER: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senators DeKay, Armendariz, McKinney, Bostar, McDonnell, and Hansen, please return to the Chamber. The house is under call. Senator DeKay and McDonnell, please return to the Chamber. The house is under call. Senator Slama, we're lacking Senator McDonnell. Would you like to proceed? The question is, shall AM1883 be amended to AM853 of LB514? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record.

CLERK: 8 ayes, 22 nays on adoption of the amendment, Madam President.

DeBOER: The amendment is not adopted. Mr. Clerk for the next item. I raise the call.

CLERK: Madam President, next item: Senator Slama would move to amend the standing committee amendments with FA138.

DeBOER: Senator Slama, you're recognized to open on your amendment.

SLAMA: Thank you, Madam President. So I appreciate that vote. It's-- I actually got more votes than I anticipated. But when I'm bringing that amendment and when I'm discussing the constitutional issues with the Evnen Amendment, I'm, I'm doing everything in my power to save us from going to a special session. I'm also laying the groundwork for everybody to make edits to the Evnen Amendment as they see fit. I understand that using my amendment as a starting point after the Evnen Amendment came out of the Government Committee probably wasn't ideal, but I look forward to discussing the constitutional issues with this amendment and talking about where we go from here. So, I'm actually interested-- so, reading from the handout from General Brewer-- not general. I'm really sorry to give you a promotion there. It's colonel-- Brewer on this bill, the-- that the way-- from the handout: Unfortunately, the way her bill addresses these issues would violate federal law or impair protections we already have. And the only-- oh, here we go. Here are the points. And I'm going to read them aloud because I'm going to think as I'm on the mike and process these live. Requiring an investigation of citizenship before registration when the applicant has signed a voter oath would violate the National Voter Registration Act. We have provisions in AM1801 to give the Secretary of State additional taskers relating to voter list maintenance and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

citizenship. Voter list maintenance is always ongoing. My quick response to that is, no, it's not. And also there is nothing authorizing or mandating any entity like we have in our language in the Slama Amendment, which was just unfortunately voted down. There's nothing empowering the Secretary of State to do anything more than what they're doing right now than with the DMV motor voter list, which only covers about 55 percent of IDs used right now in order to vote. Requiring a notary public or a witness for out-of-state, overseas, and military worker-- voters is a violation of the Equal Protection Clause of the United States Constitution. It also violates the Uniform and Overseas Citizen Absentee Voting Act. The problem, again, here is that other states do it and they do it with a strict notary requirement. We're actually making our-- my amendment broader with the witness attestation and notary requirement. The biggest issue I have here with the Evnen bill is that there's no means of verifying that the person is who they say they are when it comes to mail-in voting. It's a fraud-friendly amendment that I've fleshed out pretty thoroughly. And if we're not going to use witness attestation or a notary, like the overwhelming majority of other strict voter ID states use-- I'm open to suggestions rather than just shaking your head no and burying it in the sand. Other states successfully do this. I don't know why our Secretary of State's Office can't find the capability within themselves to follow through with the will of the voters. Three, the reasonable impediment certification is a fail-safe. Providing this sort of problem-solving process is important for any constitutional analysis similar to the used-- one used in the Crawford case. Now, that's just a complete misread of the Crawford case, and I'll go into that on one of my next turns on the mike. Here's the problem-- and here's the problem that's been the case since day one with this bill-- is that the voters gave us a very clear mandate that we as a Legislature have to follow through with a photo ID, voter ID framework. The Secretary of State is clearly pushing for a weak voter ID framework. That's ideally what he'd love to do. He'd like to do less work. I get it. The problem is is that the voters demanded that we have a strict photo ID, voter ID law. And in doing so, we have to take lessons from those with strict voter ID. Now, the Secretary of State continuously fails to do that, especially in his own amendment with the constitutional issues I've outlined and I will now outline up until cloture time. And I get it. This is the path of least resistance. The Secretary of State signed off on it, so you've been told it's a clean bill. I am up here with years of experience and years of experience behind me and working with previous introducers of voter ID and election law experts and telling you this is not a clean bill. And until somebody gets on the mike with the authority to do so

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

and tells me that they are going to work in good faith on these three items, I'm not going to believe it and I'm not going to stand down and we're going to burn through time on the floor that we don't have because I don't want us to go to a special session. Like, I'm going to give us as many opportunities as I can to where I'm not rolling back here in October and my first speech opening on any of this is "I told you so." Because I get-- this is a very dry thing. Very few people really dig into the election law statutes, and that's all right. But it's really important that when we do, we, we do so thoughtfully. And unfortunately, we're being guided by the Evnen Amendment. Just to give you a heads-up, the Secretary of State is batting 0 percent when it comes to challenging constitutionality before the Nebraska State Supreme Court during his time as Secretary of State. So you can side with the person who's batting 0 percent on that end, who's just shaking his head no at everything that gets presented. Or we can learn from the lessons gained by other states and other case law, which is what we've done in my amendment. It's what I've done in the changes that I am proposing to happen with the three changes that I'm requesting from the Evnen Amendment. The three changes I'm requesting are actually getting teeth to the citizenship checks. Right now, the citizenship checks would only cover about 55 percent of voters. And moreover, the timing of it gives people no due process and removes them from voter rolls without even notification. Point two is witness attestation and notary. And you know what? If there's some other way that we can verify mail-in ballots to ensure that people are who they say they are and that they're following through with the language of our constitution and noting that they have presented a valid photo ID in order to vote, that's fine by me. But at the end of the day, we have to have some sort of verification for mail-in voting. Otherwise, you're adopting a fail-- fraud-friendly path of least resistance that goes directly in the face of the constitutional amendment, goes directly in the face of the voters who overwhelmingly approved voter ID, and will not hold up in court. Now, three, the "reasonable impediment" language. The Secretary of State is correct in that you do have to have pressure relief valves. However, you don't have to have "reasonable impediment" language that anybody and everybody can point to and say, I have a reasonable impediment for voting. I still have not received an explanation from anyone, including the Secretary of State's Office, as to what standard would be used. So you have one to two standards that I've already talked about and I'll talk about again. The first standard is any reasonable impediment that somebody says is a reasonable impediment counts as a reasonable impediment. That runs in clear violation of the state constitutional language. On the other hand, if you're saying that there is some sort of standard

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

determined by the county clerks or election officials for what a reasonable impediment is, then you're running into a Bush v. Gore problem, Fourteenth Amendment, that says that you can't have different standards for different counties when it comes to eligibility to vote. And for example, this is like saying that someone in Dakota County might have a reasonable impediment that's determined to be reasonable by their county clerk. They could say, my dog ate my ID, and that wouldn't fly with the Otoe County election clerk. These are three extremely clear issues that I am outlining now. And I'm just asking for somebody to get on the mike and tell me, I'm going to work-- I commit to working with you on these issues. Like, that's all I'm asking for. Because right now, I'm bringing up these, these very clear issues-- I feel like I'm the canary in the coal mine going, we're going to have a special session if we pass this bill. And I promise you, we are going to have a special session if we pass this bill because it is voter ID without voter ID. And this isn't for anybody on the floor who's stuck around to listen to debate on this-- and I'll take this until whenever cloture is-- but for the folks at home. If you voted for voter ID and you think that somebody should show a photo ID to prove that they are who they say they are in order to vote, you should be reaching out to your senator right now. And especially based on the last vote on the board--

DeBOER: One minute.

SLAMA: Thank you, Madam President-- and asking them why you don't support the will of the people. Like, this is a very clear problem I'm working to address here. And I'm going to do everything I can, even if it means standing up here for eight hours myself, until I get a guarantee from someone that this is going to get worked on. Because this stuff hasn't even been reviewed by the Attorney General yet. That's the craziest part about this whole thing. This amendment has not been reviewed by the Attorney General. When it comes to constitutionality, we don't have an official take because the Attorney General hasn't looked at it. So I, I would invite you to stand with me in asking for a review of these issues as we go into next round. And until that happens, voting against cloture. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. Senator Erdman would like to recognize the following guests: Sen-- Mr. Tim Horn and Mrs. Kelly Horn [PHONETIC] of Hemingford, Nebraska. Please stand and be recognized by your Nebraska Legislature. Senator Conrad, you're nex-- recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

CONRAD: Thank you, Mr. President. Good afternoon, colleagues. I wanted to rise in support of LB514 and the Government Committee amendment and rise in opposition to Senator Slama's amend-- floor amendment, FA138. As an important point of just general engagement and education for all new members, I just wanted to make sure that the record was clear and that new members were clear about how a special session happens and when a special session happens. It doesn't automatically happen. At all. It's governed by the constitution and it's governed by state law. And it happens in two ways. One would be if the Governor were to issue a call for a special session. The second way for a special session to occur is if 10 state senators initiate a process and start a request that is administered by the Secretary of State's Office, and then that is essentially sent out and meant to poll or seek affirmation from additional members to see if there are, in fact, a supermajority of 33 senators who would agree to call themselves into special session. So, that's how special sessions are called. And I appreciate and understand that Senator Slama and other stakeholders are incredibly and rightly concerned about having to reconvene for a special session on this or any other topic, but special sessions do not just happen. Special sessions go through a deliberative process. They are called by the Governor or a supermajority of senators. And they are to address extenuating circumstances that would not be foreseen during the course of the legislative session. Doesn't appear that those kinds of circumstances are in place in regards to this matter. Now, we also have to remember we do have elections coming forward next year in 2024. And we do need to give enough time to the voters, the election officials, and all stakeholders to update policies, procedures, rules, and regs, do training, do education, order the appropriate materials to make sure that we can carry out the will of the voters as expressed at the ballot box in November 2022 in regards to how we implement the voter ID measure. I think the other thing that's important to be clear here is, you know, Senator Slama is absolutely right. Different attorneys can look at existing case law, at different statutes, and come to different conclusions as to interpretation or application. She has been very straightforward in regards to her interpretation and application. I would note that my perspective, that of committee counsel, that of other lawyers who are looking at how we best implement these measures have come to a different conclusion. And that conclusion is that the Government Committee approach is divorced from politics and personalities and adheres to the existing guidance, as we understand it, under the federal Constitution, the state constitution, federal voting rights laws, state voting rights laws, and corresponding case law. The final point I will note on that topic is, of course, it's how we make our case as attorneys, where we argue

whether or not certain precedent applies to the issues at hand. I would respectfully disagree with my friend, Senator Slama, in regards to whether or not Bush v. Gore is the prominent--

DeBOER: One minute.

CONRAD: --controlling authority-- thank you, Madam President-- in regards to this issue. I would contend that it is not. But rather, the Crawford opinion is more on point and analogous to this-- to the situation before us. Finally, when it comes to Gore v. Bush, I think it goes without saying, of course, that this is widely held across the political spectrum as one of the most notorious and perhaps poorly received and poorly analyzed cases in Supreme Court history. So it would be always, I think, a little bit shaky to rely upon that. And what that looks at is vote counting, not how we cast our vote, which is what we're talking about in voter ID. Thanks, Madam President.

DeBOER: Thank you, Senator Conrad. Senator Blood, you're recognized.

BLOOD: Thank you, Madam President. Fellow senators, friends all. I'm just going to speak real briefly. I am against the floor amendment but in favor of the Government amendment and the underlying bill. And, and I have to say, I don't ever get involved in constitutional discussions because I don't fancy myself a constitutionalist. The only time I talk about constitution is when we blatantly, blatantly take away constitutional rights like we did on Friday from parents on that bill. But I will say also that when I'm told that we have to wait for something from the Attorney General, I've never been really impressed by what we get from the Attorney General's Office. We recently got some information from the Attorneys General's Office that was basically not an answer. It was just a bunch of mumbo jumbo. And I look about how when we had complaints about the petition process to get this bill on the ballot that it was never taken seriously because if you can prove deception, which we were able to do, then that particular list on that petition drive is supposed to be invalid, and that was never done. So the fact that we're waiting to hear something from the Attorney General's Office doesn't impress upon me that I want to do anything. What I want to do is listen to Senator Slama and Senator Brewer and hear what their pros and cons are, and I'll make my decision based on that. But to be told that we need to have more information from the Attorney General's Office, I-- you know, they're going to have to start doing their job in a way that influences me better. Because from Mead, Nebraska with the previous Attorney General and never taking action on that to the most recent decision that they

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

shared with us, I am unimpressed. But with this, I would be more than happy to yield any time I have left to Senator Slama.

DeBOER: Senator Slama, you are yielded 3:15.

SLAMA: Well, thank you, Madam President. Thank you very much, Senator Blood. I do appreciate your point on the Attorney General's input and his thoughts. It's just as ludicrous to me as it is a-- waiting on that to pass a bill is just as ludicrous as having a member of the executive branch in your Executive Committee meeting in which a vote's taken, where that input from the executive branch member that's shuttered away from public view and only in the view of the committee members and the news media and-- yeah, that's why I objected to the process here. But I, I do, I do like your feedback, and that's why I'm really trying to narrowly focus my concerns with this bill on the five core constitutional issues. Do I have more issues with this bill? Absolutely. But I do think that this bill lives and dies on five failures, in my mind, to follow either federal-- the federal Constitution, federal law, the state constitution, or other precedent that's been set controlling case law. So, just a quick overview of that. And I'm going to get back into reading this whole memo again, especially as I wait for my staff to bring me the full text of the Bush v. Gore decisions and the Crawford decision so we can just read them aloud together. Because I do think there is this aura among certain people of, oh, this person's a lawyer, so they understand the law better than I do. They might have sometimes more experience when it comes to it, but at the end of the day, if you can be literate, you can get, like, 90 percent of the law. Like, law school is just teaching you the right things to look for in a case. So we're going to read those cases together, and I'm going to give you my takeaways from those cases because we do have time. And I think this is a very, very valuable thing to be allotting a lot of time to on the floor. So we've got five main constitutional issues with the Evnen AM, which we've now adopted and confirmed we're going to continue to support. Section 5 violates the National Voter Registration Act, NVRA. Sections 10 to 11 places an undue burden on the fundamental right to vote. We've got case law directly on point on that one. It also violates--

DeBOER: One minute.

SLAMA: Thank you, Madam President-- the amendment passed by voters by allowing nonexempt persons to vote without showing a valid ID. Section 12 violates religious objectors' fundamental right to vote as outlined by the United States Supreme Court. Section 17 through 19 either violates the fundamental right to vote or the Equal Protection Clause

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

as articulated by the United States Supreme Court. And Section 23, when taken with the rest of the amendment, violates the Privileges and Immunities Clause of the Fourteenth Amendment. That's all I have on this turn on the mike. I assume-- I might be up next. But if not and I have a quick break, that would be wonderful. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. And indeed you are next in the queue.

SLAMA: Oh, dandy. It's like every day's Christmas. All right. So starting back up with this memo-- and I do think it's important to get it in the record several times in full just to really drive the message home that the complaints I'm making here are clear, concise, to the point and on point. And I'm hopeful they can direct discussions between General and Select File so we can fix clear issues with this amendment before we end up passing something that's taking the easy way out into law, where we're going to be stuck in a court case where the court, based on my reading, will absolutely not uphold this. So Section 5, violating the National Voter Registration Act. Secretary Evnen said that he would use Section 5 of this amendment when people register to vote so as to prevent noncitizens from getting on the voter rolls in the first place. However, that is not what his amendment does. Section 5 of the Evnen Amendment states the Secretary of State shall develop a process to use the information in possession of or available to his or her office to match and verify the citizenship of the corresponding registered voter. This use of the term "registered voter" rather than "applicant" or some other term clearly shows that it only applies to somebody that is already registered to vote. Removing someone who is already registered to vote is a clear violation of the National Voter Registration Act. 52 U.S. Code 20507(a)(3) indicates that a registered voter can only be removed from the voter rolls in four situations: the voter request to be removed, the voter died, the voter moved and certain criteria were met, or the voter was convicted of a crime that disqualifies them from voting. A simple citizenship check using DMV data prior to removing a person from the voter registration rolls does not meet any of these situations. That is why my amendment requires an investigation and prosecution-- so, due process. The Secretary's amendment is a clear violation of the NVRA. So what this amendment would lead to is folks that fall into a loophole that might have been convicted of a felony five years ago and finished serving their sentence three years ago to where they get pinged as not being an eligible voter. Not only would they not receive any notification that they were removed from the voter rolls, but they would be lining themselves up for a case of

being accused as a noneligible voter under this amendment. If you care about due process and you care about doing things the right way and giving people notice before they're breaking the law, I'm telling you right now that this amendment does not provide any kind of notice. It does not fulfill the needs of due process and it does not fulfill the language of the NVRA. Sections 10 and 11 place undue burdens on the fundamental right to vote. Sections 10 and 11 of Secretary Evnen's amendment is unconstitutional because the affidavit requirement is confusing and ambiguous-- those are used-- words tabbed by the court. They're not just adjectives that I'm using lackadaisically-- and couldn't even pass rational basis review, which is actually a very impressive thing to do. Under both the United States Constitution and the Nebraska State Constitution, voting has been found to be a fundamental state right. Burdens on the fundamental right to vote are subjected to two different levels of scrutiny depending on the burden imposed. The level of review relevant here is rational basis review-- and I'm basing that off of the *Burdick v. Takushi* case decided by the Supreme Court, Supreme Court in 1992. In a case directly on point, the Missouri Supreme Court found that a confusing and ambiguous affidavit failed the rational basis review and was therefore unconstitutional. The Evnen Amendment on the affidavit says that a voter who has a reasonable impediment to voting does not have to show an ID, but it does not define what "reasonable impediment" is. And the voter has to fill out an affidavit claiming a reasonable impediment. The affidavit restricts the voter to checking the box for three possible--

DeBOER: One minute.

SLAMA: Thank you, Madam President-- three possible and reasonable impediments, but a voter may legitimately believe that their circumstances qualify as a reasonable impediment under the amendment language but is not listed on the affidavit. If the amendment wanted to limit reasonable impediments to those listed on the affidavit, it should say so both in the text of the amendment and on the affidavit so as not to confuse voters. Because it does not, the affidavit is ambiguous and confusing to the voter. Under the logic of the Missouri Supreme Court then, it fails the rational basis review. And I'll continue on my next turn on the mike. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. Senator Hansen, you're recognized.

HANSEN: Thank you, Madam President. Going through emails and phone calls about this bill-- we did, we did receive a phone call from one of my constituents in Stanton County. And Stanton County is one of those 11 counties in Nebraska that conduct elections entirely by mail.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

And so he wants to know, as a rural, widowed Nebraskan, how do these amendments affect his ability to vote? Do these require him to go chase down somebody in the county to consider his valid vote? With that being said, I did have a question for Senator Brewer that would pertain to that, possibly. But I wanted to ask the same question of Senator Slama. I'm just-- on behalf of my constituent, getting an idea on how each of their perspectives would affect his ability to vote with the mail-in ballot that they have. So what would-- Senator Slama, would you yield to a question?

DeBOER: Senator Slama, will you yield?

SLAMA: Yes.

HANSEN: So what would your amendment require from the voter that I just mentioned earlier of these all-mail-in election counties?

SLAMA: Yes. In the case of that voter, where they have nobody at the house and they have nobody to go to, they can go to, like, literally anybody in the county election office. They'd be required to help them out. But they can also contact the Secretary of State's Office, who's meant to have a reasonable amount of outreach, and can get that voter taken care of. They'd also have the notary option. I think in this case, they'd prefer some variation of witness attestation to make their lives easier.

HANSEN: OK. Thank you very much. Appreciate that. And I, and I appreciate you getting up here and explaining your perspective a lot more that we can all listen to, and I encourage all my colleagues to listen as well. And so, with that, will Senator Brewer yield to a question, please?

DeBOER: Senator Brewer, will you yield?

BREWER: Yes.

HANSEN: So I know you have a couple counties as well in your district-- Cherry and Dawes County-- that also do the all-mail-in ballot-- they're one of the all-mail-in ballot counties. So what does-- what does the Government Committee amendment require from the voter of these all-mail-in election counties?

BREWER: All right. We'll go back and, and kind of rehash some of this with the attestation, or the, the signature. One bill requires it, one doesn't. Mine requires that you put on that ballot your identification, whether that be a state ID or whether that be your

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

driver's license. That is then able-- the Secretary of State's then able to look at that and confirm that that is the person who has sent that ballot, the names match, and that's how they complete that cycle to understand who the voter was.

HANSEN: All right. Thank you very much. And I, I appreciate both senators answering this question on behalf of one of my constituents. I hope this clear things up for him and maybe some others that are in some of these, like, counties as him. So, with that, thank you, Madam President.

DeBOER: Thank you, Senator Slama, Brewer, and Hansen. Senator Slama, you're recognized. And this is your third opportunity.

SLAMA: Good golly gosh. Thank you very much, Senator DeBoer. I appreciate that. And I appreciate Senator Hansen's question because it drives home a key-- like, the key focus of, at least my perspective, of when we were negotiating this bill, this amendment-- everything to do with this bill. Two, two main things were on my mind: is it constitutional and is it workable? So the workable language we have covered with the witness attestation and notary requirement that over a dozen states have at least some variation of. Like, Rhode Island requires two witness attestation signatures. We just require one. And then the other question becomes, is it constitutional? Now, my-- one of my biggest concerns with the Evnen Amendment, as I've discussed several times before, is that there is no backend verification on those mail-in voting, mail-in voting ballots. So you have two options under the Evnen Amendment when you do a mail-in vote. One is put an ID number. The second is a copy of your eligible ID. Copy of your eligible ID-- fine. We can just debate that and discuss that. My core problem is with the ID number, which I understand is necessary. Because if you just have it be a copy, you run into issues with, well, who doesn't have access to a copier? I understand why you include the language. But given the wide range of IDs allowed-- like, any political subdivision can issue an ID under this amendment. There's no means of the Secretary of State verifying that ID to ensure that you are who you say you are or even that you're using a valid ID. So for me, this is the key difference between our two bills. There's no language-- even if the Secretary of State wants to point to and says that there is language-- if you can't point the line in the section of the bill where that language lives, it doesn't exist. And every reading I've had of that bill is that that language doesn't exist, and that's a huge problem for me because we want to make sure that the mail-in voter in Douglas County is held to the same standard as the in-person voter in Dawes County. It's a matter of every voter in the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

state having to show a photo ID in order to vote unless they fall within a very narrow list of exceptions. So, back to my concerns about the constitutionality of the Evnen Amendment. This is discussing Sections 10 and 11, placing undue burdens on the right to vote. While the Missouri Supreme Court case is not controlling, a Nebraska court or a federal court would analyze the amendment under the-- that same standard-- so, rational basis test. Therefore, we can be confident that this amendment places an undue burden on the fundamental right to vote under both the United States Constitution and Article I, Section 22 of the Nebraska Constitution. Section 10 and the associated sections of Secretary Evnen's amendment violates Article I, Section 22 of the Nebraska Constitution by failing to actually implement the voter ID provisions required by that article. And the language is-- and it's so important we get this on the record several times because this is our framework for how we're meant to be moving forward. Before casting a ballot in any election, a qualified voter shall present valid photographic identification in a manner specified by the Legislature to ensure the preservation of an individual's rights under this constitution and the Constitution of the United States. It requires to-- it requires the Legislature to pass a law that says how somebody shows an ID, not whether or not they have to show an ID. It's not ambiguous at all when it comes to that. And at the same time, hierarchy of laws demand that this provision passed by the voters be interpreted as consistent with the United States Constitution. So the Constitution is the highest law of the land there. And then a little bit further down is the state constitution. In Crawford v. Marion County--

DeBOER: One minute.

SLAMA: --Election Board-- thank you, Madam President-- the U.S. Supreme Court found that, under the United States Constitution, there are only select groups of individuals that may receive special accommodations under voter ID laws. They include elderly persons born out of state who may have difficulty obtaining a birth certificate; persons who, because of economic or other personal limitations, may find it difficult to either secure a copy of their birth certificate or to assemble the other required documentation to obtain a state-issued identification; homeless persons; and persons with a religious objection to being photographed. This is a case from 2008, and it's very helpful in guiding our knowledge. And I will come back and continue this on my next turn on the mike. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. Senator Conrad, you're recognized.

CONRAD: Thank you, Mr.-- thank you, Madam President. And good afternoon, colleagues. I continue to rise in opposition to the floor amendment and in support of Senator Brewer's amendment and the underlying bill. I wanted to just make a, a few additional points that may be instructive and helpful for members who I know are carefully listening to the debate to have some additional context beyond just the dueling amendments and approaches that are before you on display in the debate today and that you may have been keeping track of over the last couple of weeks and months in kind of, I guess, doing social media or traditional media kind of recounts of where we are in, in the process and kind of further explanation illuminating the approach that 92 out of 93 county clerks and election commissioners are taking, along with the Secretary of State, and the majority-- almost a unanimous majority of the Government Committee, and then the approach that Senator Slama has decided to chart, which, of course, is, is her right to do so. I want to also make sure that members are aware, for folks who haven't had a chance to work kind of on the front lines of some of these, these voting rights issues maybe as deeply, but as a civil rights attorney-- and my husband and I were just kind of chuckling that we met in law school and were in the same law school class. And I think it was 20, 20 years ago this May that we graduated from law school. I've spent the entirety of my career working for working families as a civil rights attorney and as a member of the Legislature, so I've had a distinct opportunity to be able to work on a lot of these voting rights issues over the years. And I want to share just a little bit of background without getting too deep into the weeds because I'm far more of an enthusiastic student than I am an expert when it comes to kind of the backend administration in regards to ensuring integrity of our voter rolls. But there are a host of existing laws, policies, and procedures in play when it comes to making sure our voter rolls are secure and that they are accurate, that it's not a process that is regulated to kind of a Wild West approach. It's highly, highly regulated. So, for example, Nebraska's county-- their county election commissioners, county clerks, and the Secretary of State's Office work periodically with a host of different stakeholders to make sure that our voting-- that our electoral roll, rolls, our voter rolls are accurate and have integrity. So they're constantly doing appropriate checks, safeguards, and cross-checks with, say, for example, the criminal justice system, with USPS, with vital records, with other critical stakeholders, coordinating with ERIC, I believe, to make sure that our voter rolls are appropriate, are up to date, and to ensure that those who are ineligible to vote for a variety of reasons do not remain on the list, but also taking great care to ensure that those who are eligible to vote are not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

needlessly removed because, of course, both, both of those outcomes are abhorrent to democracy. We do not want noneligible voters to vote and we do not want eligible voters to be denied from voting. And that's why we don't have to come up with a novel plan--

DeBOER: One minute.

CONRAD: --thank you, Madam President-- to implement voter ID. We can take into account the existing legal framework when it comes to things like citizenship, when it comes to things like voter integrity, when it comes to things like how to implement voter ID. And that is the deliberative, careful process that the Secretary of State, the vast majority of election officials, and the Government Committee has put forward. I respect and appreciate Senator Slama's right to chart her own course, but it is inapposite to what the lessons teach us in terms of the case law on point. Thank you, Mr. Pre-- Madam President.

DeBOER: Thank you, Senator Conrad. Senator Brewer, you're recognized.

BREWER: Thank you, Madam President. All right. Let me, let me go back and stress to you that I am not an attorney. I appreciate Senator Conrad being one and being able to address issues that she has a good working knowledge of and that was part of the discussions that we had in the committee hearings. For those that are starting to question, well, you know, is the committee just all ate up and did they lose their focus? Is there, is there some crazy thing going on here that would cause us to start doubting this whole process? I ask you to remember that 92 of the 93 county elections officials weighed in in support of this bill. We have the Government Committee. So it's not like this is a Crazy Ivan that we just pulled out of our hat and we're throwing out there. And there's a point I can only listen to so much without coming back with some feedback here. If you look at AM1801, page 1, and go to line 12-- and what, what, what this does is it starts breaking out the whole process, the photo ID and identification. And in there, it talks about the United-States-issued identification, state of Nebraska, an agency, or political subdivision of the state of Nebraska, of the state of Nebraska, and postsecondary institutions within the state of Nebraska. OK? That's fairly clear and forward. And if you drop down to number two, it says, the document issued by the United States Department of Defense, United States Department of Veterans Affairs, Veterans Administration, any branch of uniformed service as defined in Section 85-2902, or any Native American tribe or band recognized by the United States government. Then below that, it goes into a little more detail with: Shows the name of the individual whom the document was issued, shows a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

photograph and digital image of the individual whom the document was made for. And then it goes into hospitals, assisted-living facilities, nursing homes, or other skilled care facilities. If we take and flip over-- and you have it in your black binder-- to page 1 on LB535 and you go down to number three-- in here, we talk about a document issued by the government agency or political subdivision that stratifies all the following: that the document shows the name of the individual to whom the document was issued, the name confirms to the name of the individual voter registration record, the document shows a photograph or digital image of the individual to whom it was issued. Let's see. One of the items listed as evidence of lawful status in the subdivisions through-- of Section 80-- 484.04-- this provided by individuals as part of the issuing process of the document, the agency, or political subdivision-- political subdivision-- that issues the document provides the lawful status information from the item provided pursuant to the subdivision and this subdivision to the State Secretary-- to the Secretary of State. If you keep reading down-- the bottom line is that when we come to this issue of trying to verify your ID, this paragraph 3 is kind of the, the, the wild card, that says ID, items, any political subdivision--

DeBOER: One minute.

BREWER: --issue of subdivision keeps coming up. And if you compare the reading of these two-- and that's where we're going to have to go with this because we're going to go back and forth on lawyer stuff all day-- but just go black and white and, and tell me which one is cleaner and, and easier to understand. And I think if you do that, the logic will carry the day and you'll understand why the committee did what it did. Thank you, Madam President.

DeBOER: Thank you, Senator Brewer. Senator Slama, you've already spoken three times, but there's no one else in the queue, so this is your close.

SLAMA: Outstanding. Thank you, Madam President. I, I knew that I was just overexcited to respond to my friends and colleagues, Senators Conrad and Brewer, on their points. So this letter that was signed by 92 out of 93 election officials in the state of Nebraska has been brought up a lot. And there was actually a rule in our negotiations to not even-- to not give that letter weight because at the end of the day, what happened with that letter and how it was coordinated, I've had several people reach out to me and express regret at signing onto that letter and feel as though they were pressured because they signed a letter that was shoved in front of their face with a 24-hour

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

deadline to sign on and a lot of pressure that they felt the need that they had to sign onto it to be in line with the other county election officials. So a lot of them-- and I'm not saying all of them-- feel that they weren't even given enough time to analyze it and were pressured to just go along with the flow, which I feel a lot of us are being pressured to go along with the flow now. Just because a bill is shorter and-- it doesn't mean it's cleaner and easier to understand. It's cleaner because the Secretary of State's Office said it was, said it was. Now, the problem is is that hasn't been vetted by literally everybody else that was around the table for three months negotiating a voter ID amendment. And easier to understand? We all know that that doesn't have any standing with whether or not the courts hold up with an amendment. So, just to get back to my constitutional issues with voter ID-- with this voter ID amendment. It's called the Evnen Amendment. I just got done with my quote from Crawford. If y'all are excited to hear more about Crawford, I have the full case text and will be able to fully flesh out the Crawford case and talk about what it says because we'll go through the entire Crawford case. But taken with the Nebraska constitutional amendment, what this means is that the Nebraska Legislature must pass a law implementing voter ID that only, one, makes exception for those with religious objection and, two, makes accommodations for all other groups mentioned by the Supreme Court. If we cannot make accommodations for those groups, then they too would be exempt. However, the text of the constitutional amendment requires that anybody outside of these groups show a valid ID. The Evnen Amendment and related sections beyond Section 10 go far beyond this by allowing somebody to vote if they're sick or they don't want to get out their vote-- birth certificate to get an ID. This last cate-- category is very concerning because the U.S. Supreme Court has explicitly said that having to acquire the appropriate documents to get an ID is not an undue burden on the right to vote. Therefore, the Evnen Amendment violates Nebraska Constitution and it betrays the will of the voters that everyone show an ID. My amendment, on the other hand, makes accommodations for all these groups while requiring those who are required to show an ID to show an ID in order to vote. And even a provisional voting system where if they don't have an ID, they have seven days to get one if they vote on Election Day. The Secretary of State is to aid these individuals in obtaining the necessary documents to get an ID. If they cannot, the Secretary of State can provide them with an exemption or provide an ID for them. Again, this is what Missouri does, and they handle all of this with a state that is much larger than Nebraska's with one person, one full-time employee whose job it is to help out voters. Section 12 violates a religious objector's fundamental right to vote as outlined by the United States

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

Supreme Court. Any infringements upon a person's sincerely held religious belief is analyzed under strict scrutiny. Requiring those who have religious beliefs against being photographed to recertify that religious belief would-- would have to recertify that religious belief, and that would be a burden analyzed under strict scrutiny. And it is not the least restrictive means of achieving that. A voter could simply be required to notify the Secretary if their belief changes, which is what's required under my own amendment. Therefore, the recertification would fail--

DeBOER: One minute.

SLAMA: --strict scrutiny-- thank you, Madam President-- and be an unconstitutional burden on the right to vote. Section 6-- 17 to Section 19 would be my next one up. But for the sake of not having to have a floor amendment voted down, I will withdraw this current floor amendment.

DeBOER: Thank you, Senator Slama. Mr. Clerk for items.

CLERK: Senator Slama, we've got FA145, which is exactly the same as your previous FA. Normally, that'd be a reconsideration, but you withdrew. Would you like to take up FA145 or move on to a new floor amendment?

SLAMA: Wasn't that one striking Section 1 and this one striking Section 2?

CLERK: You've got multiple striking each section, Senator.

SLAMA: OK. We'll go to the next one that I'm going to guess strikes Section 2.

CLERK: OK. In that case, Madam President, Senator Slama would move to amend with FA145.

DeBOER: Mr.-- or, thank, thank you, Mr. Clerk. Senator Slama, you're recognized to open on your floor amendment.

SLAMA: Thank you very much, Madam President. Thank you very much, Brandon. I do want to take a moment, since I have a longer opening here and only about seven minutes of stuff worth to read on this turn, to thank some very important people who have been wonderful throughout this process: my amazing staff, two of which are under the balcony, my legislative aide, Tori Osborne; my outstanding committee counsel, Joshua Christolear; Sue Ellen, my-- Sue Ellen Stutzman, my

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

administrative aide who keeps the trains running; and Natalie Schunk, who keeps all the trains rolling on the Banking, Commerce and Insurance Committee. They're a wonderful team. And I also have to thank those who came before me, who introduced voter ID and have encouraged me to hold strong on this: people like senators-- former State Senators La Grone, Murante-- Senators Larson and Janssen actually signed a letter in support of, of my bill for the committee hearing, so their support means a lot. And last but not least, Marcia in, in the Bill Drafters Office has been wonderful about drafting the different revisions. And if anybody, like, feels the need to say thank you to Marcia, she loves Diet Coke. So if y'all want to go into a pool with me and buy her, like, a pallet of Diet Coke for putting up with us this session, like, I'm game to do that and happy to coordinate. But today's, today's battle didn't come with me standing as an army of one, though sometimes it can feel like it. It's come from a lot of wonderful people who have supported me along the way. And at the core of that support are those who supported voter ID, the hundreds of thousands of Nebraskans who voted in favor of Initiative 432 to get voter ID across the finish line. The Nebraska Legislature tried and failed for years to get voter ID across the finish line. It always got filibustered or got blocked coming out of committee. Something always happened to where we couldn't even get it out of the Legislature to go to a vote of the voters. So the voters took it into their own hands, successfully lined up a, a petition drive and got that across the finish line, and then got the vote across the finish line too, with a strong 65 percent of the vote in support. So I'm just so grateful to everybody who helped make voter ID happen. And everything I'm doing right now is for them. Like, the people who put in hours and hours and hours of their time volunteering to collect signatures, working different events and county fairs to get signatures. I'm just so grateful for your efforts, and I'm not going to let you down by standing down on this one because it's easier thing to do. I'm going to follow through with your wishes and I'm going to follow through with the language of the constitutional amendment. So, back to my constitutional objections with the Evnen Amendment. Sections 17 to 19. So this either violates the fundamental right to vote or the equal protection law as articulated by the United States Supreme Court Court. Got case law directly on point. It also violates the amendment passed by the voters by allowing nonexempt persons to vote without showing an ID. There are two possible interpretations of Sections 17 through 19. One is that no one would check to see if the voter actually had a reasonable impediment to vote, thus not actually requiring anybody to show an ID at all, as we already discussed regarding Sections 10 and 11. This would fly in the face of the voters

and would clearly violate the Nebraska Constitution. So it's voter ID without the actual voter ID. The other interpretation would be that the election officials in each county would be left to interpret whether an individual has a reasonable impediment. With the fact that Nebraska has 93 counties at a minimum, 93 different election officials would be making separate determinations of whether a reasonable impediment existed. An election commissioner in Scotts Bluff County might interpret someone's cold as a reasonable impediment, while an official in Otoe County might say that it is not. Such a possibility would violate the Equal Protection Clause of the Fourteenth Amendment as outlined by Bush v. Gore. I know my friend, Senator Conrad, and I have a disagreement on that, but what we're going to do is read Bush v. Gore in full on the mike, and I'll let you decide for yourselves. In other words, if this is the correct interpretation and people's reasonable impediments have to be checked, this amendment will turn all of our elections into the fiasco that was Florida in the 2000 presidential election. However, it doesn't just stop there. Since Sections 17 through 19, when looked at as a whole, require three different election entities-- the election official, the receiving board, and the counting board-- to make potentially separate decisions on an individual's reasonable impediment, there is a possibility that we could have 279 different interpretations of whether a certain claimed reasonable impediment counts. See, there's a reason why other states don't do this. And even states with "reasonable impediment" language have clear, clear constraints outlined-- a ceiling, not a floor like this has-- because you can run into literally hundreds of different interpretations of what a reasonable impediment is. And also, reasonable impediment isn't language used by strict voter ID states. Nebraska, with the passage of the constitutional amendment, is now a strict voter ID state. You can't just say I have a reasonable impediment like we say. I've got a-- I've-- I don't have to have a real excuse to mail-in vote. We have stronger language on showing an ID than that now. Section 23, when taken with the rest of the Evnen Amendment, Section 23 violates the Privileges and Immunities Clause of the Fourteenth Amendment. The Supreme Court has held that a state cannot discriminate against a person based on where they're from as it relates to exercising a constitutionally protected right. That's as referenced in the Bolton case from 1973. Voting, as I've already stated, is a constitutionally protected right. Secretary of State Evnen's amendment only pays for the documents required to get IDs for people born in the state of Nebraska. This is such an easy administrative fix that I don't know why we're not addressing. Like, if you're born out of state, it doesn't pay for the documents you need to vote. This is a clear burden on a fundamental right based on the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

state a person was born in. Thus, Evnen's amendment violates the Privileges and Immunities Clause of the Fourteenth Amendment to the United States Constitution. We're literally lining up two separate classes of individuals: those born in the state of Nebraska who can get help for free through the Secretary of State's Office to get things like birth certificates and whatever in order to get an ID in order to vote and those who were not born in the state of Nebraska, who cannot get assistance through the Secretaries of State's-- Secretary of State's Office or would have to pay their own way, which, as we've discussed before, is a clear violation of not having a poll tax, a poll tax and not having to pay to vote. So, I'm-- like, if nothing else-- like, this Section 23 needs get fixed. Like, I don't even care where you're at on strong voter ID versus weak voter ID. Like, that's just a simple thing. And I consider-- there's one more section about this. Like, Section 23 and Section 12. I don't care where you're at on pro-voter ID or not pro-voter ID. If you're getting up here and saying that that language is fine and it's consistent and we should uphold it-- like, why? Why are we saying that someone has to call in to the Secretary of State's Office every single election cycle to affirm that they don't have-- that they have a religious objection in order to vote? Why are we saying that before every special election, every election cycle, that they have to make that call? When if you have a religious objection that's strong enough to be-- you being photographed that it raises the level of you being unwilling to be photographed for any identification-- like, that's not going to change every two years. This just not something that happens. It's a very narrow segment of our population, and it's a clear, undue burden on them to call in to the Secretary of State's Office or the county election clerk's office every 18 months. Section 23-- like, all of us can agree we shouldn't have two classes of citizens in the state of Nebraska. We shouldn't be implementing a poll tax on people just because they were born outside the state of Nebraska. These are two very clear-cut examples of simple things that need to be fixed with this amendment. It's not a clean amendment. It's not ready for prime time. And that's why I'm going to get up and keep hammering the case law, the relevant issues I see with this. And odds are, unless I really, really need a break and no one else is speaking, that I'm not going to take a lot of these to a vote just because I don't want to be hauling people in here back and forth. It's not fair to you guys to just take this eight hours on my own. So with that, thank you very much, Madam President.

DeBOER: Thank you, Senator Slama. Senator Hansen, you're recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

HANSEN: Thank you, Madam President. I first want to give my thanks to Senator Slama for all the time and effort she's put into the ballot initiative for voter ID. I know whenever I would text her and she would angrily text something back to me, I know she was stressed over all the work she's put, she's put into doing all this. So I know it takes a lot of time and effort and, and work to do what she's done. And all the people that she's thanked also played a huge role in it. I was hoping Senator Slama would yield to a question.

DeBOER: Senator Slama, will you yield?

SLAMA: Yes.

HANSEN: I, I noticed in, in, in the black binder that you sent out that you have a flowchart about in-person voting. I was hoping maybe a, a little bit if you could elaborate on that. So, I know we talked about some of the mail-in voting parts of how your amendment to what you want to see happen would work. Could you elaborate more just a little bit on the in-person voting aspect of that?

SLAMA: Absolutely. Yeah. No-- and I'm grateful that we're pointing to charts and using the charts. I love visual references, and I think this is very helpful, especially getting, in a way, kind of-- to Senator Cavanaugh-- John Cavanaugh's point that he raised earlier about how the provisional process would work. So in-person voting, how it would work is you show up to your designated polling place on Election Day-- like, this is considering in-person voting on Election Day. Does this voter have a valid photo ID to present? If yes, they just show their ID, they receive and complete their ballot, and they're good to go. If they don't-- say, they lost it in a fire or-- like, literally any reason, literally any reason whatsoever. We're not choosy about our reasons. It can be, oh, I forgot it at home, my dog ate my ID. Literally doesn't matter-- that voter will receive and complete a provisional ballot. And then after that, they've got seven days after Election Day-- so in that provisional voting period-- that they must show that valid photographic ID to the election official for their ballot to be counted. And after that, you can take one of those two routes and then you vote it.

HANSEN: All right. Thank you, Senator Slama. I, I appreciate her clarifying some of these questions, not just for myself, but some constituents as, as well because we are dealing with a lot of legalese and a lot of, you know, a lot of-- the minutia of how this ballot initiative would be implemented in the state of Nebraska from, from both sides and, and both ideas. And so I think for us to kind of wrap

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

our heads around this and get a good idea about how we're going to vote, I think it's, I think it's good that we're-- that both parties have gotten up here and explained things in detail. So, with that, I will yield the rest of my time back to the Chair. Thank you, Madam President.

DeBOER: Thank you, Senator Hansen. Senator Conrad, you're recognized.

CONRAD: Thank you, Mr.-- Madam President. And thank you, colleagues. I, much like Senator Slama, find nothing perhaps more enjoyable or exciting as having an opportunity, I think as she put it or we talked about together off the mike, to nerd out on constitutional law and voting rights. This is, I think, probably every, every lawyer's dream scenario. So it's, it's fun to, to be able to debate these important issues together even if we have a, a very different conclusion. And-- you know, that's one thing that I, I want to point out, and then I want to make sure to provide some context, as Senator Slama said she's planning to read into the record the Bush v. Gore case as well just so that colleagues can, can have some understanding about how that president is-- precedent is utilized and whether or not it is applicable to the present sense. But when you have 92 out of 93 election officials come forward and sign a letter, if some of them were pressured, they're always free to provide that information about undue coercion or otherwise to our offices in a confidential manner. We heard from election commissioners for large counties and more rural counties just about implementation issues, which was critically important. And I think everybody agrees that we have super hardworking election officials all across this great state and poll workers, and they have to be partners in this effort. Once we make a policy decision, they're charged with implementing that. And we need to take into account the practical and pragmatic considerations in terms of allowing them to prepare for a sea change in the administration of elections and to take into account the feedback that they have for how to do that and what we've learned from our sister states. So when you have-- and, let me be clear, I disagree with the Secretary of State frequently and voraciously on a variety of different issues, but I agree with him in this instance. I agree with my friend, Senator Brewer, in this instance and I agree with our election commissioners. And what you have there, friends, is not a conspiracy, but a consensus. Multiple people have looked at these issues from multiple angles and find this path the most possible to limit litigation, to facilitate the will of the voters, and to ensure that we don't needlessly suppress voting rights for eligible voters. The other thing that I want colleagues to know in regards to the Bush v. Gore case that was dispositive over a hotly contested presidential campaign back

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

in 2000-- which I know many of us watched closely-- but if you look just at the the initial commentary from the justices in that 5-4, highly controversial decision-- and this has been hotly debated-- the court itself says-- this is not meant to be a, a, a wide-- a widespread precedent. But, quote unquote, the court says in Bush v. Gore: Our consideration is limited to the present circumstances for the problem of equal protection in election processes generally presents many complexities. So, that's important to remember. And in the 23 years or so since Bush v. Gore was decided, the Supreme Court has really only mentioned it in passing twice, which shows you what limited precedential-- pres-a-dent-- not presidential-- precedential value that the case has when it comes to electoral law. Now, that doesn't mean that litigants haven't sought to utilize that--

DeBOER: One minute.

CONRAD: --thank you, Ms.-- Madam President-- that case in any host of different election-related issues before the lower courts or even state courts, but that definitely should help to provide a little bit of information. The Bush v. Gore case is limited in terms of its precedential value on its face, and it looks to whether or not there is an equal protection issue for the lack of statewide standards in regard to a recount. I do not think we should paint with a broad brush, as Senator Slama is encouraging us to, to say that an equal protection problem arises whenever there's differences in voting. That's not the case. Look at Nebraska and let commonsense dictate. We have 11 counties that are all by mail. We have other counties that chart a different course. That in, in itself is not an equal protection problem. Thank you, Madam President.

DeBOER: Thank you, Senator Conrad. Senator Slama, you're recognized.

SLAMA: Thank you, Madam President, I am grateful to my friend, Senator Conrad, for further fleshing out the issues she sees with Bush v. Gore. And it's a rather long opinion, so I will get around to talking about it here shortly. But the key thing here is no matter if you look at Bush v. Gore or any other controlling precedent-- like, the language is key, that you cannot have different standards to be able to vote if you're in a different county within the same state. I get that some of our counties are fully mail-in. That's not what I'm talking about here. And also, if we're saying-- it, it also gets to, like, this weird logical conundrum of mail-in voting somehow isn't voting so restrictions on photo ID for mail-in voting shouldn't count because mail-in voting somehow isn't voting when of course it is. What I'm saying is that you can't have 93 different standards, depending on

who your county election clerk is, as to what a reasonable impediment is. You very clearly have a problem here of vague and ambiguous language when it comes to the "reasonable impediment" language. All you need to do to address that is clearly outline what a reasonable impediment is and set that as the ceiling, not as the floor. If you set it as a ceiling, you're following what other states, like Texas, have done-- which has a relatively weak voter ID framework-- and at least saying, as the state level, this is our standard. Can the voter meet X and Y? If not, it's not a reasonable impediment. If yes, reasonable impediment. That's all I'm asking for. What you're asking is for county election clerks to take on yet another responsibility and be the judge and the jury for whether or not a person's sick note from their doctor is valid. By creating a simple framework on the state level, you're, you're easing those concerns, and that's the only point that I'm making. Like, to me, that's both settled in case law in *Bush v. Gore*-- and we will read the full thing because I've got the time to do that. But first, a opinion that I've brought up several times in my constitutionality argument is *Crawford v. The Marion County Election Board* cited by the Supreme Court of the United States in 2008. And I'm just going to read the full thing. And actually, I'm going to start with the syllabus. And I'm going to start with the syllabus for each of these cases. That way, you can get a short, quick summary of what we're dealing with here, and then I can go into the full opinions if we happen to have the time. Let me hit my button again. After Indiana elect-- enacted an election law requiring citizen voting in-person to prevent-- present government-issued photo identification, petitioners filed separate suits challenging the law's constitutionality following discovery that its district court granted respondents summary judgment, finding evidence in the record insufficient to support a facial attack on the statute's validity. In affirming, the Seventh Circuit declined to judge the law by the strict standard set for poll taxes in *Harper v. Virginia Board of Elections*-- decided several decades back-- finding that the burden on voters offset by the benefit of reducing the risk of fraud. Held: the judgment is affirmed. So the previous court's ruling was affirmed. Justice Stevens, joined by the Chief Justice and Justice Kennedy, concluded that the evidence in the record does not support a facial attack on SEA 483's validity. Under *Harper*, even rational restrictions on the right to vote are invidious if they are unrelated to voter qualifications. However, even-handed restrictions-- key-- two key words here-- even-handed restrictions protecting the integrity and reliability of the electoral process itself satisfy *Harper's* standard. A state law's burden on a political party--

DeBOER: One minute.

SLAMA: Thank you, Madam President-- an individual voter or a discrete class of voters must be justified by a relevant and legitimate state interest sufficiently weighed to justify the limitation. I'll pick up from there later on. But just a note of appreciation: I do appreciate the chance to nerd out on election law. And I think we discuss it far too little. And to actually have a substantive back-and-forth with points and counterpoints is something that has been lacking in a lot of our floor debate this year, so I am really grateful to engage and have this conversation.

DeBOER: Thank you, Senator Slama. You are next in the queue.

SLAMA: Thank you, Madam President. Is this my third turn?

DeBOER: This is your third time.

SLAMA: Oh, fantastic. All right. So, picking back up on the Crawford v. Marion County Election Board decision. I'm just reading from the syllabus now. And if we happen to have enough time, I'll hop back into the full opinions. But I just want to make sure that everybody gets the gist of these opinions because they're really helpful to understanding the constitutional limitations we have in place and where the Evnen Amendment really falls short and where I see it falling clearly short when it comes to the courts and enforcement with Nebraska's strict voter ID constitutional amendment language. Each of Indiana's asserted interests is unquestionably relevant to its interest in protecting the integrity and reliability of the electoral process. The first is the interest in deterring and detecting voter fraud. Indiana has a valid interest in participating in a nationwide effort to improve and modernize election procedures criticized as antiquated and inefficient. Indiana also claims a particular interest in preventing voter fraud in response to the problem of voter registration rolls with a large number of names of persons who are either deceased or who no longer live in Indiana. While the record contains no evidence that the fraud SEA 483 addresses-- in-person voter impersonation at polling places-- has actually occurred in Indiana, such fraud has occurred in other parts of the country. And Indiana's own experience with voter fraud in a 2003 mayoral primary demonstrates a real risk that voter fraud could affect a close election's outcome. There is no question about the legitimacy or importance of a state's interest in counting only eligible voters' votes. Finally, Indiana's interest in protecting public confidence in elections, while closely related to its interest in preventing voter

fraud, has independent significance because each-- such confidence encourages citizen participation in the democratic process. The relevant burdens here are those imposed on eligible voters who lack photo identification cards that comply with SEA 483. Because Indiana's cards are free, the inconvenience of going to the Bureau of Motor Vehicles, gathering required documents, and posing for a photograph does not qualify as substantial-- as a substantial burden on most voters' right to vote or represent a significant increase in the over-- increase over the usual burdens of voting. Now, this is a really key sentence, so I'm going to repeat it again for the record. Because Indiana's cards are, are free-- this is referencing the cards they use for those who didn't have a qualifying ID, the vote-only cards that are accessible to the people of Indiana-- the exact same as what we're imposing in my own amendment-- the inconvenience of going to the Bureau of Motor Vehicles, gathering required documents, and posing for a photograph does not qualify as a substantial voter-- a, a substantial burden on most voters' right to vote or represent a significant increase over the usual burdens of voting. The severity of the somewhat heavier burden that may be placed on a limited number of persons-- i.e., elderly persons born out of state who may have difficulty obtaining a birth certificate-- is mitigated by the fact that eligible voters without photo identification may cast provisional ballots that will be counted if they execute the required affidavit at the circuit clerk-- circuit court clerk's office. Even assuming that the burden may not be justified as to a few voters, that conclusion is by no means sufficient to establish the petitioners' right to relief that they seek. Petitioners bear a heavy burden of persuasion in seeking to invalidate SEA 483 in all its applications. This court's reasoning in Washington State Grange v. Washington State Republican Party applies with added force here. Petitioners argue that Indiana's interests do not justify the burden imposed on voters who cannot afford or obtain a birth certificate and who--

DeBOER: One minute.

SLAMA: --must make-- thank you, Madam President-- and who must make a second trip to the circuit court clerk's office, but it is not possible to quantify, based on the evidence in the record, either that burden's magnitude or the portion of the burden that is fully justified. A facial challenge must fail where the statute has a plainly legitimate sweep. And with that, I will mark my spot and continue with this case on my next turn on the mike. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. Seeing no one else in the queue, you're recognized to close on your amendment.

SLAMA: My goodness. I've stunned everyone into silence. Well, thank you, Senator Dorn. I appreciate that. Back to Crawford v. Marion County Election Board. So if I am losing my voice today, it's not that I'm very much weak and losing it after a few hours of speaking. It's because I'm still very much recovering from my illness that took me out of the game at the end of the week last week. And my throat's not exactly healed up, so please bear with me if I get squeaky. When considering SEA 483's broad application to all Indiana voters, it imposes only a limited burden, burden on voters' rights. The precise interests advanced by Indiana are therefore sufficient to defeat petitioners' facial challenge. Valid, neutral just [INAUDIBLE] nondiscriminatory law, such as SEA 483, should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators. Justice Scalia, joined by Justice Thomas and Justice Alito, was of the view that petitioners' premise that the voter identification law might have imposed a special burden on some voters is irrelevant. The law should be upheld because its overall burden is minimal and justified. A law respecting the right to vote should be evaluated under the approach in Burdick v. Takushi, which calls for application of a deferential, important regulatory interest standard for nonsevere, nondiscriminatory restrictions, reserving strict scrutiny for laws that severely restrict the right to vote. So that, that paragraph there is where I'm talking about. When you're talking about voting rights, you've got two separate, you've got two separate standards. You can either have strict scrutiny or you can have the important regulatory interest standard. So you've got two different ways in which you're working here. The different ways in which Indiana's law affects different voters are no more than different impacts of the single burden that the law uniformly imposes on all voters: to vote in person, everyone must have and present a photo identification that can be obtained for free. This is a generally applicable, nondiscriminatory voting regulation. The law's universally applicable requirements are eminently reasonable because the burden of acquiring, possessing, and showing a free photo identification is not a significant increase over the usual voting burdens, and the state's stated interests are sufficient to sustain that minimal burden. Stevens, J., announced the judgment of the court and delivered an opinion in which Roberts, CJ; and Justice Kennedy joined. Scalia filed an opinion concurring in the judgment, in which Thomas and Alito joined-- and that's posted later on in this opinion. Souter filed the dissenting opinion, in which Ginsburg joined. Breyer

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

filed his own dissenting opinion. So that's the syllabus for Crawford v. Marion County Election Board. And I, I hope you were able to pick up on some of that. I will expand as I get more time on the mike. I've got another amendment coming up, but I am going to now withdraw this amendment, and we'll put up the next one and reset. Yes, ma'am.

DeBOER: Thank you, Senator Slama. The question is the adoption-- the amendment is withdrawn. Sorry. Mr. Clerk.

CLERK: Madam President, Senator Slama would move to amend with FA139.

DeBOER: Senator Slama, you're welcome to open on your floor amendment.

SLAMA: Thank you very much. And a big thank-you to my wonderful administrative aide, Sue Ellen Stutzman, who is now handing me a can of my chosen carbonated beverage, which is called Liquid Death. The flavor is mango chainsaw. And it, quote, murders your thirst. It's a really just a really stupid marketing thing that worked on me, but it is actually quite tasty. So, at this point, I'm going to read through-- and this is a very brief opinion, so I feel all right going into-- it's a brief, but it's an important opinion because it is the Missouri case that is on point for my objections on Section 10 and Section 11. It's Priorities USA v. State. So here's the full text of the opinion-- sorry, just a second. Priorities USA, Mildred Gutierrez, Ri Jayden Patrick, and West County Community Action Network filed a petition for declaratory and injunct-- injunctive relief against the Missouri Secretary of State, alleging that Section 115.427 unconstitutionally burdens individuals' right to vote. Specifically, they contend that prospective voters, because of their personal circumstances, will have difficulty adhering to Section 115.427's photo identification requirements. This is helpful. After a bench trial, the circuit court entered a judgment finding Section 115.427 constitutional except for subsections 2(1) and 3, the affidavit requirement. Subsection 2(1) permits individuals to vote with listed forms of nonphoto identification if they execute an affidavit that meets certain requirements. The related subsection 3 provides the affidavit language. The circuit court enjoined the state from requiring individuals who vote under this option to execute the affidavit required under subsections 2(1) and 3. The circuit court also enjoined the state from disseminating materials indicating that photo identification is required to vote. The state appeals. Because the affidavit requirement of Sections 115.427.2(1) and 115.427.3 is misleading and contradictory, the circuit court's judgment declaring the affidavit requirement unconstitutional is affirmed. Further, the circuit court did not err in enjoining the state from requiring

individuals who vote under the nonphoto identification option provided in Section 115.427.2(1) to execute the affidavit or in enjoining the dissemination of materials indicating photo identification is required to vote. The circuit court's judgment is affirmed. Here's the section on background. Sorry. Had a tickle in my throat there. In 2016, the legislature truly agreed to and passed Section 115.427, which became effective in 2017. Section 115.427 establishes three options under which individuals can identify themselves for the purposes of voting. Again, this is the Supreme Court of Missouri ruling. Very helpful to take from our sister states and our neighbors, especially when they're right across the river from my own district. Under the first option in subsection 1 of Section 115.427, an individual can present acceptable forms of personal identification, all of which contain the individual's photograph. Under the second option, as found in subsection 2 of Section 115.427, an individual who does not possess the types of photo identification provided under the first option can vote by executing a statutorily specified affidavit and presenting a form of nonphoto identification expressly authorized in Section 115.427.2(1). The affidavit individuals are required to execute under the second option must be substantially in the form provided in Section 115.427.3. Individuals must aver that they are listed in the precinct register, do not possess personal identification approved for voting, are eligible to receive a Missouri nondriver's license free of charge, and are required to present a form of personal identification to vote. Finally, under the third option, individuals can cast a provisional ballot, which will be counted if: (1) the voter returns to the polling place during the polling hours and provides the approved form of photo identification under option one, or the election authority compares the individual's signature with the signature reflected on the election authority's file and confirms the individual is eligible to vote at that particular polling place. Respondents filed a petition for declaratory and injunctive relief against the secretary of state, alleging Section 115.427 unconstitutionally restricts the right to vote in Missouri by imposing burdens on prospective voters who, because of their personal circumstances, will have difficulty adhering to Section 115.427's identification requirements. After a bench trial, the circuit court entered a judgment finding Section 115.427 constitutional except for that affidavit requirement in subsections 2(1) and 3. The circuit court determined that the affidavit was contradictory and misleading and, accordingly, impermissibly infringed on an individual's right to vote. The circuit court enjoined the state from requiring individuals who vote under the second option to execute the affidavit required under subsections 2(1) and 3. The circuit court also enjoined the state from

disseminating materials that indicated photo identification is required to vote. The state appeals. Standard of Review. This court reviews de novo a challenge to the constitutionality of validity of a statute. That's based on the case Williams v. Mercy Clinic Springfield Communities. A statute is presumed constitutional and will not be found unconstitutional unless it clearly and undoubtably vio-- violates the constitution. Nonetheless, if a statute conflicts with a constitutional provision or provisions, this court must hold the statute invalid. The party challenging the statute's constitutionality-- constitutional validity bears the burden of proving a violation. The issuance of injunctive relief, along with the terms and provisions thereof, rests largely with the sound discretion of the trial court. The circuit court is vested with a broad discretionary power to shape and fashion relief to fit the particular facts, circumstances, and equities of the case before it. Analysis. I, The Affidavit Requirement. The state argues the circuit court erred in enjoining the use of the affidavit when voting under option two because the affidavit requirement does not burden the right to vote and is constitutional. In response, respondents assert that affidavit requirement is misleading and contradictory and, accordingly, impinges on voters' right to equal protection and the fundamental right as guaranteed by the Missouri constitution. The Constitutional Valid-- Validity of the Affidavit Requirement. Two constitutional provisions establish with unmistakable clarity that Missouri citizens have a fundamental right to vote. Article I, Section 25 provides that all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Article VIII, Section 2 establishes the qualifications necessary to vote in Missouri. Missouri courts have made it clear that, pursuant to these provisions, the right to vote is fundamental. Further, the Missouri constitution guarantees citizens the equal protection of the laws. But as the court has previously indicated, some regulation of the voting process is necessary to protect the right to vote itself. To determine the level of scrutiny that should be applied to evaluate a statute addressing that right to vote, Missouri courts first evaluate the extent of the burden imposed by the statute. And this is what was talked about in the syllabus of the last case, the Crawford decision. If a statute severely burdens the right to vote, strict scrutiny applies, which means the law will be upheld only if it is narrowly tailored to serve a compelling state interest. Conversely, when the law does not impose a heavy burden on the right to vote, it is subject to the less stringent rational basis review. So that's strict scrutiny versus rational basis. This court need not evaluate the extent of the burden imposed by the affidavit requirement

because this requirement does not even satisfy even the rational basis review. The state asserts the affidavit requirement combats voter fraud through verifying a voter's identity and eligibility to vote. Such an interest is legitimate and even compelling. But to satisfy even the lowest level of scrutiny-- rational basis review-- the affidavit requirement must be rationally related to this interest. In other words, the requirement must be a reasonable way of accomplishing this goal. The affidavit requirement is set out in Sections 115.427.2(1) and 115.427.3. Subsection 2(1) provides that an individual who appears at a polling place--

DeBOER: One minute.

SLAMA: Thank you, Madam President-- without an approved form of photo identification under option one but who is otherwise qualified to vote may cast a regular ballot provided the individual presents an approved form of nonphoto identification as specified under option two in Section 115.427.2(1) and executes an affidavit that meets certain requirements. Subsection 3 then provides that the affidavit must be substantially in the following form-- and I'll pick up where I left off later. But again, like, I'm just going to take this for time and keep putting up amendments and withdrawing them before they come to a vote. So you don't need to worry about sticking around and missing votes. Like, I've got you guys covered. But I really do want to get these cases on the record and get my concerns on the record and fully fleshed out so no one can say they didn't hear enough from me on voter ID. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. Senator Raybould would announce that she had 41 fourth graders from McPhee Elementary in Lincoln in the balconies. They're no longer in with us right now, though, so then we'll go next to Senator Slama.

SLAMA: Sorry about that, Senator Raybould. I promise the next time school kids come in I'll try to talk about something more exciting than voter ID case law. Although, I think Senator Conrad and I might be the only two in this body that actually think that that's exciting. But, yeah. Back to the Missouri case that is exactly on point to my concerns with Sections 10 and 11. When we're talking about the "reasonable impediment" language and how that's ambiguous and contradictory to potential voters; here in the Missouri case, we're talking about that with their affidavit requirement and how differing instructions fail to even meet the rational basis level of review, which is, like, the lowest bar that you can have. Subsection 3 then provides that the affidavit must be substantially in the following

form: I do solemnly swear or affirm that my name is blank; that I reside at blank; that I am the person listed in the precinct register under this name and at this address; and that, under penalty of perjury, I do not possess a form of personal identification approved for voting. As a person who does not possess a form of personal identification approved for voting, I acknowledge that I am eligible to receive free of charge a Missouri nondriver's license at any fee office if desiring it in order to vote. I furthermore acknowledge that I am required to present a form of personal identification as prescribed by law in order to vote. I understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution. Section 115.47.3. Although this language is consistent with the requirements listed in subsection 2, subsection 2 also requires that individuals must aver they do not possess a form of identification approved under option one and must further acknowledge that they are required to present a form of identification approved under option one in order to vote. The affidavit requirements in Section 115.427.2(1) and 115.427.3 is contradictory and misleading for several reasons. The affidavit language in subsection 3 requires individuals who vote under option two to aver that they do not possess a form of personal identification approved for voting. If form of personal identification means any identification, photo or nonphoto, approved under Section 115.427, then the affidavit is misleading because individuals voting under option two are required to swear under oath that they do not possess such identification but then must present nonphoto identification approved under Section 2. But if consistent with the affidavit requirements in subsection 2(1), the phrase "form of personal identification" means only the photo identification approved under option one, then the later sentence in the affidavit that provides individuals must acknowledge that they are, quote, required to present a form of personal identification, as prescribed by law, in order to vote. See Section 115.427.3. It's contradictory because individuals can vote by presenting nonphoto identification as described in option two. For this reason, the language of subsection 2, which includes-- which provides that individuals signing the affidavit must acknowledge they are required to present a form of personal identification as described in subsection 1 of this section in order to vote is inaccurate. Under either interpretation, an individual voting under option two is required to sign an ambiguous, contradictory statement under oath and is subject to the penalty of perjury. So where this comes in-- I think it's really valuable to anchor this in something. Where this comes in is the Evnen Amendment's "reasonable impediment" language. A voter may genuinely believe, under penalty of perjury,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

that they have a reasonable impediment to them receiving a valid photo ID in order to vote. However, we run into the problem that the Secretary of State has set a floor in an ambiguous set of directions as to what qualifies as a reasonable impediment. So you've got a mix of different options as to what may or may not be acceptable as a reasonable impediment. That language is clearly ambiguous, potentially contradictory, and is lined up to confuse voters. And this is why this Missouri case from 2020 is so helpful and is so on point in understanding why the language of the reasonable impediment attestation just doesn't work. The testimony of several witnesses highlighted the confusion--

DeBOER: One minute.

SLAMA: --that resulted-- thank you, Madam President-- that resulted from the affidavit's contradiction. Gutierrez, who voted in November 2017 after signing the affidavit and presenting her Social Security card, voter identification card, and birth certificate, testified she found the affidavit's language concerning. By signing the affidavit, Gutierrez swore under penalty of perjury she did not possess a form of personal identification approved for voting when, in reality, she had all kinds of forms of identifications, end quote. The affidavit led her to believe that she needed photo identification to vote in future elections. I'm going to keep going with this on my next turn on the mike, which is probably next. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. Senator Lowe, you're recognized.

LOWE: Thank you, Madam President, I just got up because I wanted to give Senator Slama a little break. Maybe she can sit down and relax for a minute. She's been up here speaking, and I, I appreciate that. She's a very good friend of mine, and, and so is Senator Brewer, so I really, really enjoy this debate that we're talking about today because a lot of it is going over our heads because it's attorney speak and it's being read from court documents and, and things like that. But I'm on the Government, Military and Veterans Affairs Committee, and this was the bill-- or, the amendment that we kicked out was what went into AM853. We kind of had an understanding that this was the right thing to do. As we looked at the amendments-- we had three amendments before us and we kind of went through all three amendments and we kind of pieced them together. And we wanted one to come out that wasn't going to take too much debate and we could get passed. We looked at Senator Slama's amendment and-- and I told her that day, I said, I'd really like this attached onto your bill because you're the one that really pushed through voter ID. You, you got the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

referendum on the ballot and it got voted on by the, by the people of Nebraska and it won handsomely. So the people do want voter ID. I want voter ID. I want it through, and I don't want it contested. I know it's going to be contested no matter which way we go, but I want, I want the people to win out of this deal. I have my constituents from both sides of, of the platform, and they're all emailing me saying, vote this way or vote that way. Well, I got elected by a majority vote, and I'll probably vote that way because that's the way they wanted me to vote when I came down here. I, I said-- I spoke my views and they had-- the majority, the majority agreed with me. I've listened to some of the debates and I've debated on-- or, I've voted on some bills I didn't really agree with, but I didn't think they'd do much harm. And that's kind of what I want this end product to do, is do as little harm as possible, especially to those in the nursing homes and assisted-living homes and those just not able to get out of their house. We need to make sure that they're all able to vote because they're citizens, and we need to make it so that they can vote. I don't like a lot of mail-in voting, but it's something we need to do for these people. I think that we need to limit mail-in voting. I don't think we need to do it for a full month, but maybe a week we could do that, and, and for special needs only for people like this, people in the military, people that just can't be there that day. I don't want it to be a laziness deal that, I just don't want to go down to the, to the-- and, and vote in person. I think that takes something from us when we, when we don't want to do things in person. It's good to stand up. It's good to go down there. It's good to get that sticker on your jacket when you, when you leave from there. It's good to be proud and to vote in person. I think that's very important. If Senator Slama has had a long enough rest now, I'll, I'll stop babbling along and-- and I appreciate her making a stand for what she truly believes in, and that I wish would I-- I could stand with her on this. But with that, thank you, Madam President.

DeBOER: Thank you, Senator Lowe. Senator Slama, you're recognized.

SLAMA: Thank you very much, Senator Lowe. I appreciate your thoughtful approach to this process and also your efforts to try to keep this as being attached to my bill, which I really do appreciate. As leading the voter ID petition drive, it really, it really would have been great to be able to see my own bill get across the finish line. But that didn't happen, and I'm OK with that. I'm at peace with that. But now I'm just going to fight and do everything I can to make sure the will of the people is heard and that we're adhering to the constitutional amendment that so many people fought so hard to get across the finish line. Senator Lowe is one of my really good friends

in this body. I'm even better friends with his wife, Kim Lowe. I think she's in town today, and I might swing by and visit her during supper time so long as I can get food quick enough. But I really do appreciate Senator Lowe's ability to give me a break. The problem is his voice is just so soothing. I was, like, halfway asleep during it, which is just a really impressive talent that I don't have. Apparently, every time I get up on the mike, I sound very highly strung. I've tried to deal with that, but I will never be soothing on the same level as Senator Lowe. If he could filibuster every bill or if we could all filibuster bills at that same level, I'm pretty sure we would be a much more level-headed and soothed body. But in any case, we don't have that. So we're stuck with what we've got, and what you've got is me. And we're on the *Priorities USA v. State Supreme Court of Missouri* ruling, which is really helpful in understanding why the "reasonable impediment" language used in the Evnen Amendment is not constitutional and will be-- will fail to meet even the rational basis test standard that the affidavit standard failed in Missouri in this 2020 case. So back to the opinion language. Similarly, Patrick, who voted in November 2017 election by presenting their voter identification card and signing the affidavit, testified the language of the affidavit was confusing and ambiguous because it required them to state they do not possess personal identification when they, in fact, did have their personal identification card-- their voter identification card. Both Gutierrez and Patrick testified they would not sign the affidavit to vote in a future election. The record further indicates that election officials did not understand the affidavit requirement. For example, Gutierrez was informed by an election official that she would need to obtain photo identification to vote in the next election. And one of respondent's witnesses, David King, was told he could not vote despite presenting his voter registration card-- an acceptable form of nonphoto identification under option two. This is under Section 115.427.2(1). Although the state had an interest in combatting voter fraud, requiring individuals voting under option two to sign a contradictory, misleading affidavit is not a reasonable means to accomplish that goal. For this reason, the affidavit requirement of Sections 115.427.2(1) and 125.427.3 does not pass muster under any level of scrutiny. Accordingly, the circuit court's judgment declaring the affidavit requirement unconstitutional is affirmed. Just a second. B, The Remedy. After declaring the affidavit requirement unconstitutional, the circuit court enjoined the state from requiring voters to cast a ballot under option two to execute the affidavit. The state argues the circuit court erred in severing the affidavit requirement in its entirety. According to statute [SIC-- the state], two alternative, narrower remedies existed.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

First, the state argues the circuit court could have allowed the secretary of state to rewrite the affidavit language.

DeBOER: One minute.

SLAMA: Thank you, Madam President. In the alternative, the state argues the circuit court could have severed only the parts of the affidavit requirement the circuit court found unconstitutional. 1, Revision by the Secretary of State. Section 115.427.3 provides that the affidavit's language must be substantially in the form provided by the statute, implying the form in Section 115.427.3 need not be followed exactly. The state argues the circuit court should have followed the secretary of state to modify the affidavit's language to address the circuit court's constitutional concerns. This proposed remedy falls short of rectifying the affidavit requirement's constitutional flaw. Although the affidavit need only be substantially in the following form provided in Section 115.427.3, any modification must be consistent with the affidavit requirements in Section 115.427.2(1), which the secretary of state has no authority to alter. I'll pick up there on my next turn on the mike. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. Senator Dorn, you're recognized.

DORN: OK. Thank, thank you, Madam President. Thank you very much. Wanted to know if Senator Slama would yield to some questions.

DeBOER: Senator Slama, will you yield?

SLAMA: Yes, I will.

DORN: Yes, you will. Well, part of-- through all this process today, been getting numerous emails about some questions-- or, some of the process here going on. And one of them that I thought was a little interesting: if we-- as we sign up, as we show our voter ID, whether we vote once or whether we do it at the county election place or wherever, are we then done? Do we not have to ever show it again? Or do we, every time there is an election, every time-- even there's a mail-in ballot, we're going to also-- we're going to have to go through this same process?

SLAMA: Yep. So that's a great question and really helpful since we're talking about the religious exemption language, which I argue should be the opposite of that. But with the language of the constitutional amendment, you would be required to show an ID every single time you voted.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

DORN: Every time we vote and then--

SLAMA: Yes.

DORN: --even the mail-in ballots now, this process, what's-- there's been several different types that we've talked about today. That would also be the same way, with a mail-in ballot. You're not, not just, you're not just signed up once. You will go through this process numerous times then every time you go to the ballot box.

SLAMA: Yep. Other-- under either approach, whether you're looking at the Evnen Amendment or my amendment, you would have to go through that every time you vote.

DORN: Every time. OK. Good. Thank you for answering that. Then the other one is-- and it's as much my, I guess, question as much as it was Senator Conrad earlier today-- talking about the special election-- like, what, what, what are we looking at there? What-- I mean, how will we get to that point? Or will we get to that point? Is, is there something that this will be going through, I call it, the court, into the Nebraska Supreme Court? Is this just an Attorney General's Opinion? Or what is the process that might get us to that point?

SLAMA: Yup. So, I love that question, and I appreciate getting the chance to clarify. Senator Conrad did make a very fair point in that a special session doesn't just appear out of thin air. The voters have dictated to us that we need to designate a framework for voter ID in this session. If you remember from our freshman-- not fresh-- well, our freshman biennium-- when we legalized gambling, it was the same idea in that we were obligated by the voters through that constitutional amendment to pass a framework to legalize gambling in that session. If we fail to fulfill those constitutional obligations, it's my interpretation that we would be called-- in my understanding from a few different sources-- that a-- AM special session would occur. Moreover, if the court decides to throw out the, the bill that we pass--

DORN: Um-hum.

SLAMA: --we'd be stuck in the same position. So, stuck not fulfilling our duty to the voters to fulfill that language of the constitutional amendment.

DORN: OK. But one of my questions was, with expanded Medicaid that, I call it, went on for a period of time--

SLAMA: It did.

DORN: --why then can't this go on for a period of time? Why does it have to be, I call it, done in time for the next election?

SLAMA: Yup. This one's a very clear-cut, ready-to-go one where it's-- there's no real question about how it should be-- about whether it should be implemented. There's, there's no question that we have to fulfill that, that constitutional amendment language. With the Medicaid expansion, I believe there was a back-and-forth about the requirements presented by that language.

DORN: There was a federal-- I forget the number-- there was a federal number that, that was in question whether or not that applied or not and all those things with that. So-- no. So the-- so, that, that is-- I mean-- so the people of Nebraska, there's a real good probability that the next time they go to vote, which would be in the fall-- well, spring of '24, fall of '24, that they will have voter ID in place?

SLAMA: Yes. That is absolutely my goal--

DeBOER: One minute.

SLAMA: --and I'm hopeful everybody's goal that's involved that we have this in place for the '24 elections.

DORN: Thank you for answering those questions.

SLAMA: Thank you.

DeBOER: Thank you, Senator Slama and Dorn. Senator Slama, you've already had your third time, and so this will be your close. No one else is in the queue.

SLAMA: Thank you very much. And I'm absolutely not tracking this, but I do appreciate Senator Dorn's questions. And if you have any questions about any part of voter ID or the different approaches we took, please ask questions. Like, please ask questions of me. I think Senator Conrad is still on the floor and would be happy to answer questions from her perspective too. Like, we love nothing more than nerding out on this issue, and we can have a constructive dialogue back and forth about it and really build that legislative record for the two differing approaches that I think we have. One is a very much less restrictive voter ID that I would argue is voter ID without voter ID. And on the other hand, you have my own approach, which is a more conservative approach to voter ID that takes the lessons we've learned

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

from different cases, some of which I'm taking the chance to read through now, to really build an amendment that is constitutional and it's workable. I'm happy to work with anyone. And all I need is a commitment. Like, if somebody who is in power to do so gets on the mike and says, I agree to work with you between General and Select to help address your concerns with the constitutionality of this bill-- like, that's literally all it'll take. And I will sit down and we will get back onto the next thing on the agenda. Like, that's the thing I'm going for here. I've outlined my three asks. I've outlined my constitutional issues with this bill. And now I'm going into the case law that I believe is very helpful in helping us understand the issues that I've raised on the constitutionality of the Evnen Amendment. So I appreciate this conversation. I'm willing to hop out at any time if somebody gets on the mike and gets on the record and say, I'm willing to work with you to address these concerns. And with that, I'd like to withdraw my floor amendment and we'll head onto the next one.

DeBOER: Thank you, Senator Slama. It is withdrawn. Items for the record, Mr. Clerk.

CLERK: Thank you, Madam President. Communication from the Governor: engrossed LB574e. It was received in my office May 22. This bill was signed, delivered to the Secretary of State on May 22, 2023. Sincerely, Jim Pillen, Governor. Additional communication: engrossed LB799e, LB799Ae, LB813e, LB815e, LB816e, and LB282e were received in my office on May 17, 2023. These bills were signed, delivered to the Secretary of State on May 22, 2023. Signed-- sincerely, Jim Pillen, Governor. New LR: LR253 from Senator McDonnell. That will be laid over. Additionally, motion to be printed from Senator Cavanaugh to LB514. Madam President, Senator Slama would move to amend with FA146.

DeBOER: Senator Slama, you're recognized to open on your amendment.

SLAMA: Outstanding. Thank you very much, Madam President. And good afternoon again, colleagues. We're solid two hours away from our dinner break. If you need to go run errands, that's fine. I've got the floor here. And unless you want to hop in and get involved, you're always more than welcome to. But I won't be bringing any of these to a vote because I do respect the process. I really just want to build the legislative record with my concerns. I think I pretty well outlined those on the last turn on the mike, so I will return back to the *Priorities USA v. State*, which is a case directly on point from the Supreme Court of Missouri from 2020. So back to Section I, subsection B(1), Revision by the Secretary of State. Pursuant to Section 115.427.2(1), the affidavit must include language acknowledging that

the individual is required to present a form of personal identification as described in subsection 1 of this section in order to vote. As emphasized above, such a statement as misleading, as option one, photo identification, is not required to vote. Accordingly, because any modification by the secretary of state must follow the requirements in Section 115.427.2(1) and include this misleading statement, allowing the secretary of state to rewrite the affidavit's language is not an adequate remedy. The Affidavit's Severability, sub 2. In the alternative, the state asserts the civil--circuit court should not have enjoined the affidavit requirement entirely but instead should have severed only the portions of the text it found unconstitutional. While the provisions of every statute are severable, when a portion of the statute is found unconstitutional, the remaining provisions will not be upheld if they so essentially and inseparably connected with and so-- and are so depending upon the void provision that it cannot be presumed the legislature would have enacted the valid provision without the void one. This court employs a two-part test to determine whether valid parts of a statute can be upheld despite the statute's unconstitutional parts. First, this court considers whether, after separating the invalid portions, the remaining portions are in all respects complete and susceptible of constitutional enforcement. Then this court considers whether the remaining statute is one that the legislature would have enacted if it had known that the rescinded portion was invalid. As established above, the phrase "form of personal identification" as used in Sections 115.427.2(1) and 115.427.3 is misleading and contradictory. For this reason, the portion of the affidavit requiring individuals to aver they do not possess a form of personal identification approved for voting and the portion of the affidavit requiring individuals to acknowledge they, quote, are required to present a form of personal identification as prescribed by law in order to vote, as well as the corresponding language in Section 115.427.2(1), are unconstitutional. Under either interpretation of the meaning of "form of personal identification," an individual voting under option two is required to sign in-- an ambiguous, contradictory statement under oath and subject to the penalty of perjury. After this language is severed, the affidavit language in Section 115.47.3 reads in pertinent part: I do solemnly swear or affirm that my name is blank; that I reside at blank; that I am the person listed in the precinct register under this name and at this address; and that, under penalty of perjury, I do not possess a form of personal identification approved for voting. As a person who does not possess a form of personal identification approved for voting, I acknowledge that I am eligible to receive free of charge a Missouri nondriver's license at any fee office if desiring it in

order to vote. I furthermore acknowledge that I am required to present a form of personal identification as prescribed by law in order to vote. I understand that knowingly providing false information is a violation of the law and subjects me to possible criminal persecution. The portion of the affidavit language providing "I knowledge that I am eligible to receive free of charge in Missouri nondriver's license at any fee office if desiring it in order to vote," as well as its corresponding clause in subsection 2(1), would also need to be severed to avoid a misstatement of the law, as the secretary of state's witness testified that not everyone is eligible for a free nondriver's license. While removing this language eliminates any constitutional concerns, requiring-- requiring individuals to sign this modified version of the affidavit would be futile, as all voters are required to sign a precinct register establishing the voter's identify-- identity and qualification to vote. The precinct register further provides notice that, quote, it is against the law for anyone to vote or attempt to vote without having a lawful right to vote. Because the modified version of the affidavit would essentially, essentially replicate the information in the precinct register that every voter must sign, the legislature would not have enacted the modified affidavit. Although the dissenting opinion does not reject this court's holding that the affidavit requirement of Sections 115.427.2(1) and 115.427.3 is misleading, contradictory, and unconstitutional, the dissenting opinion agrees with this court's decision to affirm the circuit court's severance of the affidavit requirement. The dissenting opinion presents two alternative reve-- remedies it believes should have been adopted instead. For reasons-- for the reasons below, both remedies are nonsensical. First, the dissenting opinion suggests that the circuit court should have severed Sections 115.427.2 in its entirety rather than severing only the affidavit requirement language. As the dissenting opinion notes, if option two-- the nonphoto identification option-- is severed, two options for voting remain: option one and option three. Under option one, an individual cannot vote without showing a government-issued photo identification. Under option three, an individual's vote will not be counted unless the voter returns to the polling place during the polling hours and provides an approved form of photo identification under option one. Or (2) the election authority compares the individual's signature with the signature on the election authority's file and confirms the individual is eligible to vote at that particular polling place. The record reflects the signature-matching process could result in an over-rejection of legitimate signatures, as there is no training or uniform standards election officials follow. So, regardless of whether individuals vote

pursuant to option one or option three, to ensure their votes are counted, individuals must show a photo identification. In effect, the dissenting opinion's proposal to sever option two in its entirety-- entirety would result in individuals having to present government-issued photo identification to ensure their votes are counted. In *Weinschenk*, this court made clear that requiring individuals to present photo identification to vote is unconstitutional-- and this is just for the transcribers. *Weinschenk* is spelled W-e-i-n-s-c-h-e-n-k. *Weinschenk* emphasized that some individuals, due to their personal circumstances, experience hurdles when attempting to obtain photo identification, a concern that remains relevant in the instant case. Obtaining photo identification requires appropriate documentation, time, and the ability to navigate bureaucracies. Quote, those things that require substantial planning in advance of an election to preserve the right to vote can tend to eliminate from the franchise a substantial number of voters who did not plan so far ahead, end quote-- this quoting *Harman v. Forssenius*. *Harman's* spelled H-a-r-m-a-n, and *Forssenius* is spelled F-o-r-s-s-e-n-i-u-s. For these reasons, the dissenting opinion's first proposed remedy possesses constitutional concerns and could not have been adopted by this court. Second, the dissenting opinion proposes the circuit court could have severed only the contradictory affidavit language but maintain the affidavit requirement for nonphoto identification voting. Notably, the dissenting opinion is not specific regarding which part of the affidavit's language it could have severed. Regardless, as made clear above, after the unconstitutional pro-- provisions are severed, the modified version of the affidavit would essentially replicate the information in the precinct register that every voter must sign. Accordingly, the legislature would not have enacted the modified affidavit. For these reasons, the dissenting opinion's proposed remedies are nonsensical, and the circuit court did not err in enjoining the affidavit requirements in its entirety. Section II, The Secretary of State's Materials.

DeBOER: One minute.

SLAMA: Thank you, Madam President. I'm going to tab off there and just repeat for the good of the cause, as I turn my light back on for next time, that I am happy-- more than happy, in fact-- to stand down if I get a commitment from either the Speaker or the Chairman of the Government Committee that we will work on and work to address these concerns between General and Select. But until I get that commitment, I'm going to keep fighting for the voters in Nebraska who overwhelmingly approved a strict photo ID, voter ID requirement. So I'm here for the full eight hours. If you have any questions to ask

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

me, please feel free. I'm happy to answer them. But otherwise, I'm going to keep reading this case because it is extremely helpful. It's a really easy-to-read case that really dives into the meat of the problems with the "reasonable impediment" language and how that language will absolutely not hold up if it gets challenged in Nebraska Court. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. And you're next in the queue.

SLAMA: Oh, happy day. Well, we can pick up directly where we left off. Section II, The Secretary of State's Materials. Again, this is *Priorities USA v. State*, citing the Supreme Court of Missouri in 2020. I'm referencing it in relation to the "reasonable impediment" language offered in the Evnen Amendment and why it will not hold up, because it is contradictory and ambiguous, as the court determined was unconstitutional and failed the rational basis test in a similar affidavit language utilized by Missouri, and that was thrown out by the state's supreme court. The Secretary of State's Materials. The circuit court also enjoined the state from disseminating, quote, materials with the graphic that voters will be asked to show a photo identification card without specifying other forms of identification which voters may also show. The state argues the circuit court erred in enjoining secretary of state from disseminating such materials because these materials accurately reflect Section 115.427's requirements. Section 115.427.5 assigns the secretary of state the duty to notify the public of the personal identification requirements of Sections 115.427. Section 115.427.5 provides: The secretary of state shall provide advance notice of the personal identification requirements of subsection 1 of this section in a manner calculated to inform the public generally of the requirement for forms of personal identification as provided in this section. Such advance notice shall include, at a minimum, the use of advertisements and public service announcements in print, broadcast television, radio and cable television media, as well as posting of information on the opening pages of the official state internet websites of the secretary of state and governor. The adverti-- advertisement promulgated by the secretary of state that the circuit court found problematic provided: Voters, Missouri's new voter ID law is now in effect. When you vote, you will be asked for a photo ID. A Missouri driver or nondriver license works, but there are other options too. If you don't have a photo ID to vote, call 866-868-3245 and we can help. As the circuit court determined, materials like this advertisement mislead individuals into believing photo identification is required to vote. This finding is supported by the record, as respondents' political science expert, Dr. Kenneth Mayer-- that's Mayer, spelled M-a-y-e-r--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

testified that materials are-- that are incomplete and fail to describe all the forms of identification permitted in 115.427 caused confusion and decreased voter turnout. The state asserts the advertisement is an accurate statement of Section 115.427 because when individuals vote, they're asked to show photo identification. But no part of Section 115.427 mandates that election officials ask individuals for photo identification. Indeed, at trial, the state asserted that while election officials may request photo identification, they are not required to, as all three methods of voting are equally valid. The advertisement misleads individuals into believing photo identification is required to vote, which is an inaccurate characterization of Section 115.47. After finding the advertisement misleading, the circuit court had discretion to, quote, shape and fashion relief to fit the particular facts, circumstances, and equities of the case before it. The injunction was limited in scope, as it enjoined the state from disseminating only those materials with the graphic that voters will be asked to show a photo identification card without specifying other forms of identification which voters may also show. The decision to enjoin these materials is well-supported in the record. The circuit court did not--

DeBOER: One minute.

SLAMA: Thank you, Madam President. The circuit court did not abuse its discretion in enjoining the secretary of state from disseminating materials that provide a misleading description of Section 115.427's requirements. Conclusion-- I will get to that on my next turn on the mike. But again, I'm not doing this for vanity. I'm not doing this for fun. I'm not doing this because I like to hear my-- myself talk, which, like most people, when I hear my own voice, I don't like my own voice. This is literally just because I have worked on voter ID for years. I've worked on it for years. And I'm telling you my core objections to the Evnen Amendment-- which has been adopted to the Government Committee amendment. I have all the respect in the world for the Government Committee, but unfortunately they're taking some advice that I do not agree with, and I'm going to take my mind-- my time outlining why until someone gets on the mike and says that they're willing to work with me and address these constitutional issues between General and Select. Until that happens, I'm going to take time.

DeBOER: Time, Senator.

SLAMA: Thank you, Madam President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

DeBOER: Thank you, Senator Slama. Senator Bostelman would like to recognize a very special guest. His wife, Jan, from Brainard is sitting underneath the south balcony. Please rise and be recognized by your Nebraska Legislature. Senator Clements, you're recognized.

CLEMENTS: Thank you, Madam President. I received the notebook. And I was looking at it, and the mail-in voting is an item that I was really hoping that we can make more secure in, in the election or voting bill. And I would ask if Senator Slama would yield to a question.

DeBOER: Senator Slama, will you yield?

SLAMA: Yes, although now that the budget's passed, I'm less likely to.

CLEMENTS: Thank you, Senator Slama. I was looking at the flowchart on mail-in voting. And, first of all, is that a chart of how your bill would work or the committee amendment?

SLAMA: Yes, this is a chart of how my own bill would work.

CLEMENTS: Yours would. And does your proposal allow for mailing out ballot applications to voters?

SLAMA: So-- it doesn't address that. It more addresses it on turn-in. That's where we really wanted to attack and ensure security of our mail-in voting process.

CLEMENTS: My understanding is there are some counties that do 100 percent mail-in balloting. Does-- would that be permitted under your proposal?

SLAMA: Absolutely, yes.

CLEMENTS: All right. And-- so in that case, people wouldn't have to provide a valid reason in their written request. But when there isn't 100 percent mail out-- mail-in voting, do-- is there a valid reason needed on requesting a early ballot?

SLAMA: We don't change our excuse-- or, no-excuse requirement for mail-in voting. So no, we're not-- we're not changing that.

CLEMENTS: All right. Then on the-- they have a voter-- is the voter on the signature photo ID list? That's a term that I'm not that familiar with. What is the signature photo ID list?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

SLAMA: Yes. That is somebody who would fall outside of the standard voter ID registration list, somebody who does not have a valid voter ID-- for example, somebody who has a sincerely held belief against being photographed. If they do have that sincerely held religious belief, they would simply sign their ballot envelope. No witness requirement is necessary. But if they don't fall into the bucket of people on the signature photo ID list who has a religious objection, then that voter would have their ballot envelope witnessed or notarized after providing the certificate with a picture that was issued by the Secretary of State. So that second bucket-- first one's religious objection to being photographed. The second bucket is this person has literally no way of obtaining a birth certificate or any documentation after a reasonable investigation by the Secretary of State's Office to obtain the documents necessary to get one of those free voting IDs. That's a relief valve that you have to have included. And that group of people would receive that photo ID-ish that's provided by the Secretary of State that has their name, confirms they're a voter, and has their picture on it. That way, they are still providing a photo ID. So it--

CLEMENTS: Now--

SLAMA: --the-- that-- it's two separate buckets.

CLEMENTS: Back to the-- the first part, the signature photo ID list. So if I have-- a driver's license has my signature on it, that means that I am on the signature photo ID list?

SLAMA: No. If you're on the signature photo ID list, you either have a religious objection--

DeBOER: One minute.

SLAMA: Thank you, Madam President-- you either have a religious objection to being photographed or you fall into that very rare case where you don't have the documents.

CLEMENTS: OK. So this is a, you know, a narrow-- just a small group of people we're talking about.

SLAMA: Extremely narrow. Probably around five.

CLEMENTS: In either case, it's going to require a witness on the ballot envelope, right?

SLAMA: Yes, sir. A witness or a notary.

CLEMENTS: Thank you.

SLAMA: Yes.

CLEMENTS: Thank you, Madam President.

DeBOER: Thank you, Senator Clements and Senator Slama. Senator Erdman would like to recognize two guests sitting under the south balcony: Tony and Tracey Tangwall [PHONETIC] from Chadron, Nebraska. Please stand and be recognized by your Nebraska Legislature. Senator Slama, you're next in the queue.

SLAMA: Thank you very much, Madam President. Let me clear off my binders here. I do appreciate the questions from Senator Clements about the mail-in voting process. I know the signature photo ID list can be confusing by name. If you want to have it be a different name, I'm more than happy. If we want to have it be the wonderful Chairman of Appropriations', Rob Clements, ID list, that, that would work with me. I, I'm not sure what the restrictions would be on names, but I'm happy to work with you there. But I just want to get back to the conclusion before I wrap up. This might be my last turn on the mike. I might-- is this my last turn on the mike, Madam President? Oh, thank you. Can I just take a moment? Our pages are wonderful. Like, they've just gotten through their semester finals and are now, like, diving headfirst into summer break, and they're still here with us on late night debates. Like, God bless them. They are wonderful humans, and I wish them nothing but the best in the future. And if they ever need a letter of rec, they can always reach out to me. But, yeah. Back to the conclusion from the Priorities USA v. State Supreme Court of Missouri case from 2020, which I believe is directly on point, as it references language used in the "reasonable impediment" language of the Evnen Amendment, in that it is contradictory and ambiguous, in violation of the threshold-- the rational basis threshold that the court clearly establishes is applicable under Missouri's affidavit language. But back to the conclusion of this case, and then I'll go into a little bit more detail and reset where we're at and where we're heading. In conclusion, because the affidavit requirement of Sections 115.427.2(1) and 115.427.3 is misleading and contradictory, the circuit court's judgment declaring the affidavit requirement unconstitutional is affirmed. Further, the circuit court did not err in enjoining the state from requiring individuals who vote under the nonphoto identification option provided in Section 115.427.2(1) to execute the affidavit or in enjoining from-- enjoining it from disseminating materials indicating voter identification as required to vote. The circuit court's judgment is affirmed. Now, this, this ruling is

especially helpful for a few reasons. One, it's one of the very rare opinions we get that's really bite-sized. And you can take away clear things from this decision that are extremely helpful in how we're looking at the Nebraska voter ID language. Now, where this applies to the Nebraska voter ID language is the "reasonable impediment" language. So if a voter comes in and they think they have a reasonable impediment to voting and they say they do, they believe they do, they can be under the impression that they do, but when they get the sheet, they see that, of the three options determined by the Secretary of State's Office to be a reasonable impediment, they do not qualify. So you're asking someone to conform their reasonable impediment to three different forms on a sheet. So you run into the problem of a person who, in using this "reasonable impediment" language-- which is why it's so problematic and why it just shouldn't even be used in this amendment language-- who's left either forcing themselves into a box that they don't qualify for, committing perjury-- as we outlined was a problem in the Missouri case-- or walking away believing they have a reasonable impediment but being unable to vote, if-- essentially disenfranchising that voter. That's why this "reasonable impediment" language is so problematic when we're talking about the Evnen Amendment, not only in practice, but because we have a Supreme Court of Missouri case that's exactly on point. We, we need to learn. I mean, voter ID is one of the most litigated issues in the country. 35 states have it, and I'm pretty sure all 35 states, when going through the implementation of voter ID, ended up with a lawsuit on either side. Like, it's a very--

DeBOER: One minute.

SLAMA: Thank you, Madam President. It's, like, third to abortion and gun rights when it comes to amounts of litigation. And we have the lessons from other states. If we fail to learn the lessons of other states and we're left here holding a bag of an unconstitutional amendment, that's on us. So I'm grateful for everybody who stuck around and who's listening. I believe I have my close up next, so I'll just hold my other thoughts for that. Thank you, Madam President.

DeBOER: Thank you, Senator Slama. Senator Conrad, you're recognized.

CONRAD: Thank you, Madam President. And I wanted to give my friend, Senator Slama, a chance to use the facilities and confer with her staff. And in response to Senator Clements' questions, I, I thought perhaps it might be an appropriate time to provide just a little bit of clarity in terms of some of the mechanics or some of the terminology relevant to this debate as well. You know, let me start

with a quick story at, at first, though, since we have some time and-- want to make sure Senator Slama has the time that she needs even though she's, she's doing a great job of, of making the case from her perspective. You know, one-- there's so many special memories I have in this beautiful building, in this beautiful space, and many of you know that I got that political spark very early in life when I was in elementary school and I had an opportunity not only to volunteer on Helen Boosalis's gubernatorial campaign. But after that formative experience, I had a chance to join then-Governor Orr and a host of election officials, along with my grandparents and, and my parents, here at the Governor's hearing room to do a-- I believe it was a, a vote-by-mail press conference to encourage more people to vote. And I was in elementary school. And it was such an exciting time to be able to be with Governor Orr and so many incredible leaders in the state. And I remember my mom bought me a new dress. And she even made me a sash like you see in beauty pageants. It was a blue sash, like, on, on satin material with, with white lettering that said "1996 Voter" on it. And I loved that sash and proudly wore it to the press conference and still have it in my keepsake book at home. And so it's kind of a fun, full-circle moment to be back in the Capitol as a state senator still working to advance voting rights, as I had a chance to be inspired to do as, as a young person in this, this very building. But one thing that I wanted to make clear-- and I think-- we hear about this a lot at the Government Committee, and it definitely causes confusion for citizens and other stakeholders as well, is just about some of this terminology and some of these mechanics. So, you might remember-- and we've talked about it already today-- I think it's about 11 counties in Nebraska that are all vote-by-mail counties. So, Senator Clements asked a great question about process and procedure. So in these counties, you don't get a vote-by-mail application. You get a ballot. All registered voters get a ballot. There isn't a vote-by-mail application process. So, that's the first piece. Other counties do it different ways, do it a little bit differently. So, Lancaster County, for example-- and I believe Douglas as well-- has utilized a permanent vote-by-mail list or registry, where citizens step forward and they'd say, it's my preference to vote by mail and I'd like to do so in future elections. So for the folks that are utilizing a permanent vote-by-mail list, what the election commissioner in those counties might do-- or, or does do, actually-- is then they send-- automatically send out a vote-by-mail application to everybody on that VBM list, that vote-by-mail list. And then you have the obligation to return it and request your early ballot. That's how it works in, in Lancaster and, and Douglas County, generally. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

then in other counties, it's on an individual basis that citizens have to, have to request their--

DeBOER: One minute.

CONRAD: Thank you. Madam President-- have to request their early ballot. So one thing that I think is frequently confusing about how this works from a mechanics perspective or that causes unfounded concerns about fraud is that as the popularity of vote-by-mail increases-- and it has, year over year over year over year, including huge spikes during the pandemic. And then we continue to see growth in, in that type of voting for a lot of different reasons. But as, as we see more people embrace vote by mail, more candidates and more interest groups are also trying to facilitate voting rights through vote by mail. So what you will see is that candidate campaigns and interest groups or partisan groups or civic groups will send out vote-by-mail applications to registered voters. And vote-by-mail applications are not the same as ballots, but that's frequently some of the confusion--

DeBOER: Time, Senator.

CONRAD: Thank you, Madam President.

DeBOER: But you're next in the queue.

CONRAD: Thank you, Madam President-- so that's frequently some of the confusion that we might hear from the citizenry or that we have heard about at the Government Committee. When people bring up the concerns that, oh my gosh, so-and-so-- my neighbor or so-and-so that I heard about in my community received four or five ballots. They're typically not receiving multiple ballots. They're typically receiving multiple vote-by-mail applications. And sometimes the lists utilized by candidate campaigns or partisan groups or civic groups aren't always as up to date in terms of the voter rolls that are in place for our election officials. So sometimes you will see them being mailed in error to maybe folks that moved or maybe folks who had passed away since the last election. And those-- there's a key and important distinction between vote-by-mail applications and actual ballots. But I think that, that has definitely caused a lot of confusion for stakeholders. The other thing that I think is important to keep in mind-- and we hear a lot about this at the Government Committee, and I know my friend Senator Lowe listens attentively to those who come before the committee. He's a, a very diligent committee member. But we know that different people utilize vote by mail for all different

reasons. Some, geography, like we have in those rural counties where everybody automatically gets a ballot. Sometimes people are traveling. Sometimes people have illness. Sometimes people don't know where they'll be on Election Day or have to work on Election Day and can't get off even though there are some provisions to get time off on Election Day. But a lot of times, people also want to do their due diligence and sit down with a cup of coffee, sit down with their computer, for example, and really take time to read the League of Women Voters' Voter Guide or the Journal Stars or to do their own independent research about the lengthy ballot initiatives or particularly low-- or, lower ballot races that may not receive as much information or as much attention. And so we, we definitely can see that there's been a longstanding tradition in Nebraska to utilize vote-by-mail and no-excuses absentee voting. We were an early adopter in that regard. We've continued to see more and more Nebraskans, for different reasons, embrace other opportunities to, to vote by mail year over year over year, cycle after cycle. But I think it's cool that we also maintain an option for people to be able to vote in person if that is their preferred course of voting. I think it definitely brings a lot of gravity to the moment and a lot of formality, and it can be a really important civic opportunity to, to check in with, with other members of your community and your friends and neighbors as well. So, we have all of these different processes in place-- oh, and I forgot to mention that sometimes for special elections, like school bonds, we also see every registered voter getting a ballot instead of a vote-by-mail application. So we've got all of these different processes and procedures in place for different counties, for different elections, for different types of elections based on individual voter preferences, discretion that is afforded to individual county election officials. And that being said, it helps to ensure that we're doing what Secretary Evnen has talked about in the past: we're making it hard to cheat but easy to vote. And I, I always thought, well, maybe there is something to that saying because I think it encapsulates what we're all talking about and what we're all concerned about.

DeBOER: One minute.

CONRAD: Thank you, Madam President. We want to ensure that folks that are ineligible to vote do not have an opportunity to vote. We want to make sure that folks who are eligible to vote do not face unnecessary burdens in that regard. So what I think the Government Committee amendment does is it helps to advance those North Star policy goals. We know that there is existing law in place in regards to how we handle citizenship issues, fraud issues. Those are well-vetted,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

well-documented, and come with significant criminal penalties, as they should. When it comes to ensuring that we facilitate the will of the people to implement voter ID, it's not going to be a problem for a lot of folks. But for some of the folks, for a variety of different reasons, who might not otherwise be able to cast a vote, even if they are eligible, we have to have some fail-safe, some safe harbor for them so we don't turn away eligible members of our democracy. Thank you, Madam President.

DeBOER: Thank you, Senator Conrad. Senator Blood, you're recognized.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I stand opposed to the floor amendment but in support of the Government's amendment and the underlying bill. And with that, I would ask that Senator Brewer yield to a quick question.

DeBOER: Senator Brewer, would you yield?

BREWER: Yes.

BLOOD: Senator Brewer, during this debate, the-- really, the only communications I've received, except for a few random emails from other districts, is one in reference to domestic violence victims, and I was hoping we could just go ahead and get it on the mike so they can hear it during debate. Are you OK with that? In reference to ID? I, I know you know the answer to this--

BREWER: OK. I'm, I'm--

BLOOD: --or I wouldn't ask you.

BREWER: --I'm glad you know that. I don't.

BLOOD: I have hope, Senator. So-- I'm just going to read what they wrote to me. Abusers use many different types of control over their victims, and one of those is confiscating the state-issued IDs, birth certificates, and Social Security cards of their victims, which we know. They do whatever they can to make sure that people can't leave the situation. And so, lots of times, victims will find themselves homeless or in a shelter, sometimes couch surf-- couch surfing without any type of legal ID or any way to replace it. How are they able to remedy this through the bill that we're presenting?

BREWER: Well, that was one of the issues that we had to figure out an option with. And so the idea was that they could still vote, that there would be a time given post-voting that they would then be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

allowed to go through a process to establish their criteria for eligibility. And that, that would then suffice for the need for that ID that they didn't have at the moment that they were actually going to vote.

BLOOD: So they could ask for an exception--

BREWER: Yes.

BLOOD: --basically?

BREWER: That's right.

BLOOD: All right. See, I knew you'd know the answer, Senator.

BREWER: Well, I was trying to walk you through the thought process.

BLOOD: I appreciate that. And I, I think it's important when people watch this and we start seeing panicked advocates concerned about the people that they serve that it's OK for us to have this conversation and just to make sure that they know that, that you are indeed aware of this, this issue. I think you actually had people come and testify about it during the hearing, if I remember correctly.

BREWER: I did.

BLOOD: All right. Thank you, Senator Brewer. And with that, I would yield any time, if I have any left, to Senator Slama.

DeBOER: Senator Slama, you're yielded 2:27.

SLAMA: Thank you very much, Senators Conrad, Blood, and Brewer for that really helpful exchange. I am really grateful to everyone who's still plugged in and being thoughtful about their approach to this. So I do appreciate-- although we're on opposite sides of this, Senator Conrad, Senator Brewer, and Senator Blood's perspective because we are a body of 49, and I'm grateful for their perspectives on this. And before I get into Bush v. Gore, which I know everybody's super overwhelmed and excited to get to-- as Senator Conrad knows, it's an extremely long opinion. Extremely long. And I'm trying to find a quarterproof syllabus on it so I don't have to go through the whole thing. But as I do that, I'm going to hop into some very helpful NCSL articles on voter ID laws so that you can understand where we took our concepts from, where we took from our sister states and our neighboring states, our ideas to craft my own amendment and where I think the lessons learned by neighboring states could be very useful

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

in how we move forward handling the Evnen Amendment. And again, I am not hiding the ball here. I am trying to be very transparent and precise-- that if the Speaker or the Chair of the Government Committee gets up and says, we're going to work with you on your constitutional concerns between General and Select, I'm totally game for that. Like, I will sit down with a smile on my face because I've very-- taken the time to very clearly outline my issues with this bill and what I think we should be doing to alleviate those concerns. All I need is somebody to get up and say, you know what? You have our word that we'll work with, with you on these. We might not come to something that we can agree with, but I'll happily sit down if that just happens. And the fact that it hasn't happened yet pretty well outlines where negotiations on this have been like. So my first NCSL article on voter ID laws is aptly named "Voter ID Laws" and it's from the 18th of October 2022. There's a helpful note at the beginning. Please note: Our organization does not run elections and cannot provide legal advice. If you are a voter looking for assistance, please contact your local election official. You can find your local election official's website and contact information by using this database from the US Vote Foundation. Introduction--

DeBOER: Time, Senator.

SLAMA: Thank you, Madam President.

DeBOER: Thank you, Senator Slama. Senator Conrad, you're recognized.

CONRAD: Did I hit my three times? Oh, OK. There's my mike. Sorry. Sorry. Thank you, Madam President. Thank you, colleagues. Wanted to give Senator Slama perhaps a, a chance to find that synopsis that would save her and the transcribers probably a, a great deal of trouble instead of reading a, a very, very lengthy Supreme Court decision into the record. But I don't know if-- well, SCOTUSblog was probably around back then. That might be as good as source as any to check on. But I'm sure that there's probably some good rundowns that, that we could take a look at so that she could fully illustrate her point in regards to, to that measure and as she sees fit in regards to this specific question before us. So I wanted to just run through a, a little bit of additional information in terms of some of the key components, some of the essential elements of the Government Committee's amendment and how we kind of looked at some of the most important things to keep in mind when it came to carrying out the will of the people. And as some of you may know, there is a provision in our state constitution that essentially indicates that constitutional amendments, initiatives are self-executing. But this specific measure

that Senator Slama and the other members of the campaign committee brought forward to the voters and was approved by the voters had a, a specific direction that the measure would be carried out as the Legislature saw fit. And I definitely don't want to speak for Senator Slama and those that drafted the constitutional amendment that the voters approved, but I'm guessing that perhaps that deference or direction to the Legislature for implementation and facilitation was probably made with an eye towards running afoul of a single subject prohibition in our powers of initiative or referenda-- or, initiative or, or in terms of legislation as well. So I'm, I'm guessing that perhaps that's why there was a specific direction to the Legislature for implementation. But again, I don't want to put words in their mouth or, or make assumptions. Nevertheless, what we do have before us in terms of the record is the record. And the key components of the legislative history on the constitutional amendment ballot initiative are a couple of, of very brief items, actually. We have the, the object clause that is put before voters at the time of signature. We have the ballot title that the Attorney General takes up in preparing the ballots for the voters after the signature gathering and verification process. And then we have the language itself. And then finally, we have a public hearing component that provides some additional education and information for, for voters and stakeholders. And then we have a voter information pamphlet, where both the proponent and opponent campaigns are allowed to provide a brief explan-- explanation of their measure to the voters. So when you look at the text of the amendment, when you look at the ballot title, when you look at the object clause, when you look at the voter information pamphlet, you will see that there is no indication, there is no appearance of some of the issues that Senator Slama is most concerned about in regards to the committee's approach to implementation. So the committee focused on defining what a appropriate form--

DeBOER: One minute.

CONRAD: Thank you, Madam President-- of identification would be before casting a vote. We talked about the duties to the Secretary of States and election commissioners to ensure that there is a robust public awareness campaign so that eligible voters do not run afoul of the new requirements. We talked about how this would be implemented in terms of different groups of voters: folks who vote in person on Election Day, in-person early voters, and then folks who vote by mail. And folks who vote by mail, of course, have a variety of important subsets that we've already talked about in terms of-- for example, overseas and military voters as well. So we tried to work through these different components to facilitate the will of the voters following

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

existing law as we understand it and good models from other states.
So--

DeBOER: Time, Senator.

CONRAD: Thank you, Madam President.

DeBOER: Seeing no one else in the queue, Senator Slama, you're recognized to close on your amendment.

SLAMA: Thank you, Madam President. And I was able to find the syllabus of *Bush v. Gore*, a good syllabus. And in a bunch of my printed opinions, they didn't have a syllabus. And my wonderful legislative aide, Tori Osborne, found it and so graciously got it to me. So I'm going to hop in now to the syllabus just so we have that on the record of *Bush v. Gore*. And if we want, we can expand on *Bush v. Gore*. Like, we've got plenty of time to come back to it, but I do just want to get the syllabus on the record to start. On December 8, 2000, the Florida Supreme Court ordered, *inter alia*-- *inter alia*, sorry-- that manual recount of ballots for the recent presidential election were required in all Florida counties where so-called "undervotes" had not been subject to manual tabulation and that the manual recounts should begin at once. Noting the closeness of the election, the court explained that, on the record before it, there could be no question that there were uncounted illegal votes-- *i.e.*, those in which there was a clear indication of the voter's intent-- sufficient to place the results of the election in doubt. Petitioners, the Republican candidates for president and vice president who had been certified as winners in Florida, filed an emergency application for a stay of this mandate. On December 9, this court granted the stay application and treated it as a petition for a writ of cert, and granted cert. Held: Because it is evident that any recount seeking to meet 3 U.S.C. Section 5 December 12's safe-harbor date would be unconstitutional under the Equal Protection Clause, the Florida Supreme Court's judgment ordering manual recounts is reversed. The clause's requirements apply to the manner in which the voting franchise is exercised. Having once granted the right to vote on equal terms, Florida may not, by later arbitrary and disparate treatment, value one person's vote over that of another. The recount mechanisms implemented in response to the state court's decision do not satisfy the minimum requirement for nonarbitrary treatment of voters. The record shows that the standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another. In addition, the recounts in three counties were not limited to so-called "undervotes" but extended to all of the ballots.

Furthermore, the actual process by which the votes were to be counted raises further concerns because the court's order did not specify who would recount the ballots. Where, as here, a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied. The state has not shown that its procedures include the necessary safeguards upon due consideration of the difficulties intended to this point. It is obvious that the recent-- that the recount cannot be conducted in compliance with the requirements of equal protection and due process without substantial additional work. The court below has said that the legislature intended the state's electors to participate fully in the federal electoral process, as provided in 3 U.S.C. Section 5, which requires that any controversy or contest that is designed to lead to a conclusive selection of electors be completed by December 12. That date is here, but there is no recount procedure in place under the state court's order that comports with minimal constitutional standards. The case is reversed and remanded. And my takeaway here and my takeaway that has been from the start is that you can't apply different standards to different counties. I, I really do like the line referencing here that you might not even be creating different standards in a single county. You might be counting-- you might be creating different standards within individual counties. Now, this is like when you ask your--

ARCH: One minute.

SLAMA: Thank you, Madam President-- you ask your mom or dad something as a kid and it kind of depends on the time of day in which you ask it as to whether or not you get it. So a county election clerk on Election Day, if you reach out at 9:00 a.m., might be very, very committed to their own structure of what a reasonable impediment should look like. And if you come in with a cold, the county election clerk might not believe that is a reasonable impediment and outright rejects you. However, when you've got 17 reasonable impediment requests stacked up, you're either going to delegate that task of deciding who has a reasonable impediment and who does not to somebody else or you're going to, because it's human nature, take different approaches to different concepts unless you have a clear set of standards laid out. If we're leaving this to just a subjective assessment by a single official or even multiple officials, we're lining ourselves up for a Bush v. Gore problem. And I understand--

DeBOER: Time, Senator.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

SLAMA: Thank you, Madam President. And I withdraw that motion-- amendment.

DeBOER: Thank you, Senator Slama. Mr. Clerk for a motion-- or, next item.

CLERK: Madam President, Senator Slama would move to amend with FA144.

DeBOER: Senator Slama, you're recognized to open on your amendment.

SLAMA: Thank you, Ms. President. And good evening again, colleagues. This is a key different in Senator Conrad and I's assessment of the relevance of Bush v. Gore here in that she, as I understand it-- and she can hop in and correct me if she wants. I'm actually doing good on time. I'm good to go for a while-- that the scope of Bush v. Gore is limited only to counting votes in different counties and that that leads to you essentially valuing votes in a greater way than another. I'm reading it a bit more broadly and saying that counties establishing different standards-- in this case, for voter ID-- especially with the "reasonable impediment" language-- would be running afoul of this decision. So for me, the main takeaway in Bush v. Gore is that. And I believe a "reasonable impediment" language either falls flat on the language of the state constitutional amendment in which any voter can say they have a reasonable impediment and it's good enough, there is no checking. Or we're leaving this to a subjective standard determined by who your county election official is because there's not a standard broken down in statute for them to follow. Now, with that, I do want to hop back into the NCSL articles on the voter ID laws. I'll start with the first one that I had up, which was October 18, 2022. And you can follow along with these online. The NCSL has a lot of really useful materials when it comes to voter ID. And I really want to hit on two articles right now. One, their main "Voter ID" article, and then another one, which is "How States Verify Voted Absentee/Mail Ballots." Because right now, we don't have that verification in our system. But the NCSL has a great tool kit and summary of how other states do it and how they appropriately do it, normally with a witness attestation or a notary or some combination of the two. So first up is the NCSL's "Voter ID Laws," main article. Introduction. A total of 35 states have laws requesting or requiring voters to show some form of identification at the polls. Scroll over the map to see below for state-by-state details. Note: on April 1, 2022, the Arkansas Supreme Court granted an emergency stay in the lawsuit against Act 20-- 249, which passed in 2021 and made changes to the Arkansas voter ID law, allowing the state to go into-- allowing the law to go into effect. The case is pending

before the state's supreme court. The remaining 15 states and D.C. use other methods to verify the identity of voters. More frequently, other identifying information is provided at the polling place, such as a signature, is checked against information on file. See NCSL's "Voter Verification Without ID Documents." And I'm going to include these references as I'm reading along just because it is helpful to know, like, what's available in this NCSL tool kit. There are plenty of tools available if you just happen to be excited about voter ID and want to read more about it. And if you are, please talk to Senator Conrad and I. We have a fan club going and it's pretty lonely. Proponents see increasing requirements for identification as a way to prevent in-person voter impersonation and increase public confidence in the election process. Opponents say that there is little fraud of this kind, and the burden on voters unduly restricts the right to vote and imposes unnecessary costs and administrative burdens on election administrators. See "State-by-State In-Effect Voter ID Requirements--" Table Two, far below-- for citations and details on what IDs are accepted and what happens when a voter does not have ID. Variations in Voter Identification Laws. Voter ID laws can be categorized in two ways. First, the laws can be sorted by whether the state asks for a photo ID or whether it accepts IDs without a photo as well. Second, the laws can be divided by what actions are available for voters who do not have ID. These two categorization schemes can and do overlap. Photo versus nonphoto identification: some states request or require voters to show an identification document that has a photo on it, such as driver's license, state-issued identification card, military ID, tribal ID, and many other forms of ID. Other states accept nonphoto identification such as a bank statement with name and address or other document that does not necessarily have a photo. Using this categorization for laws that are in effect as of October 2022-- so this wouldn't include the state of Nebraska-- 18 states ask for a photo ID and 17 states also accept nonphoto IDs. Procedures for when a voter does not have identification: if a voter fails to show the ID that is asked for by law, states provide alternatives. These laws fit into two categories: nonstrict and strict. Nonstrict: at least some voters without acceptable identification have an option to cast a ballot that will be counted without further action on the part of the voter. For instance, a voter may sign an affidavit of identity or poll workers may be permitted to vouch for the voter. In some of the nonstrict states, like Colorado, Florida, Montana, Oklahoma, Rhode Island, Utah, and Vermont, voters who do not show required identification may vote on a provisional ballot. After the close of Election Day, election officials will determine via a signature check or other verification whether the vote was eligible

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

and registered-- whether the voter was eligible and registered, and therefore whether the provisional ballot should be counted. No action on the part of the voter is required. In New Hampshire, election officials will send a letter to anyone who signed a challenged voter affidavit because they did not show an ID, and these voters must return the mailing, confirming that they are indeed in residence as indicated on the affidavit. Now, the other segment we have for voter ID laws are "strict." Voters without acceptable identification must vote on a provisional ballot and must take the additional steps after Election Day to be counted. For instance, the voter may be required to return to an election office within a few days after the election and present an acceptable ID to have the provisional ballot counted. If the voter does not come back to show ID, the provisional ballot is not counted. So, strict photo ID states include, Arkansas, Georgia, Indiana, Kansas, Mississippi, Missouri, Tennessee, Wisconsin, Arizona, North Dakota, Ohio, and Wyoming. And there are some who would say Alabama's law is a strict photo identification law because voters who don't show a photo ID will generally be asked to cast a provisional ballot and then must bring the required ID to an election office by 5:00 p.m. on Friday after Election Day. However, there is an alternative: two election officials can sign sworn statements saying they know the voter. So it's a different variation of witness attestation. And it's not counted as strict because you don't necessarily have to show a photo ID in order to vote. So, first-time voters. In addition to the laws governing what identification all voters must show at the polls, first-time voters may face additional requirements. The federal Help America Vote Act-- so that's what is in your glossary listed as HAVA-- Section 15483(b)(2)(A) mandates that all states require identification from first-time voters who register to vote by mail and have not provided verification of their identification at the time of registration. The act lists a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and the address of the voter as acceptable forms of voter ID. Now, there are some exceptions to voter identification requirements. Most states with strict voter identification requirements make some exceptions. So, not all. And I can tell you right now, most of those that don't have exceptions are under some variation of court challenges. It's worth noting that both the Evnen Amendment and the Slama Amendment have exceptions. Have religious objections to being photographed: Indiana, Kansas, Mississippi, South Carolina, Tennessee, Texas, and Wisconsin have this. My own amendment has this, and the Evnen Amendment has a variation. Are indigent: that's Indiana and Tennessee. Have a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

reasonable impediment to getting an ID: South Carolina uses this language. But again, it is different--

ARCH: One minute.

SLAMA: Thank you, Mr. President-- it is very different from Nebraska's approach, and South Carolina has very unique language compared to ours. Do not have an ID as a result of a recent natural disaster: Texas. And to call Texas strict voter ID is very generous. If you look more into the framework, you'll see a lot of workarounds for their framework. People who are victims of domestic abuse, sexual assault, or stalking and have a confidential listing: so that's in Wisconsin. And Senator Blood to referenced that issue. And I think it's something Senator Brewer and I are both aware of and willing to work with. Anyone who might have an interest on that front-- I consider that similar to the nursing home IDs exception-- we're more than willing to work with anybody who comes to the table. Additionally, voter ID requirements generally apply to in-person voting, not to absentee ballots or mailed ballots. All voters, regardless of the verification required by the states, are subject to perjury charges if they vote under--

ARCH: Time, Senator.

SLAMA: --false pretenses. Thank you, Mr. President.

ARCH: Senator Clements, you're recognized to speak.

CLEMENTS: Thank you, Mr. President. I will be making a few comments. Then I have a question for Senator in a little bit. The, the ballot initiative, I got ballots and took them around to people to get signed. And it was very easy to get somebody to sign the voter ID petition. And I see that there's been some challenges, that there were inappropriate circulators. But I was very careful to make sure that I read the language to the person before they signed and got the proper signatures. And it wasn't all that hard. I was amazed how fast I got dozens of signatures on the ballots. And I was not surprised at all of the-- what a strong majority-- supermajority, almost-- of Nebraskans voted for the voter ID bill. And I'm pleased that we have it and we're coming up with the details now. And I'm hoping that we can make it workable. Would Senator Slama yield to a question?

ARCH: Senator Slama, will you yield?

SLAMA: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

CLEMENTS: Senator Slama, thank you. As I was circulating petitions, one of the comments I got was, well, I want to make sure an, an illegal resident is not voting. And I was wondering if there's a comparison between the committee amendment and your proposal on a noncitizen we make sure they're not voting.

SLAMA: Yes, there is. And I really do appreciate that question because it is a key difference between the Evnen Amendment and my own, in the citizenship checks. So right now, under the Evnen Amendment, the Secretary of State isn't required to do more than he already does, as outlined in the language that-- he just has to use the infor-- the data accessible to him to conduct citizenship checks of voters as they register. This language aligns with the DMV's Motor Voter Program, which covers about 55 percent of Nebraska voters. Meanwhile, my checks ensure that anybody who's using an ID that is used for voting purposes has opted into the citizenship checks. So you get 100 percent coverage rather than just 55 percent coverage,

CLEMENTS: Very good. Well, thank you very much. I still think the-- I'm generally in support of the Secretary of State's and his process. And I have not seen evidence of noncitizens voting, but I do encourage the committee and, and the Secretary to make sure that his procedures are only allowing citizens and, you know, people who should be voting and not allowing noncitizens to vote. Because as I was getting those ballots-- petitions circulated, that comment was made frequently. And I do charge the Secretary of State with being certain that we have only eligible voters that are voting at the polls. Thank you, Mr. President.

ARCH: Senator Slama, you're recognized to speak.

SLAMA: Thank you, Mr. President. And I'm going to take a little bit of time to go through the next article. I could go a little bit more in detail for all the states that do have valid photo-- voter ID laws in place on that first article, but I do want to make sure that the second article, "Summary Table 14: How States Verify Voted Absentee/Mail Ballots" that that is on the record because there are a lot of states that do this in a way not unlike I'm approaching my own amendment and in a way that verifies and ensures that our mail-in ballots are being secure. Bless you. I was just trying to find a pen to mark as I go. "Summary Table 14: How States Verify Voted Absentee/Mail Ballots." This was an article by NCSL, updated March 15, 2022. The most common method to verify that absentee/mail ballots come from the intended voter is to conduct signature verification. When voters return an absentee/mail ballot, they must sign an affidavit on

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

the ballot envelope. When the, the ballot is returned to the election office, election officials have a process for examining each and every signature and comparing it to other documents in their files that contain the voter signature-- usually the voter registration record. If a ballot is missing a signature or the signature does not match the one on file, some states offer voters the opportunity to cure their ballots. The election official will contact the voter explaining the problem and asking them to verify their information and that they did, in fact, cast ballot. Some states have other methods for verifying absentee/mail ballots, such as requiring voters to provide a copy of their identification document or have the absentee/mail ballot witnessed or notarized. So this last one is the method we're taking in the Evnen Amendment-- in the Slama Amendment. In the Evnen Amendment, it's a variation of the copied or ID number approach. So 27 states conduct signature verification on returned absentee/mail ballots: Arizona, California, Colorado, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, and West Virginia. The Virgin Islands and Washington, D.C. verify that an absentee/mail ballot envelope has been signature-verified as well. And this cuts off, so I'm kind of confused as to where we go on the next side. But in any case, nine states require the signature of a witness in addition to the voter's signature. These states may conduct signature verification as well. So this is the witness attestation. This is the lang-- part of the language that I used in my own amendment to verify that a photo ID has been shown. These are the states that do solely witness attestation, so not using the notary option that I've added for the sake of our out-of-state voters. Alabama requires two witnesses or a notary. Alaska is a witness or a notary-- so it's exactly the same as Nebraska's approach. Louisiana, Minnesota, which is, again, a witness or a notary. North Carolina, two witnesses or a notary. Rhode Ire-- Rhode Island-- which is two witnesses or a notary-- South Carolina, Virginia, and Wisconsin. Three states require the absentee/mail ballot envelope to be notarized-- that's Mississippi, Missouri and Oklahoma. Nebraska is in a very unique situation when we are comparing our language with the language from other states in that our voters approved a constitutional amendment that automatically made us a strict photo ID, voto-- voter ID state.

ARCH: One minute.

SLAMA: Thank you, Mr. President. So when we're talking about the majority of other states that have some form of voter ID and we're

talking about signature verification, that really doesn't play into anything that we can do in the state of Nebraska because you do have that "present an ID at the time of voting" language that sets us apart from a lot of the other states. Arkansas requires a copy of the voter's ID to be returned with the absentee/mail ballot. And Georgia requires the voter's driver's license number or state identification card number, which is compared with the voter's registration record. So, Georgia, based on this, is really the only one that I can see where we're leaning that hard on a driver's license or a state identification card number. And it differs from the Evnen approach in that you're using a far more expansive set of, set of IDs with the Evnen approach, with no clear method of verifying that those license numbers are legitimate. And I will come back to this on my next turn on the mike. I'm probably up next.

ARCH: Time, Senator. Senator Slama, you're recognized. And this is your last opportunity before your close.

SLAMA: Wild times. Thank you very much, Mr. President. And again, I'm willing to stand down. We could have saved three and a half, four hours if either the Speaker or the Chairman of the Government Committee would have simply gotten up on the mike and said, I am more than willing to sit down and work with you and see if we can't come to a solution on the constitutional issues you've raised. Not a guarantee of an outcome, just a guarantee that we can discuss this. Like, this is choose your own adventure, and the leadership on this has chosen their own adventure. So, we're going to talk a lot about what other states do because I think that the Evnen Amendment fails to take into account lessons learned from other states in implementing voter ID in their states. So I was talking about Georgia. And Georgia's the only one in this list, as far as I can tell, that requires the voter's driver's license number or the state ID card number, which is then compared with the voter's registration record. Now, this is as close as I can see the Evnen approach getting to verification of mail-in voting. The problem is is that there's no real means of doing this under the Evnen Amendment because of how expansive the list of IDs you're talking about. You're talking about IDs issued by any political subdivision. There's no real requirement for the Secretary of State to have a list of what's a valid ID number and what's not and what's requiring the Secretary of State's Office to go number by number-- type in the number, try to figure out if a number is a seven or a two, an eight or a three. I can see that creating a lot of extra work for the Secretary of State's Office. And I think there's a very clear reason why only one state even takes close to that approach. And it's because there's not a really good parallel. And I think the Evnen

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

Amendment is problematic because it does create an incentive not to follow through and verify those mail-in ballots. So, Minnesota and Ohio also require this information-- so the Georgia information of the ID number-- though Minnesota also requires a witness signature and Ohio conducts a signature verification. So the Evnen Amendment language requires neither of those two things. So we are falling in line with the Georgia language, which is very liberal and doesn't really fit in with the language that our voters overwhelmingly approved in November 2022. So now we'll go through-- and we could go through state by state with details on how absentee/mail ballots are verified. But what I really want to do is go through the 12 states that require-- oh, thank you very much, Joshua. Oh, that's, that's so handy. OK. My legal counsel just handled-- handed me the far better way of handling this. So I am going to go through the 12 states that require witness attestation or a notary or some combination of the two because it is important, as we're going through this, to understand why other states have taken this approach and that this approach works. I've had people bring up witness attestation and notary to me as some sort of foreign concept that, how could we possibly do this in Nebraska? A lot of states and a lot of states with very rural populations are able to successfully do this. So it's important to note that we are not doing anything new with this approach. We're actually doing what's worked well in other states. So Alabama's our first state that requires witness attestation. You have to have either two witnesses older than 18 or a notary public to sign your return envelope. Absentee ballot or return envelopes must be signed by the voter and either two witnesses or a notary public. If the witnessing of the signature and the information in the affidavit establish that the voter's entitled to vote by absentee ballot, then the election officials shall certify the findings, open each affidavit envelope--

ARCH: One minute.

SLAMA: Thank you, Mr. President-- and deposit the plain envelope containing the absentee ballot into a sealed ballot box. I will come back to the other states while I try to find a pen so I can mark my way as I go. Thank you, Mr. President.

ARCH: Seeing no one left in the queue, you are welcome to close on your floor amendment.

SLAMA: Happy to. And I just found my handy pink sharpie. So I can mark as I go. All right. So the next state after Alabama that requires either a witness attestation or notary is Alaska, which I, I've heard a lot of-- so Rhode Island requires two witness signatures for witness

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

attestation, while Rhode Island's the size of, like-- you can fit two of them in Cherry County. Well, Alaska is a pretty expansive state as well, and they're able to do witness attestation. So an attending signa-- attesting signature is needed by a witness older than 18 or an official authorized to administer oaths. Absentee ballot return envelopes must be signed by the voter and a witness or other authorized official. Ballots are not counted if the voter or the official or witness authorized by law to attest the voter's certificate failed to properly sign the certificate on the outside of the return envelope. The next state up-- need to flip through a few here-- is Louisiana. Louisiana requires the absentee ballot return envelope must be signed by a witness. Absentee ballot return envelopes bear a certificate and an affidavit which must be signed by a voter and a witness. The name on the certificate is compared with the names on the absentee-by-mail voter report. If a majority of members of the county board determine that an absentee ballot is invalid, the ballot is rejected or not counted. Minnesota-- which I guess everybody knows is a super conservative stronghold when it comes to just about everything. I mean that as facetiously as possible. Minnesota has witness attestation. The absentee ballot envelope must be signed by either a witness who is registered to vote in Minnesota or by an individual authorized to administer oaths-- oaths. A certificate of eligibility to vote by absentee is printed on the back of the return envelope and must be signed by the voter and a witness. Voters must also provide a Minnesota driver's license number, state identification number, or the last four digits of the voter's Social Security number. Election judges from different political party affiliations examine absentee ballots. If the voter's driver's license number, state identification number, or the last four digits of the voter's Social Security number on the ballot does not match the information provided on the absentee ballot application, the election judges must compare the signature on the ballot and application. Ballots that fail to meet the requirements-- signature, eligibility, et cetera-- are rejected. And I'm going to take an-- back up here and note that Minnesota verifies every single one of these signatures when it comes to witness attestation. We in Nebraska with my amendment are just doing an audit on the backend. We're auditing a statistically significant number of ballots. In this case, and from our research-- like, a statistically significant number of ballots would normally be around 1,000, and that's where you're going to get to the point of diminishing returns on actually finding fraud. We go through 1,000 through the Attorney General's Office. And if there is evidence of extensive fraud, we go from there and expand out the search. Here in Minnesota, they're right-- they're matching up every signature. Now, I've been told by

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

the Secretary of State's Office that this is somehow impossible and that we'll never be able to do it and that we don't know how other states do it. But Minnesota does it. Like, Minnesota is not a really conservative bastion here. And they have a commonsense election security measure in place. And Nebraska's taken, in the Slama Amendment, an even more thoughtful approach that minimizes the, the work on our election workers and takes a very thoughtful approach to election fraud and finding election fraud. The next state--

ARCH: One minute.

SLAMA: Thank you, Mr. President-- with the witness attestation language is North Carolina, which-- it is worth noting that North Carolina's language was recently upheld by their state court. So that is in force. We can't put an asterisk next to North Carolina and say their laws aren't in place. Absentee ballot envelopes must be signed by two witnesses who are at least 18 years old or a notary public. The absentee ballot contains a certificate that the voter must sign. The certificate must be witnessed by two persons at least 18 years old or by a notary public. The two witnesses must also indicate their addresses. So I'll come back to describing what other states do because it's so important we know what other states have done and knowing that we're not reinventing the wheel here. And with that, I will withdraw my floor amendment.

ARCH: So ordered. Mr. Clerk, next item.

CLERK: Mr. President, Senator Slama would move to amend with FA147.

ARCH: Senator Slama, you are welcome to open on FA147.

SLAMA: Outstanding. Thank you very much, Mr. President. I appreciate the opportunity to continue this riveting speech on what other states do when it comes to witness attestation and notarization because we need to have a legislative record of what other states have done and what other states have done successfully because the Evnen Amendment clearly breaks from the best practices established by our sister states. And my own amendment takes those lessons that we've learned through innumerable court cases, innumerable other states' laws and proposals, and goes forward with a successful framework that ensures that, whether you vote by mail-in or in person, that you're fulfilling the language of our constitutional amendment approved by voters by a 65/35 margin and that you are showing a photo ID in order to prove that you are who you say you are in order to vote. It is as simple as that. So we just talked about North Carolina when it comes to witness

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

attestation. And the next one up is Rhode Island. And Rhode Island is unique in that an absentee ballot envelope must be signed by two witnesses or a notary public. Military and overseas voters do not need a signature or a notary. Mail ballot envelopes are printed with a certificate that must be signed by the voter and a notary or two witnesses. Election officials compare the name, residence, and signature on the certificate with the signature on the absentee ballot application to ensure they are identical. Ballots that can be reasonably identified to come from the correct eligible voter are certified. Next up is South Carolina. Absentee ballot envelopes must be signed by the voter and a witness. Military and overseas voters are exempt from the witness requirement. Absentee ballots must be returned with an oath that is signed by the voter and a witness. No ballot is counted unless the oath is properly signed. Virginia also uses witness attestation. Absentee envelopes must be signed by a voter and a witness. The return envelope is printed with a statement that must be signed by the voter and one witness. If the affirmation on the envelope is completed as required, the ballot is counted. And the final one-- and I believe the original state that first started using witness attestation when they passed their voter ID law in 2013 is Wisconsin. In Wisconsin, their law is that absentee ballots must be signed by the voter and a witness. The absentee ballot includes a certificate that must be signed by the voter and witness. If the certificate is insufficient, the ballot is rejected. And there are three states that require absentee/mail ballot envelopes to be notarized. They're a strict notary state. We did not go that route. The white copy amendment of LB535 originally had that language. We decided to go another route after hearing the thoughts of-- the feedback from the committee hearing. The first strict notary state is Mississippi. In Mississippi, absentee ballot envelopes must be signed by a notary public or other official authorized to administer oaths. The absentee ballot envelope contains a certificate that must be signed by the voter and an attesting witness who is authorized to administer oaths. Absentee ballots are not counted if the envelope is not signed by the voter and an attesting witness. Election officials compare the signature on the ballot envelope with that on the absentee ballot application. If the signatures match, the ballot is counted. If the signatures do not match, match, the ballot is rejected. Next one up with a strict notary statute is Missouri. And Missouri was actually the state in which we pulled a lot of our notes from the white copy amendment to LB535, with the strict notary framework. Absentee ballot envelopes must be signed by a notary election official or other officer authorized to administer oaths. Absentee ballot return envelopes are printed with a statement that must be signed by the

voter under penalty of perjury. The affidavit of each person voting an absentee ballot shall be subscribed and sworn to by the election official receiving the ballot, a notary public, or other officer authorized to administer oaths. The ballot is rejected if the statement is not completed. Oklahoma is the final one that is a strict notary state. It's one of three, and it's our third one. Yes; absentee ballot envelopes must be notarized. Absentee ballot return envelopes are printed with an affidavit that the voter must sign. The affidavit must be witnessed by a notary. Notary publics must maintain a log of all absentee ballot affidavits that they witness and may not notarized more than 20 absentee ballot affidavits for a single election without the written approval of the election board. The county election board reviews each ballot [INAUDIBLE] the affidavit was properly executed and determines whether improperly executed affidavits should be accepted or rejected pursuant to law. So, Oklahoma's language is actually incredibly interesting, and it's unique in the sense that not only do you have the notary requirement, you also have a limit. And I, I do appreciate this concept to prevent bad actors and ballot harvesting in that you have a limit of a notary public not being able to notarize more than 20 absentee ballot affidavits for a single election without the written approval of the election board. Because one of the most common objections we had to strict notarization is that Nebraska's a rural state, we don't have access to a lot of notaries. Aaron Sanderford with the Nebraska Examiner actually did a really interesting article on the dispersion of notaries in the state of Nebraska. And Oklahoma is a state with a lot of rural populations very similar to Nebraska. And I do find it interesting that not only are they able to make it on a strict notary state, but they can also limit the number of attestations signed by a single notary and still function and run their government-- run their elections well. So I've gone through and discussed the states that have witness attestation or a notary or a combination of both just to show that my approach isn't reinventing the wheel. It's a very common approach for states with strict voter ID laws who treat mail-in ballots as they do ordinary votes. And with our constitutional language, we are in a unique position in that our constitutional language did not specifically exempt mail-in voting. Therefore, that mail-in voting has to be covered by the photo ID requirement just as much as it is in person. So that puts us in a unique position where you do have to prove up, even if you're mailing in your ballot, that you have a valid ID and are eligible to vote. So, I'm going to find something else to read. I do have more NCSL articles. I do have the full Bush v. Gore opinion. But what I think I might do on my next turn up is go through, again, my constitutional concerns with the Evnen Amendment because we haven't

touched on that for a while. And I do think it is helpful every so often to reground ourselves in my constitutional objections to this Evnen Amendment and to really explain why I'm taking this much time on the mike because I do think we are failing the will of the voters and we are passing something that's very clearly unconstitutional and rejects the 65 percent of Nebraska voters who did vote in favor of a strict photo ID voter amendment constitut-- voter ID constitutional amendment. Thank you, Mr. President.

ARCH: Senator Slama, you are next in the queue.

SLAMA: Outstanding. Well, I can very slowly go through my summary sheet and extemporaneously expand on that. I guess I was unable to turn off my light and turn it on in time. The struggle is real. So I do have a number of issues with AM-- it's originally AM1748. I'm just referring to it as the Evnen Amendment. We adopted it earlier today. Section 5 violates the National Voter Registration Act by eliminating due process for a voter that's found to not properly be registered or on the voter rolls. Section 10 places an undue burden on the fundamental right to vote. We have a case law directly on point. It also violates the amendment passed by voters by allowing nonexempt persons to vote without showing a valid ID. Section 11 places an undue burden on the fundamental right to vote. Again, we have case law directly on point. It also violates the amendment passed by voters by allowing nonexempt persons to vote without showing a valid ID. Section 12 violates the fundamental right of a person with a religious objection as outlined by the United States Supreme Court. Section 17, you've got either two problems here-- and I messed up in my reference in the Missouri case. It was referencing Sections 17, 18, and 19, not Sections 10 and 11. That's my fault for not having the individual sections of this memorized offhand. So we're running into violating the fundamental right to vote. We've got the Missouri law directly on point. We also violate the amendment passed by voters by allowing nonexempt persons to vote without showing a valid ID or we create an Equal Protection Clause issue as articulated by the United States Supreme Court. Section 18 again either violates the fundamental right to vote or it runs into a Fourteenth Amendment Equal Protection Clause issue. Section 19 is the same thing. Section 23, when you take it with the rest of the bill, it violates the Privileges and Immunities Clause of the Fourteenth Amendment in that you're creating a situation where you have two separate classes of citizens in the state of Nebraska. Class I is a person is born in the state of Nebraska and can get free assistance from the Secretary of State's Office in procuring items like their birth certificate and other valid documents for free, or you fall outside of that and you were born outside of the state of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

Nebraska and you cannot get that assistance for free, guaranteed by the Secretary of State. I think that's a very clear cleanup problem that I think we should be at least willing to address. And no one, whether it be the Speaker or the Chairman of the Government Committee, have been willing to even get on the mike and say, we'll work with you on the issues that you have between General and Select. And, here's the thing, is I played the leading role in getting Initiative 432 across the finish line to finally amend our constitution to have a commonsense voter ID law in place. And I'm not going to stand by while the will of the voters is trampled on. So that's why I'm taking this eight hours. Medically, should I be doing this? Absolutely not. Like, my doctors are probably, like, taking blood pressure medication right now because I'm absolutely going against all doctor-- medical advice by doing this. But the problem is is so many senators have fought for so long to get one of these bills in place. And I'm not just going to stick around while we screw it up trying to take the easy way out. I'm not going to stand here and trample on the legacies of strong conservatives like--

DORN: One minute.

SLAMA: Thank you, Mr. President-- former State Senators Charlie Janssen, Tyson Larson, John Murante, Andrew La Grone, and other senators who have fought for years to get voter ID where it is today and who realized that the legislative process-- it failed voters the first time around and forced Nebraska voters to go to a petition drive. Now that the petition drive has been successful and we've gotten the constitution amendment-- amended, thanks to a vote of the people, the Legislature is failing them again with this Evnen Amendment that seeks to take the easy way out and fails to take the will of the voters and the language of the constitutional amendment into account. Thank you, Mr. President.

DORN: Thank you, Senator Slama. And you are next in the queue. And this is your last time before your close.

SLAMA: Outstanding. Thank you very much, Mr. President. I appreciate it. I've got an assortment of different sheets here that I can use to piece together and extemporize more of my objections to the constitutionality of this amendment. So I'm, I'm going to build on these a bit and just kind of piecemeal this together. I should really better organize my desk. That would be fabulous. But today is not the day for that. So my first objection on this amendment is the violation of the National Voter Registration Act on Section 5. So the approach that the Secretary of State used in his amendment-- and just as an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

aside, I call it the Evnen Amendment because it is Secretary of State Bob Evnen that drafted it. Like, I'm not using anything derogatorily. It is his office that drafted it. Section 5 violates the National Voter Registration Act because of the language that registered voters who are found to be noncompliant and potentially noncitizens will be automatically removed from the voter rolls. This violates the National Voter Registration Act because the National Voter Registration Act very narrowly defines when you can remove somebody from your voter registration rolls: one, if they're asked to be removed from the voter registration rolls; if they're convicted of a crime that takes away their right to vote-- felonies generally lead to that; the death of the voter; and also the conviction of the voter of not being a citizen eligible to vote. You have to wait until after that conviction takes place. So preemptively going through the voter rolls and just kicking somebody off without notification, without due process is in clear violation of the National Voter Registration Act. This is another administrative piece that I think can be properly addressed by fine-tuning the language, pulling the language from my amendment, whatever you want to do to make sure that person has due process and that they are being notified before they show up and accidentally commit a felony because they haven't been notified that they're taken off the voter registration rolls. That's very important to address. Section 10 and 11 places an undue burden on the fundamental right to vote, and it doubles back on-- sorry. I'm just taking a moment to collect my notes here. OK. Yeah, I've got notes here on Section 10. So in Crawford v. Marion County Election Board, the United States Supreme Court found that the U.S. election there is only-- the U.S. Constitution, there are only select groups of individuals that may receive special accommodations under voter ID laws. They include elderly persons born out of state who may have difficulty obtaining a birth certificate; persons who, because of economic or personal limitations, may find it difficult either to secure a copy of their birth certificate or to assemble the other required documentation to obtain a state-issued identification; homeless persons; and persons with a religious objection to being photographed. So taken with the Nebraska constitutional amendment, what this means is that the Nebraska Legislature must pass a law implementing voter ID that, one, makes an exception for those with religious objections and, two, makes accommodations for all other groups mentioned by the Supreme Court. If we cannot make accommodations for those groups, then they too would be exempt. However, the text of the constitutional amendment requires that anybody outside of these groups show a valid photo ID. The Evnen Amendment in-- Section-- starting with Section 10 and related sections

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

go far beyond this by allowing somebody to vote if they're sick or they don't have a birth certificate.

DORN: One minute.

SLAMA: Thank you, Mr. President. This last category is extremely concerning because the Supreme Court has explicitly said that having to go to acquire the appropriate documents to get an ID is not an undue burden on the right to vote. Therefore, the Evnen Amendment violates the Nebraska Constitution and betrays the will of the voters that everyone show an ID. My amendment, on the other hand, makes the accommodation for all these groups while requiring IDs of those required to do so. The Secretary of State is to aid individuals in obtaining the necessary documents to get an ID. If they cannot, the Secretary of State can provide them an exemption or provide an ID for them. This fail-safe is something that we have to have in place and something that the Evnen Amendment simply does not have. Thank you, Mr. President.

DORN: Thank you, Senator Slama. Senator Ballard, you're next-- recognized to speak.

BALLARD: Thank you, Mr. President. I'd like to give Senator Slama a couple minutes to, to collect her thoughts and maybe get a drink of water while I, I read this Gallup Poll article that is entitled "8 in 10 Americans Favor Early Voting and Photo ID Laws." With the midterm elections less than a month away, large majority of Americans favor three measures meant for making voting easier: early voting, 70 percent favor; automatic voter registration, 65 percent in favor; sending absentee ballots to all eligible voters, 60 percent in favor. Majority of Americans also oppose two measures that can make voting harder, such as removing inactive voter from voter list or limiting the number of drop boxes for absentee ballots. However, one policy that most Americans-- at 79 percent-- are on board with is that requiring photo identification to vote. While various combination of these policies have been adopted all over the country the past-- in the past decade, in 20-- in 2020, the pandemic in-- inter-- introduced a health-based impetus to facilitate more absentee ballot voting that some states now building on others are rolling back. Of the six policies tested this year, sending absentee ballots application to all eligible voters is the most politically polarizing. Democrats favor the policy over Republicans by 61 percent margins, 88 percent versus 27 percent. There's a smaller partisan gap in the respect to automatic voter registration, favored by 81 percent, nearly a half for Republicans at 47 percent. Sizable party difference also seen in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

limiting the number of drop boxes for absentee ballots and removing lapsed voters from the voter registration list. About 6 in 10 Republicans favor each of these positions, compared to fewer than 2 in 10 Democrats. Majority of Republicans and Democrats favor early voting as well as require a voter ID to vote, although a large party gaps exist on these as well. Having an early vote option and all voters are backed by virtually all Democrats at 95 percent, as well as 60 percent of Republicans requiring all voters and-- show voter ID to-- support of 97 percent Republicans and 53 percent Democrats. Independent views fall about halfway between Democrats and Republicans on most of these policies tested. However, Independents-- at 84 percent-- support voter identification is significantly closer to Republican level support than Democrats, while 63 percent support the universal mailing absentee ballot applications, closer to Democrats than Republicans. Public support for voter, voter ID requirements, early voting, and automatic voter registration remains unchanged from 2016, while Gallup last measured U.S. views on these. 80 percent of U.S. adults in 2016 favored required photo identification as well as voting laws. 63 percent supported automatic voter registration. This stability, however, masks a growing partisan divide in the two policies: in early voting and photo identification. The bottom line: voting laws have been a hot topic over the past decade as court challenges to federal laws have given states more leeway to craft election policy. Other than their support for requiring voter, voter ID to vote, the public generally favors changes in the smoothing people's paths to the ballot box. With numerous election laws passed, the state level, state level is just-- past two years, Americans will gain a professed perspective on ballot access over the next month as they seek to vote in November midterm election. Some will find that the process easier than before, with the pandemic era being continued or expanded, while others, where the 2020 policies have been curbed or new restrictions have been added, will find it harder. So with that, I would like to yield the rest of my time to Senator Slama.

DORN: Senator Slama, you're yielded 1:15.

SLAMA: Thank you very much, Mr. President. And thank you very much, Senator Ballard, for taking a solid 3:45. I do appreciate that. We're going to have to work with you on reading slower--

DORN: One minute.

SLAMA: --for future occasions. Thank you, Mr. President. But we'll work on that. You're a freshman. You'll get there. Section 12-- so back to my memo on the constitutional objections I have to the Evnen

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

approach and the Evnen Amendment. So Section 12 of the Evnen Amendment violates the religious objectors' fundamental right to vote as outlined by the United States Supreme Court. Any infringements upon a person's sincerely held religious belief is analyzed under strict scrutiny. Requiring those who have religious beliefs against being photographed to recertify that religious belief would be a burden analyzed under strict scrutiny, and it is not the least restrictive means of achieving that. A voter could simply be required to notify the Secretary if their belief changes. Therefore, the recertification would fail strict scrutiny and would be an unconstitutional burden on the right to vote. Thank you, Mr. President.

DORN: Thank you, Senator Ballard and Senator Slama. Senator Clements, you're recognized to speak.

CLEMENTS: Thank you, Mr. President. I wanted to discuss noncitizens or preventing noncitizens again. I had discussion with on that previous time. And I've done some investigation and talked to some people about what the committee amendment-- how the procedure is planning to work. And it starts with, when you register to vote, you attest that it says, I am a citizens of the United States of America, and that's a very serious statement to be made, being there's federal law and federal penalties for fraudulently stating that. And I was told that there is agreement that 55 percent of Nebraskans do register to vote along with getting their driver's license. And that-- and when they do that, the Department of Motor Vehicles is able to verify their citizenship and check into that. That's really because the driver's license is a privilege, not a constitutional right. And so the state is able to look into verifying whether they are a citizen. And so the 55 percent is a-- I think it's an accepted to be all citizens. Then the 45 percent, my understanding is that-- of those, the 43 percent that have registered otherwise of those 45 percent, only 2 percent maybe don't have a Nebraska driver's license, but 43 percent have a Nebraska's driver's license. And what I understand is that the proposal would be for the citizenship of those to be verified. And the citizenship verification is, you know-- it's-- that's, again, under federal law, whether they have correctly stated that they're a citizen. And so the Secretary of State can look at that list of the other 43 percent of people and ask for a verification. But Secretary of State cannot automatically remove somebody if they refuse to give that verification. Either they don't have it or they refuse to give it. But the Secretary of State does have ability to refer to the county attorney for investigation and possible fraud charges if the person won't verify or if it's verified that they're not a citizen. And at that point, I think it's going to be common for a noncitizen to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

likely just request that their name be removed from registration and possibly claim that they weren't sure what they were signing and that we just drop it and they'll drop out. So I think there's a possibility for probably 98 percent of the people who apparently do have it, a Nebraska driver's license or-- yes, driver's license. I'm going to call it that. And-- not sure what the other-- how the other 2 percent is going to be verified. Didn't quite get into the details there. But the Secretary of State--

DORN: One minute.

CLEMENTS: --has access to more than just the 55 percent. There's an additional 43 percent that have driver's license that are able to be verified or inquired upon through the Department of Motor Vehicles. And those that are questionable can be asked to give a verification. And if, if they refuse and if it's suspicious, they are-- the Secretary of State is able to give the county attorney investigative reference. And so I'm comfortable with the, the noncitizen situation with the committee amendment. Thank you, Mr. President.

DORN: Thank you, Senator Clements. Senator Slama, you're in the queue next. However, you have spoken three times already, so we'll pass over you right now. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. And I'm happy to yield time to Senator Slama if she needs it. I've hit my limit in the queue from time to time as I was involved in extended debate, and I always appreciate when a colleague's willing to share time. I know she has other measures filed, so she may not need someone to yield. But if so, just putting that out there. I'm happy to have an opportunity to speak after my friend, Senator Clements, because, again, I think that we all share very similar concerns in regards to ensuring that no person who is otherwise ineligible from voting has an opportunity to flout our laws and to vote. That's already governed by current law. It carries significant penalties if somebody who's ineligible for a host of different reasons-- age, criminal system involvement, citizenship, a finding of non compos mentis, residency-- those would be some of the, the primary considerations that, that you might look at. We, we want to ensure that those who are ineligible do not have an opportunity to vote, but we also must ensure that those who are eligible do not face a needless hindrance or barrier. And that's why we have to proceed really caut-- cautiously in regards to how we ensure that, for example, noncitizens are not voting. Now, no one is having any sort of disagreement about whether or not citizens should-- noncitizens should be voting in Nebraska. What we do need to recognize is, again, this is

governed by existing law. You have the attestation on the voter registration form or online. I have a copy of it back here. Senator Clements has also-- already had a chance to look it over, talk about it on the record. And then we also have these constructive examples from states that have tried to take a more aggressive approach in regards to citizenship verification. And we can see how they ran afoul of various aspects of federal law because, in their attempt to conduct a more robust citizenship investigation, they cast their net too widely. And what happened was that they identified and ensnared eligible voters who had-- naturalized citizens in many instances-- who did secure the right to vote. We, we have to be really, really careful that we don't cast those net too wide-- those nets too widely when conducting that investigation so that we do not disenfranchise otherwise eligible citizens to vote, including naturalized citizens. So you can look at a couple of examples that provide cautionary tales in regards to these issues. There's a pretty widely documented example out of our sister state in Texas back in 2019, where they attempted to do this really deep dive investigation in the voter rolls to ferret out noncitizen voters who might, who might be on the rolls. Now, that was subjected to, I think two or three or four legal challenges, and it identified a host of errors with the state officials' approach. As a part of the error-prone investigation and part of the civil rights litigation that was sparked due to that overly broad investigation, there was a settlement, and Texas basically peeled back from that approach. We have cautionary tales and examples emanating from our sister state in Kansas when Kris Kobach tried to institute some--

ARCH: One minute.

CONRAD: Thank you, Mr. President-- some, quote unquote, show-me-your-papers laws, in regards to voting that were turned aside, as they should be. And then we saw Kris Kobach lead a national effort under the Trump administration to try and address fraud and citizenship and a host of different issues that was quickly thwarted by a bipartisan set of secretary of states across the country in regards to perpetuating the big lie and in regards to data-sharing issues. So those are just a few examples that I wanted to insert into the record about why we need to proceed cautiously in regards to overly robust citizenship investigations that could disenfranchise eligible voters. Thank you, Mr. President.

ARCH: Seeing no one left in the queue, Senator Slama, you're welcome to close on your FA147.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

SLAMA: Sweet. Given that I think I'm the last thing-- this close is the last thing before we get out of here for a supper break, I'll try to keep it at around two to three minutes so we do kick out of here right at 5:30 and we can all get supper. I hope it's good. It normally is. And I'm really gracious to the Speaker for-- grateful to the Speaker for arranging those meals just because, normally at this point in session, I really don't eat that much. And if I do, it's one those sandwiches that are in the vending machines and-- they're good, but you just kind of never know. But, yeah. Back really quickly wrapping up the objections I have, constitutional objections I have to the Evnen Amendment. Before that, I do want to touch on Senator Clements' citizenship check process because he literally did just outline my process. And if that information is coming from the Secretary of State's Office about what his citizenship process does, that's wonderful. That means we're on the same page when it comes to having 100 percent of voters in the state of Nebraska be checked for citizenship on the voter rolls in compliance with the NVRA. So if the Secretary of State's on board with this and Senator Clements is on board with this, I'm really hopeful we can adopt my language on citizenship checks between now and Select. Otherwise, Secretary Evnen is really using aspirational language that doesn't really get to what his citizenship check language actually does. But I am hopeful he'll realize the error of his ways and see the reasonableness in my own citizenship check language. Sections 17 through 19 of the Evnen Amendment either violates the fundamental right to vote or violates the equal protection law as articulated by the United States Supreme Court. We have case law directly on point. We also violates the-- we also violate the amendment passed by the voters and allowing nonexempt persons to vote without showing a valid ID. I've got a lot more on Sections 17 through 19, but given that it is 5:30, I will cede the rest of my time to the Speaker. I've got a bunch more-- and many more amendments lined up after this. So we have nothing short of great material left for the last hour of this debate. Thank you, Mr. President. And I withdraw that amendment.

ARCH: So ordered. Senators, we will now stand at ease until 6:00 p.m. Thank you.

[EASE]

DORN: Mr. Clerk, next amendment, please.

CLERK: Mr., Mr. President, Senator Slama would move to amend with FA148.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

DORN: Senator Slama, you're recognized to open on your amendment.

SLAMA: Thank you, Mr. President. And while I'm waiting for everyone to roll in after the supper break, I'm going to read from a Pew Research article. I know. Senator Holdcroft's here. Senator Aguilar actually beat me back to the floor, which is very impressive. He has very fleet feet. Senator Sanders is here. Senator Raybould's here. Senator Dorn's in the chair. Senator Blood just walked in. Burdette is here. And Charlie. Senator Lowe's walking in. But I am going to read this Pew Research article just to kind of burn some time while we wait for more of our friends to join us. And I can get back more into the substantive side of my interactions with the Evnen Amendment and where we're going with voter ID this session. "Republicans and Democrats Move Further Apart in Views of Voting Access. Declining shares of Republicans favor no-excuse absentee and early voting, automatically registering all eligible citizens to vote. This is a report from April 22, 2021 from the Pew Research Center. In the months since the 2020 election, partisan conflicts over election rules and procedures both at the state and federal levels have become increasingly contentious. Among U.S. adults overall, sizable majorities favor several policies aimed at making it easier for citizens to register and vote, as well as a requirement that voters be required to show government-issued photo identification before voting. However, there are substantial-- and, in some cases, growing-- partisan divisions over many of these policies, largely because of changes in opinions among Republicans. For example, since 2018, there's been a decline in the share of Republicans and Republican-leaning Independents who support automatically registering all eligible citizens to vote: 38 percent today in 2021 versus 49 percent in 2018. In addition, the share of Republicans who say any voter should be allowed to vote early or absentee without a documented reason has fallen 19 percentage points, from 57 percent to 38 percent. Democrats and Democratic-leaning are far more supportive of automatically registering all eligible citizens to vote, 82 percent, and no-excuse early voting, 84 percent. Their views are virtually unchanged in recent years. The new national survey by Pew Research Center, conducted from April 5-11, 2021, among 5,109 adults who are members of the Center's American Trends Panel, also finds wide partisan differences over removing inactive voters from voting registration lists. A 68 percent majority of Republicans favor removing people from voting registration lists if they have not recently voted or confirmed their registration, compared with just 27 percent of Democrats. Still, several proposals draw majority support from both Republicans and Democrats, including requiring electronic voting machines to print paper ballots as backups and for making early

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

in-person voting available for at least two weeks prior to Election Day. Yet, in general, Republicans are far less likely than Democrats to say everything possible should be done to make it easy to vote, according to a survey conducted last month: 28 percent of Republicans versus 85 percent of Democrats. When it comes to no-excuse early and absentee voting-- a topic that has received widespread attention in recent weeks-- Republicans are significantly more likely than Democrats to say that a voter should only be allowed to vote early or absentee if they have a documented reason for doing so: 62 percent versus 16 percent. In October 2018, on the eve of that fall's midterm elections, fewer than half of Republicans, 42 percent, favored requiring voters to have a documented reading-- reason for voting early or absentee. Republicans' views of some other election proposals have also changed over this period. A much larger share of Republicans today say they favor removing people from registration lists if they have not recently voted or confirmed their registration than said this in October 2018: 68 percent today versus 53 percent then. And a declining share of Republicans support automatically registering all eligible citizens to vote: 38 percent today versus 49 percent in 2018. Over this period, Democrats have remained much more stable. Fewer than 3 in 10, 27 percent, favor removing voters from registration lists if they have not recently voted or confirmed their registration, while a sizable majority, 82 percent, continue to favor automatically registering to vote all eligi-- registering all eligible citizens to vote. There has been little change since 2018 in views requiring all voters to show government-issued photo ID in order to vote. Republicans continue to overwhelmingly support this policy, 93 percent favor; while it draws support from a smaller majority of Democrats, 61 percent. Other findings from the survey. Voters who have recent experience with early or absentee voting are more likely to favor no-excuse absentee voting policy. Those who say they voted early or absentee in 2020 are more likely than those who voted in person to favor no-excuse early and absentee voting for all voters. This is particularly the case among Republicans. Just 22 percent of Republicans who voted in person or-- on Election Day favor this policy, compared with 52 percent of Republicans who voted early or absentee in the 2020 presidential election. More approve than disapprove of independent redistricting. Many are unsure about the issue. More adults approve 49 percent than disapprove of a Democratic proposal to require the commissions with equal numbers of Republicans and Democrats draw congressional maps rather than state legislatures. A sizable share of adults, 38 percent, say that they are not sure about this proposal. Democrats are more likely than Republicans to favor replacing state legislatures with independent commissions for

drawing congressional maps. There's broad support for several election-related proposals. Sizable majorities of adults strongly favor or somewhat favor requiring electronic voting machines to print a paper backup of the ballot, 82 percent, making early, in-person voting available to voters for at least two weeks prior to Election Day, 78 percent, and requiring all voters to show government-issued photo identification to vote, 76 percent. Roughly 7 in 10 Americans also favor allowing people convicted of felonies to vote after serving their sentence, 70 percent, and making Election Day a national holiday, 68 percent. Though a majority of adults favor automatically registering all eligible citizens to vote, support for this policy is slightly less pronounced compared with the other proposals asked about on the survey. Removing people from registration lists if they have not been recently voted or confirmed their registration is the only item that a majority of the public opposes. 52 percent say they strongly or somewhat oppose those proposal. A smaller share, 46 percent, expresses support for it. While the public broadly supports six of the seven voting proposals asked about on the survey, there are sizable partisan divides on several policies, including the relative strength of support for many election issues. For example, while majorities of Democrats and Republicans say they favor making early, in-person voting available to voters at least two weeks prior to Election Day, Democrats are more than twice as likely as Republicans to strongly support this measure, 65 versus 26 percent, respectively. There's a similar pattern in views when it comes to making Election Day a national holiday. 53 percent of Democrats strongly support this policy, compared with 29 percent of Republicans. And whether people convicted of felonies should be able to vote after serving their sentences; 49 percent of Democrats strongly favor, versus 20 percent of Republicans. By contrast, Republicans are considerably more likely than Democrats to strongly favor photo identification requirements for voting. 81 percent strongly favor, compared with 30 percent of Democrats, even as majorities in both partisan groups favor this policy. Over the past few years, there have been some sizable shifts in the views of voting policy among Republicans, including in views of automatic voter registration and removing people from registration lists if they have not recently voted or confirmed their registration. In 2018, about half of Republicans, 49 percent, say that they would somewhat or strongly favor automatically registering all eligible citizens to vote. Today, a much smaller share of Republicans say they support this measure, 38 percent. At the same time, the share of Democrats who support automatic voter registration has ticked up slightly, from 78 percent in--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

DORN: One minute.

SLAMA: Thank you, Mr. President-- in 2018 to 82 percent today. So if you are just joining us, I am reading this Pew Research article just as people came back from dinner. I didn't want to be on any constitutional analyses issues while we are all kind of filtering back in from lunch. We're doing, like, a slow-walk into this. We've got about an hour left. And I'll hit on my constitutional objections to the Evnen Amendment and where this is going. Again, like, we could have saved three to four hours of floor time if the Speaker or the Chairman of the Government Committee would have just gone, we're willing to work with you to address these constitutional concerns-- not guaranteeing an outcome, but just saying that they would work with me. And it really underscores the struggle I'm having with the process here in that we can't even do that and save us four hours of floor debate time. So that's their problem, not mine. I'm going to continue standing strong for election integrity and voter ID. It's what the people overwhelmingly approved.

DORN: Time.

SLAMA: Thank you, Mr. President.

DORN: And you are next in the queue, so you're recogni-- Senator Slama, you're recognized to speak.

SLAMA: Outstanding. Thank you very much, Mr. President. So again, I'm just reading from this Pew Research Center article on polling related to voter ID and other election processes. It's a pretty helpful article to understanding the overwhelming popularity of voter ID in the United States. Even a majority of Democrats, 61 percent of Democrats in this Pew Research poll from 2021, support it. But, back to the article. Republican support for removing people from registration lists if they do not-- if they have not recently voted or confirmed their registration has also shifted considerably since 2018. Since then, a small majority of Republicans said they favor this policy, 53 percent. Today, the share is 15 percentage points higher, 68 percent. There has been comparably less movement on several of the other voting policies asked about on the survey, though Democrats are 7 percentage points more likely to favor making Election Day a national holiday compared with three years ago. Republicans are about as likely to favor this policy today as they were in 2018. When it comes to voting policies, younger people are typically more likely than older people to favor increased ballot access, whether that is through automatic voter registration, disapproval of removing voters

from registration lists if they have not recently voted, allowing ex-convicts to vote, or making Election Day national holiday. This difference is primarily driven by age differences among Republicans and Republican-leaning Independents. About 1 in 3 Republicans age 65 and older, 32 percent, favor policies that would automatically register all eligible citizens to vote, as do 35 percent of Republicans age 50 to 64, 41 percent of those 35 to 49 and 46 percent of Republicans younger than 35. There's almost no age difference among Democrats on this proposal. Similar age dynamics can be seen across a range of other voting proposals. Younger Republicans are much more likely to support re-enfranchising people convicted of felonies than are those 65 and older-- 63 percent of 18- to 34-year-old Republicans and 47 percent of those 65 and older. They are also substantially more likely to support making Election Day a national holiday, 71 percent of young Republicans, compared to 50 percent of those 65 and older. Younger Republicans are also significantly less likely to support removing voters from registration lists if they have not recently voted or confirmed their registration confirmed [SIC] with older Republicans. 56 percent of those under 35 say this, compared with 77 percent of those age 65 or older. Younger Democrats are somewhat more likely than older Democrats to support removing voters from lists if they have not recently voted, compared-- 30 percent to 18- to 34-year-old Democrats supports such policies, compared with those 65 and older. There are also substantial racial and ethnic differences in support for voting policies. In several cases, black Americans are distinctive in their preferences for more expansive voting policies. Black adults are substantially more likely than those of other races and ethnicities to favor allowing people convicted of felonies to vote after serving their sentences. 85 percent of black Americans favor this, compared to about 7 in 10 white, Hispanic, and Asian Americans. Black adults also show among the lowest levels of support for some of the more restrictive policies, such as removing people from voter registration lists if they haven't recently voted or confirmed their registration and requiring voters to show government-issued photo identification. Overall, white adults are less likely to favor making Election Day a national holiday and automatically registering all eligible citizens to vote than are black, Hispanic, and Asian adults. Among Democrats, however, white adults are supportive or, in some cases, more supportive--

DORN: One minute.

SLAMA: Thank you, Mr. President-- than black, Hispanic, and Asian adults of policies aimed at making it easier to vote. And while only a narrow majority of white Democrats, 54 percent, favor requiring voters

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

to show government-issued photo identification to vote, larger shares of black, Hispanic, and Asian Democrats say the same. Among Republicans, by contrast, white adults are less supportive than Hispanic adults of policies aimed at easing voting. For example, about half of Hispanic Republicans favor automatically registering all citizens eligible to vote, compared with 30 percent of white Republicans. And I probably won't continue this article on my next turn at the mike. There's still a lot left. And I really would like to hop back into my constitutional concerns with the Evnen Amendment. We'll burn through about 40 more minutes of floor time because I haven't gotten any guarantees that I would be worked with on these constitutional concerns. Thank you, Mr. President.

DORN: Thank you, Senator Slama. And you are recognized to speak. And this is your last time before your close.

SLAMA: Oh, gosh. It's like Christmas. So back to where I left off on my constitutional concerns with the Evnen Amendment, which we did adopt earlier today. Sections 17 to Section 19 either violates the fundamental right or it violates the equal protection law as articulated by the United States Supreme Court. We have case law directly on point on this objection. It also violates amendments passed by voters allowing nonexempt, as defined by the United States Supreme Court, persons to vote without showing a valid ID. There are two possible interpretations of Sections 17 through 19. One is that no one would check to see if the voter actually had a reasonable impediment to vote, thus not actually requiring anybody to show an ID. As already discussed regarding Sections 10 and 11, this would fly in the face of the voters and would clearly violate the Nebraska Constitution. Other interpretation would be that the election officials in each county would be left to interpret whether an individual has a reasonable impediment. With the fact that Nebraska has 93 counties-- at a minimum, 93 different election officials would be making separate determinations of whether reasonable impediments existed. An election commissioner in Scotts Bluff County might interpret someone's cold is a reasonable impediment, while an official in Otoe County might say that it is not. Such a possibility would violate the Equal Protection Clause of the Fourteenth Amendment as outlined by Bush v. Gore. So this is something where Senator Conrad and I have a key difference in how we're interpreting Bush v. Gore. I'm viewing it as a more expansive view that counties cannot set different standards within a single state when it comes to things like counting ballots and determining what a reasonable impediment is. On the other hand, Senator Conrad is narrowly construing the Bush v. Gore ruling to only reference counting ballots within a single county,

which is all right. We have a difference of opinion there. In other words, if this is the correct interpretation and people's reasonable impediments have to be checked, this amendment will turn all of our elections into the fiasco that was Florida in the 2000 presidential election. However, it doesn't just stop there. Since Sections 17 through 19, when looked at a whole, require three different election entities: the election official, the receiving board, and the counting board to make potentially separate decisions on an individual's reasonable impediment. There is the possibility that we could have 279 different interpretations of whether a certain claimed reasonable impediment counts. Section 23. Taken with the rest of the Evnen Amendment, Section 23 violates the Privileges and Immunities Clause of the Fourteenth Amendment. The United States Supreme Court has held that a state cannot discriminate against a person based on where they're from as it relates to exercising a constitutionally protected right. It's referencing the Bolton case from 1973. Voting, as I've already stated, is a constitutionally protected right. The Evnen Amendment only pays for the documents required to get IDs for people born in the state of Nebraska. If you're born out of state, it doesn't pay for the documents you need to vote. This is a clear burden on a fundamental right based on the state a person was born in. Thus, the Evnen Amendment violates the Privileges and Immunities Clause of the Fourteenth Amendment of the United States Constitution. And it also creates two separate classes of voters in the state of Nebraska: those who are born in the state of Nebraska and have the ability to get assistance in obtaining their documents for free through the Secretary of State's Office in order to get the documents necessary in order to vote, and those who were born outside of the state of Nebraska and who are left holding the bag when it comes to expenses in obtaining things like birth certificates and other relevant documents that they need in order to get the identification necessary to vote. Now, when we're talking about voter ID, I've heard a few people say, well, why is she doing this?

DORN: One minute.

SLAMA: Thank you, Mr. President. Why is she doing this? It isn't worth the time. It isn't worth the effort. We had over 400,000 Nebraskans vote in favor of enacting voter ID, a strict voter ID constitutional amendment, in the last cycle. I was spokesperson for Citizens for Voter ID, the lead on Initiative 432, and the lead on getting this ballot initiative across the finish line. I've also watched as state senators through the last decade have tried and failed to bring voter ID legislation through this Legislature. There seems to be, like what I'm seeing today, a desire to just go the path of least resistance and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

not actually listen to the voters and what they've demanded in their vote on the constitutional amendment, which is very clear: that a person has to show a photo ID in order to vote. So I'm standing up for those voters today and I will for the remainder of debate on this bill. Thank you, Mr. President.

DORN: Thank you, Senator Slama. Senator Blood, you're recognized to speak.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I stand opposed to the floor amendment but in favor of the Government amended and the underlying bill. And listening to Senator Slama-- excuse me-- listening to Senator Slama talk about certain demographics, people of color that didn't like certain things that created additional hurdles for voting, made me think of a story that I've told before in one way or another on the floor of the Legislature. In fact, when Senator Murante tried to create hurdles and make it harder for people to vote, I actually got him an autographed copy of the book about this woman. A lot of you may not know this, but in Bellevue, Nebraska, Charlene Butts Ligon-- who is retired military-- lives in our community, and her mother was Evelyn Thomas Butts. And she became involved in the Civil Rights Movement in the 1950s. And during her time as the Oakland Civic League-- a member of her Oakland Civic, Civic League, she helped create the Rosemont Middle School in her neighborhood so that children would not have to ride the bus to segregated schools. In 1960, she was involved in picketing the BI-LO supermarkets for not employing black people in higher level positions. She also protested against black people being told to sit in certain parts of the football stadium. In 1961, she was chosen to run against the president of the NAACP in Norfolk, but did withdraw in that race. But what she is known for, since you have a little bit of background, is that she and her lawyer, Joseph A. Jordan Jr., sued the state of Virginia for requiring the poll tax. Finally, in November of 1963-- which really wasn't that long ago-- I was alive-- Butts's case was that the tax was unconstitutional since it imposed an undue financial burden that violated the Equal Protection Clause of the Fourteenth Amendment. In March of 1964, the first case was dismissed. But Butts filed yet another case, and the Fourth U.S. Circuit Court of Appeals upheld the tax. Butts appealed the case, and the United States Supreme Court decided to hear the appeal in October of 1965. Her case was combined with a similar case by Annie E. Harper, which reached the Supreme Court first. And the case Harper v. Virginia State Board of Education was decided in March of 1996, making poll taxes unconstitutional. They were made unconstitutional because they were racist. And so when I hear that there's a strong demographic of people of color making sure that we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

don't make it harder to vote but easier to vote, I always like to remind people when we vote on things like this-- yes, the people voted on it. And yes, it's my understanding there were 400,000 signatures on the petitions. But again, we also know that many of those petitions were not gotten truthfully, and that was documented and it was in the media and there was video of it. So some people, not all of the people-- I am certainly not going to, to paint with a broad brush-- were simply not told the truth about the petition. And that's really unfortunate because I'd really like to know what it would have been had people actually told the truth about what the petition did and not something pretend. But after this court decision, this woman who was a washwoman-- a seamstress, excuse me. Not a washwoman-- a seamstress-- because her husband had been injured in World War II and so she had to take up the family income with three daughters. She went on to register black voters in Norfolk, Virginia, signing up 2,882 voters in one six-month period. She, along with her attorney and other community leaders, helped create the Concerned Citizens for Political Education Group, which became a powerful political force in local politics in the late 1970s. There's more to the story, but the reason I tell you that story is that this was not that long ago.

DORN: One minute.

BLOOD: Whatever we do, we need to make sure that we don't create additional burdens that cannot be overcome by the Nebraskans who want to vote. And so all I ask is that you make sure before you vote today that you know what the bills actually do and do not do and that you take a moment to speak to Senator Brewer to learn more about it because it could hurt another Nebraskan that you care about and that you want to make sure has the ability to vote. Thank you, Mr. President.

DORN: Thank you, Senator Blood. Senator Slama, you're recognized to close.

SLAMA: Thank you very much, Mr. President. I appreciate the chance to close and also to take a minute as we get to the latter half of the debate here to talk about process. It's important when we look at the Evnen Amendment that was adopted today, is we're taking the word of someone who says that this amendment is clean, doesn't have any constitutional problems with it. It's fine. That's someone who has a 0 percent record in arguing constitutionality before the Nebraska Supreme Court as Secretary of State of the state of Nebraska. 0 percent. This amendment that we adopted today has not been reviewed at all by the Attorney General. And while no, we don't need the Attorney

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

General's green light on every provision of every bill, when we're talking about something that involves a constitutional amendment framework, his opinion is very helpful in understanding where the state of Nebraska will be when it comes to potential liabilities when a lawsuit is "undoubtedly" brought, when it's on either the left or the right, with what the Attorney General will argue and where they see shortcomings of the bill. Because the last thing we want is for the state of Nebraska to get sued and for the Attorney General to put his hands up and go, yeah, you're right. The Legislature screwed up. And I'm telling you right now that the Legislature is screwing up by passing the Evnen Amendment. We're screwing up by passing a voter ID bill with no voter ID requirement in it. We're screwing up by passing a voter ID bill that flies in the face of voters who overwhelmingly supported Initiative 432. And I'm going to take eight hours for them because they put in way more than eight hours in ensuring we have voter ID in order to vote in the state of Nebraska. How many times-- 10 out of the last 11 years, I think it was, at the last count-- voter ID was brought before the Nebraska Legislature? And although it had overwhelming support in the state of Nebraska, it wouldn't go anywhere when it got to the Legislature because of attitudes like what we're seeing today of, well, this is-- the Slama Amendment is hard. The Slama Amendment's longer. It's 72 pages. The Evnen Amendment's 30 pages. That's cleaner. That's simpler. That sounds more constitutional to us. There's a reason why my amendment's 72 pages. It's because we thought through the constitutional challenges that the Secretary of State has not. So I'm asking you, as we approach the cloture vote, to consider where we're at. I just spent the last eight hours discussing constitutional shortcomings of the Evnen Amendment-- not because it's good for my health or because it's, like, a fun way to spend a day. It's because I actually care about election integrity and about the constitutional amendment and where we're taking this constitutional amendment and the will of the voters. And I heard somebody say something along the lines of, well, Slama's not making any friends today. Like, I didn't take an oath to make friends in the Nebraska Legislature. I took an oath to uphold the Nebraska State Constitution. And I'm doing everything in my power that I can do today to ensure that we're upholding the constitution, to uphold this new constitutional amendment language that we're deciding to take the easy way out of. And I'm telling you right now-- like, these constitutional problems, they're not going to go away between General and Select. I can't even get an agreement or a concession from the Chairman of the Government Committee or the Speaker of the Legislature that we'll even talk about this between General and Select. Because you know what? All the talking's been happening with me outside the room, because

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

apparently when we have a young woman who's taking the lead on an issue, we need to kick her out of the room so we can have discussions behind closed doors and decide what's best because she doesn't understand--

DORN: One minute.

SLAMA: --what that is. Well, here's the problem, is I not only have the expertise of myself, I have the expertise of the conservative election law experts in the state, the expertise of all the state senators before me who brought voter ID legislation and, just like me, ran into the same buzzsaw of mediocrity in going the easy way out. I'm asking you to stand with me and not vote for cloture so that we can negotiate and address these constitutional issues. Because we will be standing here in a special session because the courts have not upheld our language because it is too lax, it's too liberal, and it doesn't fit with the language the voters approved. Thank you, Mr. President. Oh, I withdraw my amendment.

DORN: Your amendment is withdrawn. Mr. Clerk.

CLERK: Mr. President, Senator Slama would move to amend with FA157.

DORN: Senator Slama, you're recognized open on your amendment.

SLAMA: Sorry. I just dropped an AM19-something-or-another. Could I substitute that out if there's no objection?

CLERK: Mr. President, Senator Slama would move to withdraw FA157 and substitute AM1940.

DORN: FA157 is withdrawn. And you're allowed to open on your new amendment without objection.

SLAMA: Cool.

DORN: So ordered.

SLAMA: Oh, sweet. I'm two for two on those today. I appreciate that, guys. Thank you. So I substituted, substituted out a floor amendment structured to give me-- what is it, like, 30 minutes of floor speech time?-- to-- I'm literally negotiating against myself right now. This is a compromise amendment. AM1940 is a compromise amendment that's fresh off the presses, fresh from Bill Drafters. Thanks again, Marcia. You were wonderful. And I promise I will find, like, the largest container of Diet Coke I can find and deliver it to your office before

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

the end of session. But what this compromise amendment, AM1940, does is it fixes all my constitutional turn-- concerns that have been raised by the Secretary of State's Office. So it adopts my amendment language but removes the duty from the Secretary of State's Office and resolves the constitutional concerns as it abandons the constitutional problems in Evnen's bill and adopts my constitutional bill. People will have to show an ID and comply with the NVRA. It does not require the Secretary of State to do anything more than what his own amendment requires of him, which is apparently a very important thing that we're talking about today. So we're not giving him any extra duties, and that's because we're splitting the additional required responsibilities between the Attorney General and the State Treasurer. Now, here's the crazy thing, is that because the Secretary of State has been so unwilling to actually implement voter ID, we have other state constitutional officers that are stepping up and going, yeah, I'll do the Secretary of State's job. So what this compromise amendment represents is that split. So the Attorney General will handle the additional citizenship checks. This makes sense because it falls under the Attorney General's law enforcement authority. And the State Treasurer will handle accepted groups that need IDs. This meets the Secretary's objection that he is not equipped to do this and would have to create expensive new processes. Incredibly enough, the State Treasurer is capable of doing this himself. I wonder. The State Treasurer has said he can handle this with only one new employee, similar to how the Missouri-- how Missouri implemented their bill. Therefore, all the Secretary's concerns, if they are legitimate, should be addressed by this amendment because he is not required to do anything in addition to what is currently required under his amendment. I invite him to review this amendment in the next 25 minutes or so. I'll be bringing it again. If this ends up on Select File for the body's consideration on Select File, I will be withdrawing my Select File amendment and moving to replace it with this language because we are literally taking care of all of the objections the Secretary of State has raised thus far. And this is thanks to the wonderful work of my staff. Obviously, I've been on the floor and not up in Bill Drafters all day, so I'm grateful for their work-- my LA, committee counsel, committee clerk, and administrative aide-- for doing the wonderful work behind the scenes and Marcia up in Bill Drafters for getting us a quick turnaround on this so that I can show that I'm working in good faith here. I am working with other state constitutional officers as the Secretary of State is refusing to do even, like, the constitutionally required parts of his job in implementing voter ID. We're getting other state constitutional officers to take up his job for him. So, thankfully, I think that

should resolve all of his concerns and we should be able to move forward. So I'm looking forward to a greenlight vote on AM1940. I will be keeping this one up on the board and carrying this one hopefully across the finish line if cloture's right at 7:00. If not, we may be stuck voting for a bit and then going directly to cloture. But either way, I will be bringing this on Select File. So anybody who says we need more time to review it can have more time to review it. But just again, the constitu-- the compromise amendment summary fixes all of my constitutional concerns that I've raised today. So it adopts my amendment, but it removes the duty from the Secretary of State's Office and resolves the constitutional concerns as it abandons the, the constitutional problems I've outlined in Evnen's bill and adopts the constitutional alternatives that I've spent literally eight hours discussing. People will have to show an ID unless they fall into, into the exempted groups, will be forced to comply with the NVRA. Clarifies more language on that front. Does not require the Secretary of State to do anything more than what his own require-- amendment requires of him. So I don't know what he's pointing at that will make my amendment cost \$20 million, but we've literally gotten rid of all duties of the Secretary of State besides what his own amendment requires of him. So that should reasonably go away. We also split the additional required responsibilities between the Attorney General and the State Treasurer, both of whom are more willing to follow through with the constitutional amendment language than the person tasked with enforcing and implementing elections himself, which is wild. The Attorney General will handle the additional citizenship checks. He's already very graciously agreed to the audits on the witness attestation signatures. This makes sense because it falls under the Attorney General's law enforcement authority. And the Treasurer will handle accepted groups that need IDs. And it meet the Sec-- meets the Secretary's objection that he is not equipped to do this and would have to create expensive new processes. Well, we're solving this problem and keeping you from implementing these new, expensive processes, Mr. Secretary, and we're moving it to the State Treasurer who has taken the lessons that we've already learned from Missouri. And we're going to do that with one new employee, just like Missouri did with their voter ID bill. And there's a strict notary, so you can argue that would be more work anyways. So therefore, all the Secretary of State's concerns, if they are legitimate, should be addressed by this amendment because he is not required to do anything in addition to what is currently required under this amendment. So you are seeing a wild thing today towards the end of this filibuster, which-- this is a filibuster. Like, I was very clear that I would do this if the amendment was adopted-- and that I am literally negotiating against

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

myself. So I hope that everybody sees this as a step in the right direction and a fair compromise and votes in favor of AM1940 and moves it forward so we have a better starting point going from General into Select. Thank you very much, Mr. President.

DORN: Thank you, Senator Slama. And you are next in the queue, so you're recognized to speak.

SLAMA: Great. That's wonderful. I want to give everybody the chance to review AM1940. And if you'd like to speak on it, feel free. I don't want to just spring this on you and not give you a chance to look at it before you vote. So I am going to go back to that poll research, that poll research center-- sorry. I clicked on my wrong tab and everything froze-- that Pew Research Center poll and continue where I left off at just so you can take a chance to review AM1944, review where you're going to be at. Think it through yourself. Ask me any questions you want. I'm here to answer your questions. Like, I am game. So, among Republicans, by contrast, white adults are less supportive than Hispanic adults of policies aimed at easing voting. For example, about half of Hispanic Republicans, 51 percent, favor automatically registering all eligible citizens to vote, compared with 35 percent of white Republicans. The 2020 election saw record-high levels of absentee and early voting. As a result of the coronavirus outbreak, many states dramatically expanded access to absentee and early voting for public health reasons. As was the case last summer in the run-up to the 2020 election, Americans generally say any voter should have the option to vote early or absentee. Slightly more than 6 in 10, 63 percent, now say this, while 36 percent say that voters should only be allowed to vote early or absentee if they have a documented reason for not voting in-person on Election Day. About 8 in 10 black Americans, 81 percent, say all voters should be able to vote early or absentee, as do smaller majorities of Asian, Hispanic, and white adults. White Democrats are more supportive of allowing all voters to vote early or absentee than are Democrats of other races and ethnicities, while the reverse is true for white Republicans compared with Hispanic Republicans. Among all adults, those with a college degree or more education are more likely to support no-excuse early and absentee voting than those with less education, 74 percent versus 57 percent. Partisanship remains the most important factor in Americans' attitudes about this question, with only 38 percent of Republicans in favor of allowing all voters to vote early or absentee without documented reasons for doing so, and an overwhelming majority of Democrats and Democratic-leaningers saying the same. Among Republicans, moderates and liberals are about evenly divided, with 49 percent saying voters should be required to provide documented reasons

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

for voting absentee or early, and 51 percent saying that should not be necessary. Conservative Republicans are substantially more likely to say the former, 70 percent, than latter, 30 percent. Ideological divides among Democrats are not so nearly pronounced on this issue. Those who have experienced voting early or voting absentee are more likely than those who voted in person in 20-- in the 2020 election to favor no-excuse early and absentee voting for all voters. This is especially true among Republican and Republican-leaning voters. There was a sizable disparity between how Republicans and Democrats voted in the presidential election. Shortly after the election, roughly a third, 34 percent, of Republican and Republican-leaning voters said they were-- they voted absentee or by mail, compared with the 58 percent of Democratic and Democrat-leaning voters. GOP voters who voted early or absentee in November are more likely than the larger shares of Republican voters who voted in-person on Election Day or before the election to favor no-excuse absentee or early voting. While about half of Republicans, 52 percent, who voted abs-- absentee or by mail favor no-excuse for absentee early voting, only about a third of early in-person GOP voters-- 35 percent--

DORN: One minute.

SLAMA: Thank you, Mr. President-- and just 22 percent of those who voted in person on Election Day say the same. Among Democrats, there are only slight differences in these views between those who voted absentee and those who voted in person. Thank you, Mr. President. I'll wrap this article up on my next turn on the mike, but I really would invite you to read AM1940 and see that I'm literally trying to address the problems that I've outlined here. I'm not just naming off problems and saying, well, now somebody else needs to fix them. I'm literally going through-- my staff is, at least-- literally going through and fixing the problems I'm outlining. I hope you see this as a good-faith attempt at compromise and we're able to move forward with a green light vote on AM1940. And with that, thank you, Mr. President.

DORN: Thank you, Senator Slama. Senator Raybould, you're recognized to speak.

RAYBOULD: Thank you, Mr. President. You know, I want to assure everyone out there watching this debate-- and I know Senator Slama has worked so hard and tireless-- tirelessly, but I just want to say so has the Government Affairs Committee under Senator Brewer leadership. And so have all the county clerks, election commissioners and other election officials. We have countless emails from them taking the deep dive in comparing the committees's amendment versus Senator Slama's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

amendment in, in different variations and different forms. In addition to that, there has been a, a, a whole slew of testimony from poll workers who actually see what happens on the ground and their concerns that were raised. We-- of course, I have mentioned we've heard from election officials, we've heard from county clerks, election commissioners. We work with the, the Nebraska Association of County Officials because they brought up concerns, making sure that we're not disenfranchising people out in the rural communities. We work with the nursing home associations. We work with domestic violence prevention groups with-- they're concerned about, you know, women fleeing their home with nothing, and, and that includes their ideas-- their IDs. We work with student organizations that came and testified about their concerns. And, you know, our committee put in hours making sure that we had an opportunity to cover every concern that was raised by individuals who felt that they might be disenfranchised with something that is too strict or too burdensome or, or such an impediment or too costly. You know, we work with the League of Women Voters. We work with Common Cause. We work with Civic Nebraska, and they also crafted different variations to help us come up with a great piece of legislation. And so here is what the Nebraska Association of County Clerks, register of deeds, election commissioners came up with and why they support LB514 and the amendment, AM1801. The Election Law Committee for the Nebraska Association of County Clerks, registers of deeds and election commissioners, and 92 county clerks and election commissioners across Nebraska support the committee's amendment as amended. And these are the reasons why they support it. Number one, flexibility in allowable photographic identification, including those issued by an agency or political subdivision of the state, a postsecondary institution or a hospital, nursing home or skilled care facility; a robust, multi-medium public awareness campaign instructing voters about identification requirements. They supported-- early voters may provide their photographic ID through the listing of their driver's license or state ID number on their early ballot request. And I know that the election officials were very concerned to make sure that that number would not be visible on the exterior of the envelope when you mailed in your vote-by-mail ballot so that the flap would cover your identifiable numbers. They also support it because voters lacking photographic ID may apply for a certification. Those who may apply include those with religious objections-- that we've talked about-- to being photographed, those with disabilities or illness, those who lack documents such as a birth certificate, and those with other, other reasonable impediments--

DORN: One minute.

RAYBOULD: Thank you, Mr. President-- having the certification provision is necessary for election officials to have the ability to address unique needs or special circumstances unforeseen at this time. No fees are charged to issue an original renewal or duplicate state identification card. No fees are charged for a certified copy of a Nebraska birth certificate to use in obtaining a state identification card for voting. They went on and had almost two pages, two full pages, of concerns in some of the amendments Senator Slama has put forward that they felt were really challenging to execute, were costly to implement, and would not solve and be true to what the voters had approved in the petition. So, for that reason, I ask my colleagues to continue to support LB514.

DORN: Time.

RAYBOULD: Thank you, Mr. President.

DORN: Senator-- thank you, Senator Raybould. Senator Slama, you're recognized to speak. And this is your last time before your close.

SLAMA: Thank you, Mr. President. I do appreciate Senator Raybould getting up and outlining the expansive groups that the Government Committee work with or met with. Incredibly enough, I was the author of the mainline voter ID bill. I was invited to none of those meetings. But what's interesting about the groups included in those meetings: every single one of those is a group that was either neutral or opposed voter ID. Not once did she list off a group that actively supported voter ID that represents the overwhelming majority of Nebraskans who supported the implementation of voter ID. And that, I think, is a core problem with where we're at on this voter ID language, is that those who oppose voter ID, who traditionally have opposed voter ID, groups that have people that have are now in control of voter ID. It's like putting Senator Kuehn back in the day in charge of the medical marijuana amendment. Like, that's just not-- it's not sensical. It doesn't make sense. It's not rational. It's not reasonable. And moreover, Senator Raybould got to a really great point about the "reasonable impediment" language. And I don't think she realized she made this point, but it is super helpful. In her assessment, that reasonable impediment, this language in the Evnen Amendment that I so ardently disagree with, can apply to literally anything. It could be "my dog ate my ID" or "I don't want to present an ID in order to vote." That "reasonable impediment" language is a problem because you're saying anyone who subjectively believes they have a reasonable impediment to vote doesn't have to show an ID. That could be literally anyone who walks in to vote on Election Day.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

Literally anyone. We're not saying it's a specific group or a specific exception. We're not saying it's a religious exemption or a religious objection to being photographed. We're not saying that it's the grandma in Sioux County who doesn't have access to a birth certificate, doesn't have access to birth records but you absolutely know who she is. You know she's an eligible voter. The "reasonable impediment" language flies in the face of the constitutional amendment because it is voter ID without the voter ID. You are giving every single voter in the state of Nebraska an out when it comes to presenting a photo ID in order to vote. And Nebraska, whether you like it or not, became a strict photo ID, voter ID state when Initiative 432 overwhelmingly passed with the support of the voters. Now we're in a great position where-- we have a compromise amendment on the board as we work towards cloture. I'm asking you to support the compromise amendment, AM1940, that not only addresses the constitutional issues that I've outlined-- I'm coming to the table with solutions to the problems I have outlined. I am also addressing concerns raised by the Secretary of State about his concerns about implementation of voter ID. We're making sure we comply with the NVRA. We're cleaning up that language. We're not requiring the Secretary of State to do anything more than what his own amendment requires of him. So he can't say this magically costs \$20 million out of thin air and then not name the section. And it is really interesting that nobody has actually referenced the section that magically is going to cost \$20 million of my amendment because it doesn't exist. It is not real. It never has been real. It's been a fiction that the Secretary of State has created in order to obstruct this process. So this compromise ID-- this compromise amendment takes away all the extra responsibilities that the Secretary of State has very aptly described that he does not want to do. And we give it to other state constitutional officers who are better champions for the will of the people, like the Attorney General, Mike Hilgers, and the State Treasurer, John Murante, and we divvy up those tasks accordingly. So we saw the Secretary of State-- his problems with how--

DORN: One minute.

SLAMA: --his office-- how on earth his office is going to implement voter ID-- thank you, Mr. President-- when 35 states have already done it. We're giving it to other state constitutional officers that are more willing to do a job. So therefore, all the Secretary's concerns, if they are legitimate, should be addressed by this amendment because he is not required to do anything in addition to what is currently being required under his amendment. And with that, I think there is one more person in the queue. I might be able to get in and get my

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

close and just review all of the constitutional issues with the Evenen Amendment. I'm sure we'll review them between General and Select. But I am asking you to block cloture on this right now so that we can put together a better, higher quality bill that's actually ready for prime time. Thank you, Mr. President.

DORN: Thank you, Senator Slama. Senator Raybould, you're recognized to speak.

RAYBOULD: Thank you, Mr. President. There's a, there's a reason why 92 out of the 93 county clerks, election commissioners, and election officials support the committee's amendment, LB514, because they're the ones that are on the ground. They're the ones who have to implement and, and they're the ones that have to execute on it. I know we talk about if there is an impediment or an issue that gets flagged-- these county officials, clerks, are accustomed to dealing with this. It's called a provisional ballot. They have had to deal with this for years, for years and for years, and they know how to handle provisional ballots. The language in LB514 and the amendment that was approved actually allows those individuals an opportunity to come into the election commissioner's office and cure that deficiency on their ballot. For, for example, if they didn't have their ID, then they could most likely cure that deficiency by showing another form of ID, a photographic ID, that would allow them to have their ballot validated. So I, I really appreciate their input and their feedback because they're the ones who've had to deal with all kinds of issues and scramble to come up with solutions. They're the experts at this, and I trust them. I am just really pleased with the hard work that they put in to take the time to come up with the very detailed analysis. And this was not just the association. It was-- this was clerks from Richardson County. This is clerks from all across the state of Nebraska-- gave a really clear summary on why they support the work that the Government, Military and Veterans Affairs Committee did because they know we listened to them. We listened to the concerns. We listened to the concerns that they have had to deal with for years and years. And their goal-- and I am so proud of them-- and they take their work so seriously. They are very patriotic about making sure everyone that comes to the polling place has an opportunity to exercise their right and cast their ballot, and they are willing to work with voter ID, and they gave tremendous feedback on how is the best way to get this job done while being in compliance with the wishes of the voters who wanted photographic identification. So I ask my colleagues here to please vote for cloture, support cloture so we can get a great program out and give us plenty of time to make sure that we can do the educational training that's needed,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

not only for all the clerks and poll workers, but also for our voters to help educate them on what they need to be obligated to provide so that we are going to be-- continue to be an exemplary state and continue to be the gold standard for having free and fair, safe and secure elections. Thank you, Mr. President.

DORN: Thank you, Senator Raybould. Senator Slama, you are recognized to close.

SLAMA: Thank you, Mr. President. So, I appreciate all these magical meetings that apparently I was not invited to or even made aware of that happened between all these groups. I would have loved to hear anything going on in them, especially given that it would have been talking about amendments to my own bill. So it really is an interesting take from Senator Raybould to see all of this that supposedly went on behind the scenes in the Government Committee. And for me, I am going to take my last turn at the mike to summarize this compromise amendment. Like, I get it. Y'all didn't want to sit here for eight hours and talk about voter ID. It's not a lot of people's speed, and that's OK. Because at the end of the day, the two things that we're constitutionally obligated to do in this session is pass a budget and pass a voter ID framework. And if we take the easy way out, take the path of least resistance and pass an unconstitutional framework that gets thrown out by the courts, we are going to be back here. I'm fighting on this to save us from a special session. I'm not taking that lightly. If I could sit back and go take a nap, I totally would. Like, you have no idea how much I wish I could. Like, actually, my throat is bleeding again, and that's probably not a good sign and I should probably go see a doctor. But here's the thing. We have a compromise amendment on the board, AM1940. This addresses all of my constitutional concerns. It even wraps-- cleans up the language that Secretary Evnen didn't like from the NVRA. It ensures that people who do not fall into the specifically exempted classes will still need to show an ID. And it does not require the Secretary of State to do anything more than his own requirement requires of him-- his own amendment requires of him. It splits those additional required responsibilities between the Attorney General and the State Treasurer. The AG will handle the additional citizenship checks, which makes sense because it falls under the Attorney General's law enforcement authority. The Treasurer will handle the accepted groups that need IDs. This meets the Secretary's objection that he is not equipped to do this and would have to create expensive new processes. So instead of the Secretary of State spinning around and creating expensive new processes, the State Treasurer, John Murante-- who's been a wonderful advocate for voter ID and election integrity-- he said that he can

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

handle this with only one new employee-- similar to how Missouri implemented their bill, mind you, with far more strict notary requirements. Therefore, all the Secretary's concerns, if they are legitimate, should be addressed by this amendment because he is not required to do anything in addition to what is currently required under this amendment. I'm asking for a green light vote on this amendment. And if you cannot be a green light vote on AM1948, I am asking that you please block cloture. And mind you, this will not kill voter ID for this session. Please keep that in mind. If you are voting to block cloture, you are not doing anything but allowing us to come back around the table, address the constitutional issues that I've spent eight hours outlining-- like, I've spent eight hours outlining how Section 5 has issues with the NVRA, Section 10 and 11 have issues placing an undue burden on the fundamental right to vote and allowing nonexempt persons to vote without showing a valid ID-- so, voter ID without voter ID. Section 12, violating the fundamental right to vote of a person with a religious objection to being photographed as outlined by the U.S. Supreme Court. Sections 17, 18, or 19 either violates the Bush v. Gore in creating 93 different standards of what a reasonable impediment to voting is or violating directly the state constitutional language by allowing anybody who says they have a reasonable impediment the ability to vote without a-- showing a valid photo ID. Section 23--

DORN: One minute.

SLAMA: Thank you, Mr. President-- taken with the rest of the bill, violates the Privileges and Immunities Clause of the Fourteenth Amendment because we are creating two separate classes of voters with Section 23. We're saying there's a class of voters who were born in Nebraska, you don't have to pay to get their documents through the Secretary of State's Office. Under my bill, it's the State Treasurer's Office. And on the other hand, if you're born out of state, somehow you'd have to pay to obtain those documents. This flies in the face of the Fourteenth Amendment, and we can't have a two-class system when it comes to voting in our state. So I'm asking that you please vote no on cloture. And if you can't do that, please at least vote green on AM1940. Thank you, Mr. President.

DORN: Thank you, Senator Slama. Mr. Clerk for a motion.

CLERK: Mr. President, Senator Brewer would move to invoke cloture on LB514 pursuant to Rule 7, Section 10.

DORN: Senator Brewer, for what purpose do you rise?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

BREWER: Call of the house. Roll call, regular order.

DORN: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed, nay. Mr. Clerk, record.

CLERK: 32 ayes, 2 nays to place the house under call.

DORN: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chambers, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Erdman, the house is under call. Please return to the Chamber. All, all unauthorized persons are present. The first vote is the vote to adopt cloture. All in favor vote aye; all opposed, nay. There has been a request for a roll call vote.

CLERK: Senator Aguilar voting yes. Senator Albrecht voting yes. Senator Arch voting yes. Senator Armendariz voting yes. Senator Ballard voting yes. Senator Blood voting yes. Senator Bosn not voting. Senator Bostar voting yes. Senator Bostelman voting yes. Senator Brandt voting yes. Senator Brewer voting yes. Senator Briese voting yes. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting yes. Senator Conrad voting yes. Senator Day voting yes. Senator DeBoer voting yes. Senator DeKay voting yes. Senator Dorn voting yes. Senator Dover voting yes. Senator Dungan voting yes. Senator Erdman voting yes. Senator Fredrickson voting yes. Senator Halloran voting yes. Senator Hansen voting yes. Senator Hardin voting yes. Senator Holdcroft voting yes. Senator Hughes voting yes. Senator Hunt voting yes. Senator Ibach voting yes. Senator Jacobson voting yes. Senator Kauth voting yes. Senator Linehan. Senator Lippincott voting yes. Senator Lowe voting yes. Senator McDonnell voting yes. Senator McKinney not voting. Senator Moser voting yes. Senator Murman voting yes. Senator Raybould voting yes. Senator Riepe voting yes. Senator Sanders voting no. Senator Slama voting no. Senator Vargas voting yes. Senator von Gillern voting yes. Senator Walz voting yes. Senator Wayne voting yes. Senator Wishart voting yes. Vote is 44 ayes, 2 nays, Mr. President, on the motion to invoke cloture.

DORN: Cloture is adopted. The next vote is to adopt AM1940. All those in favor vote aye; all those opposed vote nay. Have all those who voted who care to? Mr. Clerk, record.

CLERK: 5 ayes, 26 nays on adoption of the amendment.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

DORN: The amendment is not adopted. The next vote is the adoption of AM853. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, record.

CLERK: 44 ayes, 1 nay on adoption of the committee amendment.

DORN: The amendment is adopted. The next vote is the advancement of LB514 to E&R for review. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, record.

CLERK: 43 ayes, 1 nay on advancement of the bill, Mr. President.

DORN: LB514 has advanced. Raise the call. Mr. Clerk for items.

CLERK: Mr. President, next bill: LB514A, introduced by Senator Brewer. It's a bill for an act relating to appropriations; appropriates funds to aid in the carrying out of the provisions of LB514; and declares an emergency. The bill was for the first time on May 19 of this year and placed directly on General File.

DORN: Senator Brewer, you are recognized to open.

BREWER: Thank you, Mr. President. All right. The voter ID is obviously going to cost some money. Our challenge right now is that, in order to figure out what that sum is going to be, we have to get the fiscal note. That'll come between General and Select. Now, we have set-aside money in the budget for this, and it will just simply be a matter of figuring out what that figure does come to once they have a chance to review it between General and Select. This is just simply our way of holding-- a placeholder for that money so that we're able to pay for the bill. With that, I would ask for your support. Thank you, Mr. President.

DORN: Seeing no one else in the queue, Senator Brewer, you're recognized to close. Senator Brewer waives. The question before the body is the adoption of-- the advancement of LB514A. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, record.

CLERK: 40 ayes, 1 nay on advancement of the bill, Mr. President.

DORN: LB514A is adopted. Mr. Clerk for items.

CLERK: Mr. President, some items quickly. Your Committee on Enrollment and Review reports LB531 is correctly engrossed and placed on Final Reading. Additional, your Committee on Enrollment and Review reports LB227A is correctly engrossed and placed on Final Reading. Amendments

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

to be printed: Senator Slama to LB514. That's all I have this time, Mr. President.

DORN: The next bill, Mr. Clerk.

CLERK: Mr. President. Next bill: LB50. First of all, Senator Hunt, I've got MO208 with a note you wish to withdraw. In that case, Mr. President: LB50, introduced by Senator Wayne. It's a bill for an act relating to criminal justice; amends Sections 24-1302, 29-2263, 29-2269 and 29-2281 and 50-434 and several sections within Chapter 83; changes provisions regarding problem-solving courts, set-asides and restitution; defines terms; restates legislative intent regarding appropriations; creates pilot programs relating to courts, probation, and parole; terminates the Committee on Justice Reinvestment Oversight; provides duties for courts, the probation administrator, the Board of Parole, the Division of Parole Supervision, and the State Court Administrator; changes provisions relating to, to parole and provide for streamlined parole contracts; provides for applicability; harmonizes provisions; repeals the original section. The bill was read for the first time on January 5 of this year and referred to the Judiciary Committee. That committee placed the bill on General File. There are committee amendments, Mr. President.

DORN: Senator Wayne, you're recognized to open.

WAYNE: Thank you, Mr. President. So when I was volunt-- "volun-told" that I was going to run for Judiciary, I, I, I knew what I was signing up for. And-- you know, my first year we tackled TIF, which was pretty divisive. And my second year and third year, we worked on a couple other things because we didn't have money, so we were all working on how to make this place function. And even this year around, some of the more divisive issues, I was involved in many of those discussions. But I've never seen an issue that lacked so much logic, rhyme, or reason when it comes to arguments on both sides of the aisle as criminal justice reform. And I say that because there are very conservative states who have led the way in criminal justice reform and there are very progressive states who have took steps back on criminal justice reform. It's the only time that I sat in a room many times and couldn't really have an honest conversation of why people were feeling the way they felt. Some of it was a lack of maybe understanding the process, understanding what really goes on in our system. Some of it is fear. And some of it is genuinely concern about what happens to public safety. So when we started this approach, we started down public safety was something that I felt generally this body could get behind because everybody could get behind. And so I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

worked diligently with law enforcement, both Omaha FOP, Sheriffs Association, and others because I felt like, at the end of the day, if we can get the boots on the ground to say there's not a public safety concern, then maybe the politics would be taken away from this. But throughout this process, I realized that the fear of the one ultimately controlled this process. And the fear of the one is the one person who gets out and does something wrong, reoffends, commits something, and the fear of that being put on a potential flier. But outside of politics, the fear of, I casted to that vote to maybe release this individual. But as we started looking deeper and deeper to the data and started talking to numerous, numerous of individuals on law enforcement, the fear of the one shifted from the people that were released to the people-- sorry-- the people that were released early. When I say released early, I don't mean their sentences were shortened. I don't mean they're getting off. I mean parole or postsupervised release. But the fear really shifted to those who we call jam out. So I'm going to spend a little bit of time trying to educate people-- I hate lecturing because most of the people don't want to hear me lecture. But I do think not everybody understands what a jam out is. So I passed out an article that was wrote yesterday. And what essentially a jam-- in the Omaha World-Herald that I hope you all read when I emailed. If not, read through today. Because what's interesting about jamming out is literally that person wakes up that morning, they're discharged, hand-- they're handed the little bit of money they may have saved up in there. They get a ID or they already got their ID, and they're shown the door. And what happened was years ago when we tried criminal justice reform-- and I hate the word "reform" because it's ongoing. As society moves, we should move. So I don't really call it reform. We took our Class III's and IV's felonies and said they are going to be mandatory postsupervised release. So what that means is when you are sentenced to prison, when you get out, there is a period of around 18 months that you are supervised. But we only did that to our Class III's and IV's. Why is that important? Because a Class IV felony, you may not even serve a day in prison. You actually have a presumption of probation. So colleagues, what you read in that article that was passed out in that email is we are now seeing that our Class I's and II's, our most violent crimes-- or we can call them criminals if you want to-- are jamming out. The fear of the one for cops in law enforcement and your local sheriff is not the person who's getting parole. The fear of the one now is the person who packed their bags up and walked out of that prison system without any support system, without any guidance, without a job, without maybe a family to go back to, but probably the same individuals who helped them get there. When you ask a cop in Omaha, it's not if another Nikko Jenkins

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

will happen, it's when. 800 people jammed out last year. 470 are due to flat sentencing, and we'll have a little conversation about that. But if we don't start to turn that table, that number is going to continue to grow. And if you don't know what Class I and Class II felonies are, they involve guns, they involve violence, they are sexual assaults, they are burglaries, they are robberies. They are our highest elements of felonies. Now, let me be clear. We are not trying to shorten anybody's sentences. We are trying to make sure that when they get out, they have a transition period of supervision. If not, it's a problem. So I started thinking about what could I say to both sides of the aisle. And it's really, really simple. From a fiscal standpoint, this bill is probably one of the most fiscally responsible things we can do as a body. And it's real simple. We are building a prison. And if you look at every data point and you talk to everybody who is involved in our system, that prison is full the day it opens. This year-- Senator Clements can confirm-- we put an extra \$12 million in inventory and supply, \$12.5 million in our prison system. We added another \$12.5 million for salaries. That is going to go up. For every dollar we spend on building a new prison, about 30 percent increase for the operation of that prison. I handed out a data point. Right now, we have about 5,000 inmates. With inflation and an increased cost, we're looking at \$51,000 to \$52,000 per year. That's around \$263 million per year. That is looking to double over the next decade, decade and a half. And at the same time, colleagues, our income taxes and all the bills we passed in the last two years become fully implemented in 2028. We cannot afford to not do something in the smart way. Public safety. It is given by transitioning, making sure people have a place to go to, make sure that they are being supervised, decreases recidivism, which, one, reduces our costs, but also is a public safety component. You have to look no farther than talking to Senator Halloran about Hastings and their halfway house there and the success they have with those individuals. That needs to be modeled across the rest of the state and implemented throughout our system. They're actually federally halfway transitioned out. We need to figure out how to do that here. Second chances. Once somebody commits a crime and they are done with--

DORN: One minute.

WAYNE: --their time, they have to reengage. We have to make sure we are providing them with the safety support to reengage not only in their family but in their community. So it is important when we have this conversation today-- and I'm looking forward to all the questions. And on the amendment, I'll talk about what's in the amendment, what's in the bill. I'll also talk about my additional

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

amendment and where I think we can go on Select File. But colleagues, this is one of the most important issues that I've seen before this body, not because the name up there is Wayne, but because 352 individuals jammed out into my community. We have to make sure it doesn't happen anywhere else, including McCook that had 22; Kearney that had 17. We cannot afford to have just jams outs anymore in our system. Thank you, Mr. President.

DORN: Thank you, Senator Wayne. Mr. Clerk for items.

CLERK: Mr. President, Senator Hunt offers M040-- excuse me-- M0210 and M0209, both with notes that she wishes to withdraw. In that case, Mr. President, I have nothing further on the bill at this time.

DORN: Senator Wayne, you're recognized open on the committee amendment.

WAYNE: Thank you. So I'm going to summarize not this amendment, what'll be in my amendment that will replace this amendment. First, colleagues, we are trying to-- we went and, and basically adopted most of the consensus items from last year. I, I don't want to talk too much about the consensus and nonconsensus items because we have so many new members in the body. Does a disservice to them. But Section 1 simply is the expansion of our problem-solving courts. If you don't know what those are, it is something that the Supreme Court and many county attorneys support and engage in, and it's a way to be a deterrent to our system. What we do know is once you go in, it's very hard to get out. So if we can find ways through drug court, mental health court, veterans court, those types of opportunities fundamentally change people. We are providing in Section 2 a pilot program for telehealth services access at the courthouse for court-involved individuals. We have limited habitual theft enhancements committed in the past 10 years in Section 5. Section 6, we have limited a three-year habitual criminal enhancement offenses that do not involve any violence, sex, or guns. Section 9, we are notifying offenders of a set-aside process. Right now, many people just do not know how to do a set-aside and what it entails. As far as a set-aside, the county attorney is involved. They-- it's a hearing where both people are there. The judge gets to determine. So it is no got-you here. It's informing people of the process. Section 11, we are trying to figure out how to do more assistant, assistant probation officers. Right now, as our postsupervised release is going on, we have to have more probation officers, and we are helping do a pilot program to study that, mainly out in western Nebraska. Then we're also doing an incentive program in Section 12 for those people on the

program. Section 13 is a prioritization restitution to victims when defendants make a partial payment. It's inconsistent how it's applied throughout the counties. Some pay the county first, not the victim. And so we are harmonizing that to make sure the victim is taken care of. Section 17-- I'm going to hop back to this-- creates a sentencing reform task force. I'm going to tell you all why I think that is super important and why we have to study this big issue with all branches of government and come back with some recommendations. Section 22 is simple. It just sunsets the Legislative Committee on the Justice Reinvestment Oversight. Since we're having a new, a new committee, we think we can get rid of that one. 25 through 31 is pretty simple. It's, expand the rural Health Systems and Professional Incentive Act. And I can let-- I think that was Frderickson's bill. He can talk more about that. Section 32 adds factors to parole supervision and assessments. It's just, we're trying to put in statute to make parole assessments better. Section 33, parole eligibility windows based on maximum sentence. This section right here deals with what that article talks about: jam outs. We have to make sure, I believe, we do all we can to stop these jam outs from happening. And I, I, I would die on the hill for that because, unfortunately, I've seen some of my clients jam out and it's not-- it makes it very hard to be successful. Geriatric parole. This-- we create that. It excludes violence and sexual assaults. So we're talking mainly nonviolent people who are over 75. That is actually a huge cost to the state when you talk about can't be on Medicaid and Medicare. And these individuals will be not let go. They're not released. They are monitored by parole. We update the parole board and we streamline parole contracts for qualified defenders. And then we create a program for technical violations in residential housing in Section 40. And I believe there is one already going in Omaha who does that. What we added to this bill are consensus items. LB494, business record hearsay. This is something prosecutors and defense attorneys on the-- depending on which case it is and which side you're on-- likes this because too many times you'll have to fly in a Sprint representative or some communication representative just to come up and testify and say, yes, these are the records. It adds cost to the county, and we don't-- we think it's not necessary. We added LB76. This was brought by OPOA and FOP. This is about law enforcement having access to information, particularly juveniles. And we think this is important. Section-- LB27 clarifies the process of counsel for indigent defendants on appeals. This was Senator Dungan's bill. You have a right to an attorney on an appeal, but we're clarifying where that attorney comes from. We adjust the statute of limitations on post-evictions appeal cases, Section 16, LB59. These-- and these bills were all cons-- I mean all consensus, no opposition

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

bills. LB337, access to medical records. This deals with county hospital-- I mean, county corrections and local counties being able to access medical records. LB30 deals with no contest pleas for juveniles. Believe it or not, this is handled differently depending on the jurisdiction you're in. Some judges will accept it. Some judges won't. This just clarifies it, saying this is an actual plea. And then LB314, which is, I believe, is Senator Fredrickson's bill. This is just about fire-- and I think a cosponsor was Senator Brewer-- fire-- suicide prevention information. Just making sure information is provided at this-- at the purchase of a, a firearm. And those were all consensus items. Colleagues, that's what the bill does. There's going to be a lot of questions. If you want to know why there is a little bit of a lack of information provided to you all is we have been working on specific language up until 7:30-- 7:15, when this bill opened. Because when you talk about the fear of the one, you want to make sure you get it right. And that's what we're trying to do, so we're still having some ongoing conversations. But due to the wee hour of where we're at in our session, we have to move this forward, in my opinion, to keep these conversations going and to make sure we are moving in the right direction. I'm trying to not get into necessarily a negativity of the past of how I got here. To me, this is a clean slate today. I'm willing to figure out how to move forward, and I hope this body is willing to move forward. I will end with this one thing. 90 percent of-- 90 to 95 percent of the people who are incarcerated get out. They return back to our community, whether we like that or not. We have a choice today on whether we want to make sure they come back to our society with some tools to be successful, or do we want them just to jam out? To me, voting against where we are today on General File, is saying we're OK with them jamming out. We're OK with them not having the skill sets, not having any job lined up, not even having family support, and we're OK with them not being prepared to be successful. I'm not OK with that. Especially when 800 people did it last year. Especially when over 470 account for flat sentences. Especially when they're returning back to everybody's neighborhood. And if you want to know how many went back to your counties, I have the information. It is not just a Omaha issue. It is not a Lincoln issue. It's every county who is getting people who are jamming out. And I want to remind you, those are our most violent offenders. They're Class I's and and II felonies who are jamming out. No supervision, no parole, nobody making sure they're on a path to success. Thank you, Mr. President.

DORN: Thank you, Senator Wayne. Mr. Clerk for items.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

CLERK: Mr. President, Senator Wayne would move to amend the committee amendments with AM1796.

DORN: Senator Wayne, you're recognized to open.

WAYNE: I'm not going to-- thank you-- I'm not going to take all of my time. What I walked through was the amendment on the board right now. So I used that last opening for that because I actually want to engage and have conversation and I want to get out of here at a decent time. So, again, let's have a conversation. Let's engage. But keep in the mind that the fear of the one is not the person on parole. The fear of the one is the person who's jamming out. Thank you, Mr. President.

DORN: Thank you, Senator Wayne. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. I rise in support of LB50 and the underlying amendment. This feels like a little of deja vu. We were here last year with LB920, and it crashed and burned because the same people are putting up opposition or saying they're negotiating but not negotiating, or whatever else. This year, this body elected to vote for the construction of a new prison. That prison will not be opened in the next-- it might open in the next five-- four to five to six years, depending on how that goes, where they purchase the land, supply chain issues, and all those type of things. So in the meantime, our criminal justice system and our prisons will continue to be overcrowded. And that is an issue. It's a huge issue because the data shows that once that new facility is opened, it is going to be overcrowded. So we have to address the overcrowding issue. And you could say public safety, I want to be tough on crime, and all the catch words, or whatever you want to call them, to try to seem like you're doing the right thing. But the reality is that public safety is ensuring that when men and women are released from our institutions, that we set them up for success. Public safety is ensuring that when they are in the custody of the state, that they are provided with adequate programming, adequate medical support, ade-- adequate behavioral health support, adequate-- just social support, and things like that. To date, this state has failed to do any of those things, and that's the truth. So if you're going to stand up today and-- I don't know who opposes this, necessarily, because it hasn't been clear all day or all session-- and you start saying the words "public safety" and "thinking about the public," I'm going to stand up and ask you a bunch of questions about public safety. So be prepared. Because, yes, a lot-- some of these people are going back to your communities and things like that. But the fact is, a lot of people that are

incarcerated in these institutions are coming from my community. So the people you fear are coming home and being my neighbors. A lot of these people I know. A lot of these people I grew up with. And the way we've been doing the system of incarceration for this-- for-- since this state has been a state, necessarily-- has been horrible. Because, disproportionately, black people have been harmed. Native Americans, Latinos. People want to be so tough on crime that they overlook that you're creating more problems down the line. You don't think it through. You just want to be perceived as tough on crime. And honestly, I think LB50 could go further. But, you know, that's me. I thought LB920 could go further. And, and that's the truth. I, I introduced maybe five-- four or five different criminal justice-related bills. They're all stuck in committee. Even my priority bill is stuck in committee. So, you know, my priority bill won't get heard on the floor this year for whatever reasons. And, you know, I'm still standing up supporting this bill because I think we have to get something done. I don't want to just walk away from here and--

DORN: One minute.

McKINNEY: --we don't get anything done and then we come back next year and we're back to square one. And there's people that keep saying, like, oh, let's wait. We need more time. How much time do we need? I've been in this body three years, and every year it's been, let's wait. We need to study this. We need to study that. Oh, the county attorneys oppose this. Who cares? The county attorneys aren't senators. They don't run this body. It's on us to step up and be leaders and stop succumbing to fear and fearmongering from people outside this body. We should all step up and do the right thing. Vote green on LB50 and move our, our state forward. This doesn't even go as far as I think it should go, but I think we should take a step forward. But it, it's on us to be leaders and step up and be independent and--

DORN: Time.

McKINNEY: Thank you.

DORN: Thank you, Senator McKinney. Senator Blood, you're recognized to speak.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I stand in support of the amendment, AM1796, also AM1436 and the underlying bill once amended. I do sit on the Judiciary Committee, and I want to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

talk a little bit about some historical information and then bring it up to what's going on now. So many of you know that I did work for the state prison system, maximum security, and so I have seen several different views. I also ran a crisis center for abused women and children, so I have very definite views, but the views that I have are based on information. And I can tell you that when I worked at the prison, that I was there the day they closed down the gymnasium at LCC and filled it up with bunk beds because we had started decades ago to have an overcrowding problem. And we started then having a recidivism problem because when Senator Johanns and then Senator Heineman decided that we needed to start cut, cut, cutting things without a plan, they started cutting funds to the prison system, which ended up cutting the funds that helped us rehabilitate inmates. And then we decided we're going to be tough on crime, or at least pretend that we were being tough on crime, by saying we're just going to lock people up. We really don't have to rehabilitate them. But if you look at survey data over the decades, in Nebraska, those that have been surveyed on this issue always say, yes, we definitely feel people should be punished when they commit crimes. But almost that exact same percentage has the expectation that we will also rehabilitate them. And we are not doing that, not to the magnitude that needs to be done. And why don't we do that? Because bill after bill after bill gets torpedoed. That's what happened last year with Senator Lathrop's bill. And it was a good bill. And then there was this big mass text message, and all of a sudden he didn't have the support that he thought he had and the bill crashed and died. This year, sitting on Judiciary, I heard Senator Wayne all year long tell the members of Judiciary, let me know what direction you want to go. We had Exec Session after Exec Session where we really didn't talk about what bills we wanted to move out as much as what was important in the bills that we heard and how will that help us lower the population within our prison system, rehabilitate people, and make sure that we have good bridging programs and good sentencing programs to finally address this issue. Because we know that whether you build a new prison or not-- which we are, it looks like, going to build a new prison-- you have this window of time that you still have to rehabilitate and take care of these people-- from the parole board not doing their jobs, to sentencing, to rehabilitation, to bridging programs. We lack that in Nebraska. And depending on whose data you read, we have around a 30 percent recidivism rate, which means that those people are costing taxpayer dollars because they're repeating in a revolving door. And Senator Wayne and Senator McKinney are right. One day, these folks are going to be your next-door neighbors. What kind of neighbors do you want? We blew our opportunity in Judiciary this year. We could be better

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

prepared when presenting this bill, but we're running out of time. And meanwhile, Senator Wayne, Senator McKinney, and others negotiate. But for some reason, the Governor's Office and the Attorney General's Office is involved, which I don't understand. But it seems they've been involved in a lot of our legislation this year--

DORN: One minute.

BLOOD: --and it slowed it down. And a lot of cases, it's not made it better. It's made it less effective. If you want to be tough on crime, you've got to change the status quo, period. We can't keep nipping away at it with these bills that really do nothing. We've got to do something grandiose. And now is the time. These are the bills. This is the year. Thank you, Mr. President.

DORN: Thank you, Senator Blood. Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. Well, the good news is, colleagues, I think we are very close to getting people together and that there's going to be some white smoke that comes up from the chimney and, and we'll be there. So I think we're getting really close. So, that seems really good to me. Of course, I would have liked to have done a bit more, but here we are. And there are some modest changes here, but I'll take it because something is better than nothing. So I'm, I'm very glad to see that. You know, occasionally I hear folks talking about criminal justice and they say, well, how can I tell a victim that someone got out earlier than they expected? How can I look them in the eye? And here's the thing I want all of you all to think: how can you all and I look a family in the eye who's lost a loved one and say, I had the opportunity to change our laws so that more people would be rehabilitated, and I didn't? And as a result, somebody jammed out and killed your daughter. That's a much harder conversation to me than saying to someone, someone committed a crime. They didn't stay in jail as long as you thought. How about this? I could have changed something so that your son or daughter wouldn't have gotten killed. And that is what I fear will happen if we don't do a better job rehabilitating, which we cannot do if we don't change how we're structuring things. 800 jams out-- jam outs. For those of you who aren't familiar with the vernacular, a jam out is someone who serves their ma-- maximum sentence time-- or, their, their sentence time. They get to the end of their, their maximum term-- and then they go out regardless of whether they committed the-- completed the programming that they were required by the judge to complete or that the prison system said, hey, we've-- we looked at your background. We

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

decided you needed to take these programs. They just, they just go out. They're in prison one day, they don't take any programming, and the next day they're hanging out on the street corner with everybody else. Your kid walks past them on the way home from school. You know what I would rather do? I would rather make sure that everyone who goes through our prison system has the opportunity and the motivation to participate in their programming because we know it works. We know that programming works. You ask anyone on the Judiciary Committee, does programming work? They will tell you, yes. We see people who went into prison at some point earlier in their life, and from time to time they come and they testify, and the, the programming worked for them. The programming worked for them. They're doing entirely different things with their life. They found a new path. Programming works. So somebody said to me earlier today, well, then just make everyone take programming. I suppose you could do that, but it isn't going to change their heart--

DORN: One minute.

DeBOER: --to put them in a room with someone speaking the right words at them if they're not interested in hearing them. We have to get folks committed to wanting to change. You can't expect that someone will want to change unless they have some reason to want to change. We cannot have jam outs. Jam outs are dangerous. You want to talk about the most dangerous thing we can do? The most dangerous thing we can do is turn a blind eye and let people jam out without having their programming. That, that is dangerous. That is a threat to public safety. That is what we cannot do. And that is what we will do if we do not work on this problem right now. Thank you, Mr. President.

DORN: Thank you, Senator DeBoer. Senator Bosn, you're recognized to speak.

BOSN: Thank you, Mr. President. I think-- I, I've missed the conversation that's taken place on the mike, but I think it has been stated that this is still a work in progress, and that's a fact. So at this point, I am not in support of the amendment at AM1796. I think we're working on that and we're getting closer, but I-- I'm-- I am not there at this point. My concerns that we're working on relate to parole eligibility and the habitual criminal language, specifically with habitual criminal language. The concern that under a baby habitual criminal, which would cap it at a three-year mandatory minimum, the negotiation has centered around whether or not the priors would need to be some form of nonviolent offense, nonsexually violent offense, no weapons charges. I think that's been a good-faith

negotiation, I just don't think we're there quite yet. And my concerns as it relates to the parole eligibility language are-- reality is, with the language as it stands right now-- which I'm not suggesting is the final language-- but if you look at that language, under a 20-year sentence, because of good time laws, that individual is parole-eligible at 6 years under this amendment. And as a prosecutor, I am not willing to look a victim in the face and tell her or him that we went through this process and it was hard and the sentence is 20 years, but they're parole-eligible-- the defendant is parole-eligible at 6 years. And I've consistently voiced that concern. And, and I think I've been heard and I think we're still working on it. As it stands, though, that is the language in LB-- or, excuse me-- in the amendment, AM1796. Having worked with victims and been probably the only person in this courtroom that has had to have that convers-- or, in this, in this Chamber that's had that conversation with victims, I can tell you it's a hard conversation. And those individuals have been put on the stand. They've been put through a lot of things. They've been photographed, run through the wringer. And I, I, I do think that matters. And so having that language worked out is important to me. I'm still having those conversations and willing to continue having those conversations, whether they be an 85 percent or whether they be a different level of look-back period for the parole eligibility, I-- is, is yet to be determined for certain. But those are the concerns that I have. As far as this bill as a package, I, I can tell you that I think it is a true negotiation compromise package. There were a lot of things that were proposed, a lot of discussions that were had to, to get there, and I think we're very close. So, if you'll give us some patience-- or, some, you know, further patience with trying to work that language out, I would be appreciative of it. There are a lot of good things in this package and, and so I want to see it for what it is. I disagree with the statement that we should pass legislation because we will open a prison and it will be at or over capacity on day one. I don't-- I haven't seen where that came from, and no one has been yet able to provide it for me despite my requests for it. So I don't think we should operate under that fearmongering of, well, we have to pass something. Well, we have to pass something if it's the right thing to do. And so assuming we can get the right thing worked out, I will support that bill wholeheartedly. And those are my comments as it stands right now. And if something changes, I will certainly get on the mike again. Thank you, Mr. President.

DORN: Thank you, Senator Bosn. Senator Holdcroft, you're recognized to speak.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

HOLDCROFT: Thank you, Mr. President. And I rise in opposition to AM1796 and in support of LB50. And I'd like to provide a little bit of history, if I might. I was-- I've been on the Judiciary Committee from the beginning. And initially, LB50 was Senator Geist's bill and was largely a bill that came from the last session that most people agreed to. So we had, we had widespread consensus on LB50 before Senator Geist left. However, when she left, Senator Wayne took up the bill and added a number of items that many folks could not, could not live with. And then in a, in a move when we were, you know, down, down a, a member, he used a loophole, in my opinion, to, to force AM1436 out of committee on a 4-3 vote. So that's how we got to, to AM1436. And as I say, it had a lot of issues with it, which we tried to work in the Judiciary Committee. We had, we had hours-- I think up to seven, eight hours-- worth of Judiciary looking specifically at AM1436 and how we could come to consensus. And we got it down to just a, a few items. And, and to, to Senator Wayne's credit, he met with the Governor's Office and the AG and the county attorneys last week and came very close, very close to consensus here with AM1796. However, there are two, two items that, that, that Senator Bosn has outlined that, frankly, we can't live with. And the Governor and the AG's Office and the county attorneys have all indicated that they, they cannot support this bill. Now, we do have a bill that really takes us back to Senator Geist's LB50, and it is Senator Ibach's AM1610, which should come up next. So my recommendation as a member of the Judiciary Committee here is to defeat AM1796 and approve Senator Ibach's AM1610. Thank you, Mr. President.

DORN: Thank you, Senator Holdcroft. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Colleagues, I do rise today in support of AM1796. Earlier today, we passed-- or, we-- I'm sorry-- we moved forward a bill that I think represented true compromise, a bill where Senator Brewer and a number of other folks had worked together to come to some compromise on the voter ID law. And what that means is there's things in the bill that some people liked and some people didn't like. But at the end of the day, I think it was an actual effort. And what I know Senator Wayne has worked tirelessly on when it comes to LB50 is trying to reach some actual compromise. There are components of LB50 that I'm not super fond of. There's other components that I appreciate. I plan on talking more about those, but I do want to yield Senator Wayne a little bit of time here-- the remainder of my time to, I think, respond to some of the comments that have been made thus far to make sure he can speak to some of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

things that have been raised. So I'd yield the remainder of my time to Senator Wayne.

DORN: Senator Wayne, you're yielded 4:00.

WAYNE: Thank you. See, I try to play nice and not get into the process, but when people use the word "fearmongering," that's a direct shot. The fact of the matter is is you're going to have to google and look at the master plan that was sent to everybody here about our prison, that they're not just going to build one, that they have to build two, and are looking for space to expand the one to basically have two. I can't give-- I can't babysit everybody. In addition to-- let's explain how we got here. I was meeting with law enforcement multiple times. Got some agreements there. But the interesting is the Governor's Office and others decided to form a coalition without the person who has the bill. Senator Holdcroft participated in a meeting where half of my committee met with the Governor's Office and law enforcement without me there to negotiate on my bill without me. What other committee has that happened to? Does it-- all the Republicans from Revenue go meet with the Governor's Office at the same time and have a kumbayah? But they couldn't wait to do that. And the fact of the matter is, not one time, one time has the County Attorneys Association or their lobbyists met with me. So it is deja vu all over, Senator McKinney. And the difference is, I look at my personal life today and where I was. I don't need any other vote here. I don't need this vote. And I damn sure don't need to vote for anything else. What's interesting is I was going to resign last summer. And my wife wouldn't let me because, believe it or not, she's a lot more liberal than I am. I spent too much time to be ran around multiple times. And I don't care. If you want to do it, go ahead and do it. But when you come to a committee hearing and don't have a thought of your own, and when you sit in Exec and you don't have a thought of your own, and when you directly are asked "what is your individual opinion?" and you say you don't have one, that you're just going to follow the county attorneys, the Attorney General-- and then when I go negotiate with them and we only have two items left and you say they're against the whole bill, you're lying. There's two issues. So don't get up here and lie. And start coming to the committee actually prepared to talk on your own opinion, not someone else's.

DORN: One minute.

WAYNE: I've been in a lot of negotiations in this body, and many of you know it. I've sat through and had a lot of disrespect on this committee. And there's nobody in my community if I walk away today,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

wouldn't care, including LB531. But I'll tell you what, we can sit here and have a conversation about facts. But when people start getting up to calling things fearmongering, when the data says it itself, when you say that somebody is against the whole bill-- which is not factually true, go out and ask them-- I don't have time for those games. So do better and be better, Senator Holdcroft. Thank you, Mr. President.

DORN: Time. Thank you, Senator Wayne and Senator Dungan. Senator Ibach, you're recognized to speak.

IBACH: Thank you, Mr. President. I, I think every senator should have to serve a term on Judiciary just to experience the hearings, just to experience the personal testimony that, that comes to the, to the hearing room, and to really dive into what criminal justice is, why it's important, and why it's important to make good decisions. I don't think we should, should pass bad legislation ever. I'm not saying that this whole bill, Senator Wayne, is bad legislation. We really are down to just a couple of items that are really, really difficult for us to negotiate. And that's-- that comes down to the habitual criminal section that's currently in AM1796 just because it does reduce those penalties. The other one is the parole eligibility. And if you look at some of the parole eligibility examples, I think it kind of helps outline why, why I personally-- and I, I would also preface that I've learned so much on Judiciary this year because-- I don't have a legal mind and I don't have a legal background, but I have spent time in our county court systems in Dawson County. I have spent time with judges, with sheriffs, with state troopers. And I think I have a better understanding than I did four years ago. And I just-- I can't even explain how much I appreciate everybody that's helped kind of teach me these things. But under the parole, parole eligibility, with good time, an offender would be parole-elig-- this is just an example-- would be eligible after eight years; and at nine years would meet, would meet mandatory discharge. And under the stair-step proposal that's in this amount-- amendment, the offender would become parole-eligible on an 18-year sentence after only serving 5 years. And so I know that that doesn't mean a lot to a lot of people because you kind of do have to have a legal mind to understand all, all the legalities of it. And Senator Bosn, Senator Wayne, Senator DeBoer, they've been really, really helpful this whole-- I always call it a semester, but it's a session-- in kind of helping the four freshmen that are on the committee understand and analyze some of the legalities. As written, I stand opposed because of those two major things, but I think that we could have some more discussion, and I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

actually think we could bring a good LB50 out of committee. So with that, I, I yield my time. Thank you.

DORN: Thank you, Senator Ibach. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President. So, we're having fun, aren't we? And this is what I feared when I-- when we went through the CJI process. You asked whole task force-- the first meeting, the question I asked, are we here to actually do something or are we actually here to meet to meet? In the room, everybody said, no. We're here to, you know, actually do something. So we go through a whole CJI process. Whole task force agrees to 17 consensus items. Before the report is released, the county attorneys get to it. And what was 17 consensus items turned into 13 or 14. That's the issue. Then last year, we don't do anything, and everyone is like, oh, LB920 failed. Let's work over the summer. We had a couple meetings but not too many, to be honest. I introduced bills, other senators introduced bills. We went through all the hearings and all those type of conversations. And we're here today because of the County Attorneys Association, which is the horror-- most horrible lobby group in the-- in the, in the state. And will Senator Ibach yield to a question?

McKINNEY: Senator Ibach, will yield to a question?

IBACH: Yes.

McKINNEY: So you said that you're a-- you're-- whatever-- for whatever reason, you really don't agree with the parole eligibility. So currently, if I am sentenced to 18 years, I serve half of that, which is 9, which means I could jam out at 9, right? What Senator Wayne is attempting to do is to say, we don't want you to jam out. We want to get you transitioned a lot earlier. I don't understand what-- why, why do you have a problem with that? Because the reality is this-- these are considered our most serious offenders in a lot of y'all eyes. So would you rather that person not get programming, not transition out, and move next door to you? Or would you rather that person parole a little earlier, transition out, get programming, and set up for success?

IBACH: I understand what your question is. And I know we've had this discussion over and over again. It's not that I'm against the programming, because I think it does work when it works. But I think that's another glitch in the system right now that we can't, we can't seem to define either.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

McKINNEY: I think we can define it. I, I think it's just political will that lacks. And I, I won't ask you another question, but--

IBACH: Thank you.

McKINNEY: --and, and, and that's the problem. And I've said this to the committee: you were voted to represent your community and not be told what to do by a group of people who are the most unreasonable people ever to step foot in this building. And that is the truth. And that's a both sides issue. And let's be honest here. Senator Wayne has worked in good faith with everybody. And at every point of the, of the process, there is an agreement and then you guys get two or three days and y'all come back and the agreement is over. It, it's happened to multiple senators, even Republican senators-- this year, last year, and since I've been here. You reach an agreement with the county attorneys, you give them two days, they'll come back and the agreement is off the table. And that is the problem. You're never, ever going to get a straight answer and get them to stand down because, no matter what, they'll, they'll come back and say no. And that is the issue. So that-- what that means is you're either going to step up and be a leader or you're just going to listen to people who are unreasonable.

DORN: One minute.

McKINNEY: Our jails, our pri-- prisons are overcrowded. The data shows that, day one, the prison will be overcrowded. If you don't do anything-- what's honestly probably going to happen is the feds are going to step in and tell us what to do. And then you're going to be saying, why is the feds stepping in and telling us what to do? It's-- the feds shouldn't be coming into our state. Well, they're not-- well, they don't have to come in if y'all step up and be leaders and stop being told what to do. And that's the reality. And I, I know people don't agree with what I think should happen, but this is reasonable. So let's have that conversation and let's have some fun tonight because we're here. So let's smile, get on the mike, and have deep conversations about why y'all oppose this bill. And don't just sit in your chair. Stand up and make a sound argument. Thank you.

DORN: Thank you, Senator McKinney and Senator Ibach. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. Thank you for that, Senator McKinney. I'm, I'm not going to smile, but I'm-- I am happy to be here and have this conversation. So-- I, I do appreciate the work of the Judiciary Committee. I actually have my issues with this amendment in

the bill, but I really do appreciate the work. And on the whole, because of the-- there's parts I don't like and there's parts I do like, at the poin-- at this point, I'm supporting AM1796. But there are parts of this that I've really expressed my concerns about in the past. But I did want to talk about a little bit of what I've heard so far, concerns of folks who are not supporting it, which is I just-- I would like to know what the specific problems with how this bill approaches the modifications to the habitual criminal. So if anybody who's opposed to the bill could get up and explain that to me, I'd love to hear it. But as we're currently having the conversation about parole eligibility, I was just sitting here and did a little bit of math on how this works. So we're talking about somebody doing a 20-year sentence. But what you have to understand-- and so-- again, I guess I should take a step back. I really respect the work of the Judiciary Committee. I respect the work-- especially the folks who came in without experience on the committee, had to learn this vocabulary. As Senator Lippincott stated last week at some point that I had told him when I got onto Agriculture, I had to immerse myself in it to learn the vocabulary and learn the language to get to understand what was happening in that committee. And it was just-- it really was like a language immersion program for me because I just didn't know what was going on. So I, I do respect that position of folks. And so there's some parts of this that just are not second nature to people and hard for them to understand. So if you have any questions, I'd be happy to help. I didn't write this bill. I'm not on the committee, but I do have some frame of reference to help explain these things. So we're talking about a 20-year sentence. If somebody has a 20-year sentence, that means they got a 20 to 20. So they got a sentence of 20 to 20. They could have been given basically anything in that range, right, on a, on a 20-year sentence. They could have been given a 10 to 10. They could have been given a 1 to 10. They could have been given a 10 to 20. But for the sake of argument, we'll say 20 to 20. Under this bill, they get-- they would do 10 and jam out. They'd do 10 and be parole-eligible. So of course they're going to jam out. What this bill does is says that that person would then be parole-eligible at six. So their parole eligibility date would be six. Their jam date would still be 10. The reason that's significant is being parole-eligible at 6 years, jam date at 10, does not mean you're getting out. There are currently 1,000 people in our Department of Corrections who are there past their parole eligibility date. That's 1,000 out of 5,600. So it's about-- a little less than 20 percent of the people there are there past their parole eligibility date. So even if we increase parole eligibility, at least 20 percent of those people are not going to be out. And in terms of those individuals past their parole eligibility

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

date, about, say, 60 of them are there 10 years past their parole eligibility date. So, not really relevant to this conversation. So let's say three to five years. 150 of them are there past-- three to five years past their parole eligibility. So if there are 150 people in this window, they would all basically still jam out, but they would have had that opportunity to be paroled, which means they'd be working towards that parole eligibility. So increasing parole eligibility-- it's important to understand-- this suggestion, the stair-stepped approach that Senator Wayne is proposing here would not release people earlier. It would give them the opportunity to work towards being released earlier. And if they did that work, then they could have that step-down approach to custody that we-- the data shows we want. So this is-- it's important to understand it in that context. So the change Senator Wayne's making here--

DORN: One minute.

J. CAVANAUGH: --thank you, Mr. President-- is the equivalent of a 20 to 20 becoming a, say, 15 to 20, a judge sentencing somebody to a sentence of 15 to 20. That's the change in what-- how this effectively would, would play out in custody. But again, these folks, there's still 1,000 of them that are in custody, 1,000 people who are in custody past their parole eligibility date, meaning they're eligible to be released, as they would be under this context, but not getting out for whatever reason, that they haven't met the requirements or they're not ready. And so you have to think of it in that context. So I don't know why people are so afraid at increasing people's parole eligibility. But I would like to hear what the problem is with the-- changing the habitual criminal. Thank you, Mr. President.

DORN: Thank you, Senator Cavanaugh. Senator DeBoer, you're recognized to speak.

DeBOER: Thank you, Mr. President. I wanted to go a little more along the lines that Senator John Cavanaugh was, was going right now, which is that the jam date is the date that you get out no matter what. And the parole eligibility date, if it is sooner than that, is the date that you could have all of your programming finished because you can't go up before the parole board until all your programming's finished. And that means finished. That means you didn't just do the workbook, but you did the workbook in a way that the people think you took this to heart. So you've done all the things, you've taken it to heart, you've done all the, the, the programming. And then you go before the parole board. Our parole board, I will tell you, does not just hand the keys to the prison to everyone who comes there. It's rather the

opposite. So you go before the parole board. If you can make your case that you have changed, then you might maybe get out of prison. But if you get out of prison, that doesn't mean you're running around doing whatever you want as soon as you get out of prison. If you parole out, you're not free from the department. You're not free from whatever. You are still under supervision until your jam date. So you're still serving the same amount of time. It's just how you're serving it because you have proven that you're ready to go back to society. And then, by the way, we make sure that you really are, because we watch you for that time and we help you and we give you those supports that you need so that you don't just go back to your buddy's couch who was the one that robbed the Stop and Shop with you the first time. What we're asking for here isn't to be soft on crime. What we're asking for here is to make our criminal justice system the kind of efficient that does what it's supposed to do, which is to say to take people who have done things that we say are illegal and make them not do them again. I mean, that's the best thing we can do. Because 90 to 95 percent of these people that go to prison are going to come back and be your neighbors. You can either have them come back and be your neighbors better criminals or better citizens. And if we let 800 people jam out-- and, and that's a little deceptive because you may think, well, some of those people that jam out are, are probably not that bad. And maybe a few of them aren't, but these 800 are our most serious offenses. The people who are jamming out are not our IV's. Our felonies go I, II, III, IV. IV is the least serious. I is the most serious. The people who jam out are not the IV's. Because in 2014 or whatever, when we passed LB605, we switched the way IV's work. They're getting supervision. They're not jamming out. The people who are jamming out are our I's and our II's. So when we say that 800 people are coming back into our communities this last year alone, jamming out without having gone through the parole process-- no one has said, yes, we see you've changed. You're ready to go back into the world. No one has said, yes, we see you've changed. You're ready to go back in the world and we will help you to change. 800 of our most serious criminals in Nebraska have been just put back out on the street to live next door to you. We want to change that.

DORN: One minute.

DeBOER: And part of the way to change that is by making some sort of an incentive to people who are so desperate, some of them that they committed crimes or who are now in prison, and are in such a situation that they don't see a future for themselves. And we say we have one for you, but you've got to change. You can't do that again. And we use the only tool we have, which is to help them to become less likely to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

reoffend. That's what we want to do. We want to make those 800 people that come out and sit next door to your whatever, your family members, we want them to be less likely to reoffend. And how we do that is we give them an option to go before the parole board and still be supervised. They're still serving their whole term. They still have to serve their whole term. They're just proving that they're ready to come out a little bit earlier--

DORN: Time.

DeBOER: Thank you, Mr. President.

DORN: Thank you, Senator DeBoer. Senator Dungan, you're recognized to speak.

DUNGAN: Thank you, Mr. President. Colleagues, I rise to talk a little bit more about the underlying amendment that we're dealing with here. And so I think that Senator Cavanaugh did hit the nail on the head when he said there are certain aspects of this amendment that not everybody likes. And there's parts of it that I have issues with. But I do believe that the bulk of AM1796 was reached due to well-intended and I think incredibly hard-fought compromise. And the fact that we're coming down here to two major components that are sort of holding up the entirety of the negotiation I think is problematic, especially given the amount of work that's gone into that. I did want to take a little bit more time to talk specifically about one of the two components that seem to have held us up. So Senator Cavanaugh and Senator DeBoer were speaking a little bit about the parole eligibility, but I wanted to speak towards the habitual criminal phraseology that was used by Senator Ibach and that we've heard a little bit about. So for anybody who's paying attention, watching at home, sitting here tonight, I just want to make sure we do understand what the habitual criminal is. Senator Ibach said that the habitual criminal that's contained in AM1796 reduces sentences. And I want to be very clear with my colleagues that, to the best of my reading of the-- this amendment, there is not a reduction of a sentence. And I, I just would respectfully push back on the way that she, she phrased that. And the reason for that is this. When you're charged with a felony, each felony carries along with it a particular penalty. And here in Nebraska-- and again, as Senator DeBoer just stated-- we have a number of different felonies, from IV's all the way to I's-- IV being the lowest, I's, IA's being the, the top tier. Each different tier of those felonies carry along different penalties. For example, a class IIA felony-- I'm just picking that because it's a well-rounded number-- is a 0 to 20, meaning there's no mandatory minimum and 20

years is the maximum. And when you're charged with a IIA felony, the sentence that is available to the court is a 0 to 20. Now, if you meet certain criteria-- which, for the most part means you've been sentenced at least twice before in your past to a year or more-- then you may, can be additionally hit with what's called the habitual criminal. That habitual criminal is a choice. It is an option that is exercised at the discretion of the county attorney. So if you fit the criteria for whether or not the habitual criminal can be added, it does not mean it has to be added. So you can be charged with a IIA felony and be looking at 0 to 20 years as your potential sentencing range. And the prosecutor in that case does not need to also allege the habitual criminal-- that you are a habitual criminal, but they can. If they do that, the way it works is this. You still-- let's say, for example, you go to trial. You go to trial on the underlying felony. So you are still being tried in front of a jury of your peers on that IIA felony. And if you are found guilty or convicted of that IIA felony, then the judge after that makes the determination as to whether or not, because it's been alleged and added on to your sentencing, you fit the criteria for habitual criminal. If you do, and if the judge finds that your prior convictions are valid, then the habitual-- then your sentencing goes from 0 to 20 to a 10 to 60. So instead of 0 to 20, leaving discretion for the court within that entire range, your sentencing then goes for a minimum-- a mandatory minimum of 10 years imprisonment, with a maximum of 60. So that is an option that has been exercised that increases the sentencing options that you were currently afforded on that underlying felony. Now, where that's important is what this bill, I believe, seeks to do is, in certain circumstances of nonviolent offenses and in, I, I believe also nonsexual offenses--

DORN: One minute.

DUNGAN: Thank you. Mr. President-- says that if you meet different criteria and they decide to increase your penalty using the habitual criminal, instead of going up to a 10 to 60, it goes up to a much smaller range. I think it's a 3 to-- I don't remember off the top of my head. But it, it, it's not reducing the penalty that you're looking at on the underlying felony. It's saying if they decide to exercise the habitual criminal and increase the penalty, it limits the amount to which they can increase it. So colleagues, please-- I just want to make sure we're very clear. This does not reduce sentences. It reduces the amount to which your sentence can be increased if you are found to be a habitual criminal in only limited circumstances. I'm sure we'll keep talking about this. This is very in the weeds, but it's very

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

important that you not be misled-- I, I believe unintentionally. This amendment does not reduce penalties. Thank you, Mr. President.

DORN: Thank you, Senator Dungan. Senator Holdcroft, you're recognized to speak.

HOLDCROFT: Thank you, Mr. President. And Senator Wayne, you are correct. I misspoke. The Governor and the AG and the county attorneys are not opposed to this bill. They are opposed to a couple portions of AM7-- AM1796. And we tried to work with you-- well, Senator Bosn tried to work with you. She drafted some language that everyone agreed to. She tried to run it past you over the weekend. And I understand that, that was hard. But we tried to work with you today and we just could not come to an agreement on the changing so everyone could, could, could come along with AM1796. And the guidance that we have received from the Governor's Office and the AG and the county attorneys is they cannot support this, this amendment as currently written. And as to, you know, an original thought-- you're right. On the, on the Judiciary Committee, I did not have an original thought. I was, I was-- it was, it was just very confusing. I mean, I've never-- I am certainly not a lawyer and I certainly did not understand the criminal justice system, penalties. The first time I'd ever been in a prison was, you know, that, that second week on the Judiciary Committee. So it's been a tremendous learning curve. But I have always been a law-and-order kind of guy. I believe that if you've done the crime, you should do the time. And so-- and I believe in supporting our, our law enforcement and our county attorneys. So I don't believe that our job is to tell them how to, how to, how to do their job. I, I think our job is to try to help them do the best possible job that they can do. And with that, I'll, I'll yield the rest of my time.

DORN: Thank you, Senator Holdcroft. Senator DeKay, you're recognized to speak. Senator McKinney, you're recognized to speak.

McKINNEY: Thank you, Mr. President--

DORN: Hold. Here comes Senator McKay-- DeKay. Senator DeKay, you're recognized to speak.

DeKAY: Thank you, Mr. President. I had talking points to talk about earlier today, but here we are on LB50. And it has good parts and we need to talk through them. Number one, parole. We are still trying to work through those numbers. I feel that we can get there, but we have to talk without walking away and say, just fix it. Number two, we were all but there with-- the problem with-- habitual criminal part of it,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

I think we're almost there. We do have a problem with saying we've had multiple Execs. That is not an accurate statement. We've had about three Execs altogether, and that, that is not a lot. And when we have a pile of AMs given to us and being asked to vote with a very short window of time, to say that I am unprepared, I take offense to that. I went to Execs and told that we were not meeting today. I feel we have had a good committee and every question should be answered. I am getting a crash course on judiciary issues. But back to where we are at right now, we are close. We can and should get there. So if I ask questions for both sides of the issues, don't say I'm not taking one point of view. I agree that jamming out isn't the answer, but nobody will dispute that a crime has been committed. And with that, I feel an amount of time, including parole, needs to be met. Senator Wayne and Senator Bosn have been on different sides of the table and the courtroom. I will leave it to them to find the good numbers to work with. If that can't be reached, then I feel it is hard to support this amendment. Yes, I am a freshman and new to Judiciary, but we all have worked very hard, and, and I'm-- am, for one, not taking anything lightly in this Chamber or in those committee rooms. So with that, I yield the rest of my time. Thank you.

DORN: Thank you, Senator DeKay. Senator McKinney, you're recognized to speak. And this is your third time.

McKINNEY: All right. Thank you. Well, number one, parole is not automatic. If you're-- just because you're eligible does not mean you get out. Let's make that clear. Just because somebody goes in front of the, front of the parole board or is eligible for parole, that does not mean that they are released right away. Let's get that understood. The other, other thing I was thinking-- number one, if the Democratic Party texted me and told me what to do, I wouldn't do it. If the county attorneys texted me and told me what to do, I wouldn't do it. And if anybody texted me and told me what to do, I wouldn't do it. I'll listen. I'll have an open mind, and then I'll form my own opinion. That's what we're supposed to do. That's what we were elected to do. And then the, the conversation of no time and we're unprepared because the amendments are so big-- let's use that with this whole, oh, let's find out how to get to agreement on these new suggestions after Senator Wayne met with everybody and then y'all come in at the last hour on a Friday when Senator Wayne isn't even here because he has to deal with a family issue and propose a new amendment. And then y'all got the nerves to stand up and talk about no time and unprepared because y'all know the bill is coming up. The nerve. It's-- honestly speaking, I'm smiling because I'm not surprised. I thought this was going to happen the whole time. I thought this was going to happen

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

during the CJI process and I thought this was going to happen coming into this year. But I tried to be optimistic. But then, you know, you think about the makeup of the committee. I think there's four freshmen on the committee. Then the one other, I think senior person that was on the committee left the committee, put a new freshman on the committee that was a county attorney formerly. None of this is a coincidence to me. None of it. So if this is going to burn and crash like LB920 did, then let's have an honest conversation. Because why not? Because there's men and women inside of our institutions that, no matter what they did, they don't deserve to be treated inhumanely. They don't deserve to live in inhumane conditions. And they deserve a second chance. And that is-- and that's the clear, clear thing about this. The county attorneys want to use the habitual thing as a tool so they could get people to plead out to stuff. That is true. The police actually support the parole eligibility thing because they want people to be under supervision when they're released. It's-- my guidance told me not to support. I wish somebody would try to guide me and tell me what to do. That's crazy. But the-- I think you guys need to understand. And the other problem I have with the budget bill and the Appropriations Committee for voting for the prison and moving forward for it-- with it is you took away our leverage. You voted for the prison without getting reforms. Now we're going to end this session without reforms again. So, thank you, Appropriations.

DORN: One minute.

McKINNEY: Thank you. Thank you, county attorneys for stopping another bill to make changes to our criminal justice system. Thank you. Thank you. Now all you guys that can go inside the prisons, you should go in and tell the people that you think are criminals, that, hey, we're not going to do any policy changes. We don't care if the prison is overcrowded. We don't care that it's going to be more overcrowded over the next four to five years because we don't care about you. And you're a criminal, so you deserve what you get. That's what y'all should go do. You should tell the taxpayers that we're going to waste their money and keep building prisons and, and-- forever because y'all don't want to do nothing and y'all don't want to step up. Go tell all those people. Call your constituents and say, instead of property tax relief, we're going to keep building prisons. So, thank you. And we're going to be broke as a state because we're in the business of building prisons. Thank you.

DORN: Thank you, Senator McKinney. Senator John Cavanaugh, you're recognized to speak.

J. CAVANAUGH: Thank you, Mr. President. So again, I rise in support of AM1796 and AM1436 and LB50. And I haven't heard anybody other than, I think, Senator Dungan specifically address the habitual criminal, but I thought I'd continue talking on it and see if anybody could respond from-- who opposes that section. So my reading of that section, which is on page 12 of the amendment, and it is Section 6, adds to the end of the current habitual criminal statute that if someone commits a felony that does not include sexual assault, sexual penetration, the threat to inflict serious bodily injury or death on another person, the infliction of serious bodily injury on another person, causing the death of another person, or unlawful possession of a firearm, the mandatory minimum shall then be 3 years and the maximum charge be no more than 20 years for the felony or, or the penalty for the-- penal-- the fenalty-- for the felony, whichever is higher. So it creates a subsection of it. I don't see where it changes what the predicate offenses are. So it would still be somebody could previously-- as Senator Dungan correctly pointed out, what the habitual criminal is, if somebody has been twice convicted in separate instances, have a felony, and remanded to the correction center-- so, going to prison for a year or more-- on their third offense, the habitual criminal is an enhancement that can be added to increase their sentence. So someone could be twice convicted of a Class IV felony of possession of a controlled substance. They could do a year and a day on each of those. And then after they serve that sentence, then they are again charged with possession of a controlled substance. And under the current law, that person could have their chart-- their sentence enhanced, as Senator Dungan explained, if the judge finds the two prior offenses to be valid and served and meet all the requirements, then they could be sentenced, rather than a maximum 2-year sentence-- with, you know, time off, which makes it essentially a 2-year sentence-- so, a 1-year sentence with postrelease supervision, they would get a mandatory 10-year sentence with no good time. So it's a hard 10, as we call it. So they would do the actual 10-- calendar 10 years. And that's the minimum. It could go-- it goes up from there. And we have a lot of these conversations about the habitual criminal, and prosecutors, law enforcement, everybody says, well, they wouldn't do that. We don't believe that that person-- we don't think that charge merits a solid 10 years, 10 calendar years in prison. We wouldn't add that offense. But as Senator McKinney pointed out, as Senator Dungan pointed out, it's threatened in a lot of those situations. In that very scenario, I've, I've represented people who have had that threatened against them, which takes away their-- effectively their right to contest their charge because the penalty is so disproportionate to the offense. And our objective here is to

create the law as we see is the appropriate punishment for an offense. And so the habitual criminal assumes that someone once they, you know, they've committed serious offenses-- serious being felony offenses-- that they've been sentenced to time in prison, meaning that they've kind of, you know-- if you're done at least a year, you didn't get probation, you didn't get, you know, county time, that is, you know, serious enough that we're thinking you're, you know, you deserve-- maybe that's not acting as a deterrent. So the habitual criminal then acts as a deterrent once you get to that third offense, right? And so if you grant that premise, are we still-- do we think that that person should do 10 years in prison? I don't think anybody really thinks that on that third offense, possession of a controlled substance. And so what this does is and says, in those particular instances, that that person's penalty is 3 years, going up to 20.

DORN: One minute.

J. CAVANAUGH: Thank you, Mr. President. So it's just changing these lower level offenses. It's saying not in those most serious offenses, somebody is coming in on their third offense where they've assaulted somebody, they've sexually assaulted somebody, they've caused serious bodily injury, they threaten bodily injury-- they still have the current habitual criminal, the 10 and up. And they still could have the same predicate offenses, meaning that if they had two prior possession of a controlled substance where they did one year or more in prison, they could still be used as the underlying offense for this. Now, I've heard some folks say that that is different under this. I don't see that change in this statute. So I'd love to hear why I'm misinterpreting this or what the problem with that particular section is. Thank you, Mr. President.

DORN: Thank you, Senator John Cavanaugh. Senator Wayne, you're recognized to speak.

WAYNE: Thank you, Mr. President. Colleagues, I know criminal justice is hard. And for-- some people just feel, lock them up. I'll tell you where I'm at. I've seen a lot this year-- and I'm kind of smiling when I'm saying it. I've seen a lot of bills go from General to Select with a lot of compromise or amendments added. That's all I'm asking for right here. I'm not going to belabor why we haven't reached an agreement yet. People know I weren't here on Friday and I was kind of tied up on the weekend. And Senator Holdcroft is right on that. I got a phone call and a text message from Senator Bosn. We were supposed to connect again on Sunday, but I realized I got a new appreciation for single parents. Baths, basketball, kids. And Bosn actually sent a, a

funny text this morning, said she waited up all night for my phone call. And I thought that was kind of funny. And I was like, I got-- my response was, I really have a new appreciation for single parents because this weekend was-- it was rough. So, with that, that's-- so we started today. And then for those who don't know, I had a little eye situation where I couldn't see this morning and I'm on some eye drops that are kind of-- I swear I have X-ray vision now because this steroid is super strong. But nevertheless, what I'm saying here is I'm asking for the same deference. Give me a little time. We'll figure it out. Those who have worked with me always know we come to an agreement. If not, I understand. But we do got to do something. And I'm really approaching this from two, two, two angles: public safety and fiscally responsible. That may sound crazy coming from me, but I am worried about 2028. And I am worried about when all the-- all these great things we're doing are implemented that our tax receipts have not given us the, the amount of cash coming in. That will affect the canal. That will affect a potential new prison. That'll affect, affect property tax relief because we will be looking for money to make it work. So that's what this is about. I will tell you-- and I'll let Senator Bosn confirm or deny or just plead the Fifth. That's an inside attorney criminal joke. But we are working on language-- and we narrowed it down to a subset group on the parole eligibility. And that subset group is zero to five. So-- Brandt, Brandt, Brandt. Senator Brandt, I need, like, 30 seconds so she can confirm or deny that this is kind of where we're at. We're working on a subset group, and that subset group is a zero to five. The issue is, potentially under my language, somebody could get paroled before they serve a day. Under the language she propos-- she proposed, I think it eliminates a lot of parole eligi-- eligibility for that zero to five group. The rest of it we can figure out. And even the habitual, we're probably, I don't know, a couple feet apart. That's not that really far. But, we're all talking about the same language. The issue is we want to make sure it's read right. And so we got, like, two different languages floating around to try to deal with this zero to five subset group. And once we get that worked out, this is easy peasy, in my opinion. Thank you, Mr. President.

DORN: Thank you, Senator Wayne. Senator Dungan, you're recognized to speak. And this is your third time. Senator Dungan. And this is your third time.

DUNGAN: Thank you, Mr. President. I apologize for the delay there. I'm talking with some of my colleagues about what this amendment does. I understand that a lot of the things in here are pretty heady and in the weeds, but I, I believe that there's currently people working to

come to some more consensus, and so I want to make sure we continue to talk about the underlying bill and some of the necessity for it. So the thing that I've not talked about much yet are a couple of the bills that I have that have actually been wrapped into AM1796. Senator Wayne in his introduction did speak about those a little bit, which I appreciated, but I wanted to take a few minutes here to address what both of those were. So one of those was my original LB30, which allows for the plea of no contest to be done in juvenile court. That's not a novel idea. It's something that's been brought previously. And I think it's been something that, when it's been brought before, was noncontentious. In its incarnation as LB30, it made it out of the Judiciary Committee with an 8-0 vote. So it was not something that had objections to it, but it is something that I think is necessary. To just briefly articulate what it does: in juvenile court, it's a little bit different than adult court. So instead of pleading guilty or not guilty, in juvenile court, you admit or deny a charge. Some courts allow you to plead no contest in juvenile court and others don't. What a plea of no contest does is it says, I'm not officially admitting to this, but I am giving up my right to fight this, which means that if there are sufficient facts available to the court, they will, in fact, find you guilty in adult court or that you've been-- that you, that you committed the offense in juvenile court. And so the plea of no contest is important for a couple of reasons. One, it has the same outcome as whether or not somebody pleads guilty. And the benefit, though, is if you disagree with the underlying facts of the case but you still want the benefit of a plea agreement, let's say, it would allow you an avenue to plead no contest instead of fighting the case and taking it to trial. So it benefits judicial efficiency in that circumstance by allowing the defendant or the juvenile who's been charged with an offense to plead no contest because it better fits the facts in their case. In addition to that-- want to make sure I have this up here. No contest pleas are made for a variety of reasons. For instance, as I've already said, defendants will plead no contest in situations in which they do not deny committing the charged offense but do deny the factual version that the police or the prosecutor say occurred, or a defendant may be advised by counsel to plead no contest rather than guilty because a guilty plea is a judicial admission that can be used against a defendant in another jurisdiction or another proceeding. So there are certain circumstances where it's just in a juvenile's best interest to plead no contest. The outcome is the same as admitting, you are placed on probation the same, and the probation follows through the same, but it allows them that autonomy to make that decision, which I think is important. The other bill that I have that's wrapped up in here that I wanted to touch on briefly is LB27.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

This gets a little bit in the weeds as well, as all of this does in Judiciary. But LB27 makes it so if a defendant-- I'm sorry-- if a defendant-- I apologize. It was just a little loud next to me. LB27 seeks to allow public defenders to be appointed in circumstances where an appeal happens after a defendant has won a case. So, currently, if the state wins a case, then a public defender can assist a defendant in an appeal to the next level. But if the defendant wins a case-- or, wins a, a ruling-- and the state appeals, the current law's a little bit antiquated and doesn't allow for the public defender to be appointed, appointed in those circumstances. The law is still limited--

DORN: One minute.

DUNGAN: Thank you, Mr. President. The law is still limited to circumstances where the defendant is found indigent, which means that they are not able to pay an attorney. And it doesn't change the factors for what can and can't be considered. It simply provides the opportunity for a defense attorney to be appointed to somebody who can't afford their own in the event that the state appeals a case to the next level. Both of these are noncontentious bills. I believe they both came out 8-0 and were presented onto General File, so I'm happy to see them included in AM1796. They're among some of the reasons that I support this bill. But again, I would encourage my colleagues to vote green on this. It allows us the opportunity to continue to have these conversations both here today and as we move on to Select File. Thank you, Mr. President.

DORN: Thank you, Senator Dungan. Senator Blood, you're recognized to speak.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I still stand in full support of both amendments and the underlying bill. And Senator Wayne actually beat me to the punch because I was going to suggest that we go ahead and vote it through to Select File because we've seen that happen many, many, many, many, many times in the last seven years, Senator Wayne and I, where we were there almost, but not quite there, and we knew that we need more time to negotiate, but we're getting close to the end of the session, and so we needed people to show us grace so we could move forward on important bills like this. But I have to say, listening to some of you, I want to remind you that our Governor and our Attorney General are not the ones that sit on this floor and push the buttons. You are. And the more you talk about this over and over again, all I can think of is a puppet master. I don't think you have 40,000 Governor Pillens or 40,000 AG Hilgers in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

your districts. You have people who want to see prison reform. And so I'm always concerned about who we're beholden to when I keep hearing those names dropped on the mike today. If the attorney-- if the county attorneys are against it, that's fine. We can negotiate with them. But there is a reason that the executive branch and the legislative branch are supposed to be different branches. We are not beholden to them. We are beholden to our constituents. And we are beholden to, to for once and for all moving forward on reform. We crash and burn and crash and burn. And meanwhile, we dig a deeper and deeper hole. We don't get reform. Our prisons are falling-- literally falling apart. They're overcrowded. We think the solution is to build a new prison. And that's maybe a small part of the solution because the old prisons are falling apart, but that's also shame on us because we didn't invest in our infrastructure. Because that's what we always do in Nebraska. We throw money at things after it's a big crisis. We've had opportunities to save taxpayers millions of dollars, tens of millions of dollars over the last 30 years. But it's out of sight, out of mind. I don't know how many times Senator McKinney and Senator Wayne have to stand on this mike and tell you this is a problem that needs to be addressed. And I don't know if it's really falling on deaf ears or if it's like last year when Senator Lathrop had his bill and everybody got a text and they all knew how they were going to vote regardless of the promises they made for change. So, again, I challenge you to remember who your constituents are because they are not the executive branch and we are not beholden to them. And the fact that it keeps getting mentioned on the mike I think is very suspect, and I think the optics are bad. And if that is something that is not your intent, then choose your words more wisely. With that, I would yield back any time I have to you, Mr. President. Thank you.

DORN: Thank you, Senator Blood. Senator Conrad, you're recognized to speak.

CONRAD: Thank you, Mr. President. Good evening, colleagues. I want to thank Senator Wayne and the Judiciary Committee for their leadership in bringing forward this measure. I know smart justice reform is incredibly complex. And it is late in the day, so this may be perhaps the first time that many members outside of the Judiciary Committee have an opportunity to dig in. But I do think that we have had important debate at other stages of perhaps the budget deliberations or other issues to talk about kind of where we are in terms of our mass incarceration and racial injustice crisis in Nebraska. Now, of course, these issues are not singular to Nebraska, but, unfortunately, Nebraska is really an outlier in many ways in comparison to our sister states and the federal government. So our system of mass incarceration

has grown so unwieldy that about 1 in 10 kids are going to end up with a parent in the criminal justice system at some point in time. We have some of the most significant racial disparities in the country. We're number one in the country when it comes to prison overcrowding. So the body committed-- I disagreed with the decision-- but the body committed to fund a massive new prison in contravention of all of the research and data and experiences of our sister states, which showed that building-- attempting to build your way out of a problem is the most expensive and least effective means to address our shared public safety goals. Nevertheless, the reports are clear. If we do not commit to a chart of serious and significant smart justice reform that has better outcomes for people, that has better outcomes for the taxpayer, that ensures our shared public safety goals are advanced, we won't be committing to building one massive new prison. We'll be, be committing to building two. And when you take into account what that means for negative implications for education, for infrastructure, for natural resources, for economic development, for healthcare, we simply must chart a different path. You can see the statistics also being clear where, despite similar crime rates, for example, you are seeing the prison population decrease in our sister states and on the federal level. And I believe that Nebraska is only about 1 in 4 states where we're going in the wrong direction there. So we've had study after study. We've had three branches of government involved for over a decade now. And we still have yet to commit to robust, smart justice reform. We have yet to commit to a course that is right on crime. And these are not ideas that are regulated to a singular point on the political spectrum, but rather smart justice reform has generated significant support across the political spectrum in our sister states and on the federal level. It's time to commit to that chart in Nebraska-- chart that course together in Nebraska. The measures put forward by Senator Wayne and the Judiciary Committee overall are an important but modest step. We need to ensure that the parties have the ability to keep talking, to keep working on these issues and to tee up--

DORN: One minute.

CONRAD: Thank you, Mr. President-- and to tee up additional, significant, meaningful reforms to update and modernize our criminal justice system so that we don't have to continually build massive new prisons. We need to learn the examples from our sister states. We need to right-size our criminal justice system. And the only way that's going to happen is if we have a shared commitment to reform. There are modest but important steps that Senator Wayne has fought for in this measure, but we need to continue talking and we need to go deeper on ensuring that we have the right size of sentences and we're diverting

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

more people from prison on the front end, where appropriate, and having appropriate support on reentry so that we do not exacerbate cycles of recidivism. With that, I am happy to be a constructive member in those conversations, and I--

DORN: Time.

CONRAD: --appreciate the time. Thank you, Mr. President.

DORN: Thank you, Senator Conrad. Senator Ibach, you're recognized to speak.

IBACH: Thank you, Mr. President. I would just reiterate that we've had really, really good discussion tonight. I think we've had some discussion in the back of the room that's very valid. I think this bill has a little bit more work to do. I, I would encourage people to maybe take a second look and think about, if things don't happen in the meantime, we can always kill it on Select. But I think that there's so much good in this package that we've worked on that I just-- I think there's a lot of good to see through to Select. So I would encourage everyone to take a second look at it and help us work on a really good bill that we can all live with. Thank you, Mr. Speak-- Mr. President.

DORN: Thank you, Senator Ibach. Senator DeBoer, you're recognized to speak. And this is your third time.

DeBOER: Thank you, Mr. President. Colleagues, I too want to ask you to give peace a chance. We have an opportunity here. We are very, very close to getting this bill worked out and having it in a place where everybody maybe doesn't think that it's everything they want but everybody is in a place where they can live with it. And so I will ask you to give us a, a little vote here on AM1796 knowing that we're going to work on it between now and Select and that, obviously, we'll have an opportunity to discuss it again on Select File. And, and if we have not gotten to an agreement, then, at that point, you know, you can, you can withhold your vote then. But please give us an opportunity to get to Select. We really need to do that here so that we can get these last pieces worked out. It's a-- and believe it or not, it sounds sort of simple when we talk about it, but it's an incredibly difficult piece of drafting and figuring out exactly how to get the math right. It's really-- it's literally math. And it's 8:58 p.m. and math is getting harder. So, give us a chance to get to Select. And with that, I will yield the remainder of my time to Senator Bosn.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

DORN: Senator Bosn, you're yielded 3:30.

BOSN: Thank you, Mr. President. Here's the deal: I think we are very close. I recognize everyone's reluctance to push it off until Select. I'm not minimizing that. What I am telling you-- and Senator Wayne and I are in agreement that the two sections that are the biggest, contentious issues are the, the parole eligibility and the habitual criminal language. I think the entire committee would agree that those are the sticking points. I have committed to Senator Wayne that I will negotiate the language that I proposed to him via email this weekend, and he's agreed that he will negotiate the language that's in the currently proposed amendment, AM1796. And I think-- our hope is that everyone will get out of the queue. We can vote on this. Enough of us can come together in an agreement that we will work on this between now and Select. I'm willing to do that as soon as tomorrow morning to get there. I, I think we are very close. And if you're not in support of that, that's fine. Would Senator Wayne, yield to a question?

DORN: Senator Wayne, will you yield to a question?

WAYNE: Yes.

BOSN: Senator Wayne, have I correctly summarized the negotiations as they stand at this point--

WAYNE: Yes.

BOSN: --that being the parole eligibility and the habitual criminal are the sections that we are hoping to come to middle ground?

WAYNE: Yes.

BOSN: And am I correct that we will continue a good-faith effort between now and Select File, whenever that may be-- I don't know when that will be-- but we would use some time to work on those two things as they stand between your amendment and my proposed language?

WAYNE: Is this where I plead no contest or the Fifth?

BOSN: You admit or deny?

WAYNE: Oh, I admit. I admit. Yes, correct.

BOSN: All right. So, with that, that's my request from those who are listening that we would vote-- pull out of the queue. Vote on the amendment, AM1796. Please vote green. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

DORN: Thank you, Senator Bosn and Senator Wayne. Senator Bosn, you are next in the queue-- oh, you-- wait. You dropped. OK. Thank you. Senator Wayne, you're recognized to close.

WAYNE: Thank you, Mr. President. Colleagues-- I really want to do a call of the house, but I, but I won't yet. So colleagues, where we are is there is a subgroup on both of those that we're trying to figure out. One in the habitual part is whether they have a, a, a violent crime in the past and how that negotiates into a nonviolent theft of something, and trying to figure that out. I will tell you that this has been a transparent negotiation with Senator Bosn. Sometimes people outside the room here want to influence and sometimes they actually get it wrong themselves. There was a couple suggestions from people in the hallway that they thought they wanted them and you think it through, you don't. And that's part of the problem with criminal justice in general, is it's always the one fact, the one case, the one scenario that you have to walk through and say, OK. Well, how do we make sure this doesn't happen? And that's just tough. So colleagues, I would ask for a green vote. AM1796 is a white copy amendment of both the Judiciary amendment and the bill itself. So we will go-- AM1796, yes, replaces that. So we'll just go yes all the way through. And then on Select, we'll have an amendment, probably a couple, because there are some consensus items. There's one that is a Speaker priority of Senator Ibach that deals with notices for pardons board. Had no opposition. Came out 8-0. So there'll be some amendments on, on those that-- just good policy that we'll add. And then we'll have the negotiated agreement that we'll ha-- also have on there. So I'd ask for a green vote on AM1796, AM1436, and AM50 [SIC-- LB50]. Thank you, Mr. President.

DORN: Thank you, Senator Wayne. The question before the body is, shall AM1796 be adopted? All those in favor vote aye; all those opposed vote nay. There's been a request for a call of the house. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record.

CLERK: 24 ayes, 3 nays to place the house under call.

DORN: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. All unauthorized persons are here. Senator Wayne, is the vote open? Would you like to accept call-in votes? We are now accepting call-in votes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

CLERK: Senator Conrad voting yes. Senator Ben Hansen voting yes. Senator Machaela Cavanaugh voting yes. Senator Albrecht voting no. Senator Holdcroft voting no. Senator Armendariz voting yes. Senator Bosn voting yes. Senator Wayne voting yes.

DORN: Speaker Arch and Senator Erdman, please come forward. We will continue to accept call-ins. The vote was open.

CLERK: Senator McKinney voting yes. Senator Dover voting yes. Senator von Gillern voting yes.

DORN: Record, Mr. Clerk.

CLERK: 27 ayes, 5 nays on adoption of the amendment, Mr. President.

DORN: AM1796 is adopted.

CLERK: Mr. President, Senator Ibach would withdraw AM1610.

DORN: It is withdrawn. The next vote is for the adoption of AM1436. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, record.

CLERK: 27 ayes, 9 nays on adoption of the committee amendment, Mr. President.

DORN: AM1436 is adopted. And. Senator Wayne to close on the advancement of the bill. Senator Wayne waives. The question before the body is the adoption of LB50. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, record.

CLERK: 28 ayes, 8 nays on advancement of the bill, Mr. President.

DORN: LB50 is adopted. Mr. Clerk for items.

CLERK: Mr. President, next item on the agenda: LB50A, introduced by Senator Wayne. It's a bill for an act relating to appropriations; appropriates funds to aid in the carrying out the provisions of LB50. The bill was read for the first time on May 17 of this year and placed directly on General File.

DORN: Senator Wayne to open on your bill.

WAYNE: Thank you, Mr. President. Colleagues, this is going to change on Select with the amendment we just adopted, so I would ask you to vote green so we can get it to Select. Stay with the bill. And then

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate May 22, 2023

whatever amendment is-- the new A bill will be on Select. Thank you, Mr. President. I waive closing.

DORN: Senator Wayne waives closing. The question before the body is the adoption of LB50A. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, record.

CLERK: 28 ayes, 7 nays on advancement of the bill, Mr. President.

DORN: LB50A is advanced. Mr. Clerk for items.

CLERK: Mr. President, a single name add: Senator Vargas. Name added to LB227. Finally, a priority motion: Senator Fredrickson would move to adjourn the body until Tuesday, May 23, 2023 at 9:00 a.m.

DORN: Colleagues, you've heard the motion. All those in favor say aye. Opposed, nay. We are adjourned.