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Government, Military and Veterans Affairs Committee
October 16, 2009

[LR119 LR162 LR127]

The Committee on Government, Military and Veterans Affairs met at 9:30 a.m., on Monday, October 16, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR119, LR162, and LR127. Senators present: Bill Avery, Chairperson; Robert Giese; Charlie Janssen, Russ Karpisek; Bob Krist; Rich Pahls; Scott Price; and Kate Sullivan. Senators absent: None. []

SENATOR AVERY: My name is Bill Avery. I chair the Government, Military and Veterans Affairs Committee. Welcome to our hearing on interim studies. We have five of them. We will take them up in the order as they are posted on the outside of the room, starting with LR119 and proceeding through the agenda into the afternoon, if we need to, and ending up with LR126. I want to begin by introducing the people who are up here. I'll start with my extreme right. (Laughter) This is Senator Rich Pahls from Omaha. He's not extreme, notice, just right. Charlie Janssen from Fremont and Senator Bob Giese from South Sioux City. To my immediate right is the committee counsel, Christy Abraham. On my left here is Senator Russ Karpisek from Wilber, and to his left is Senator Scott Price from Bellevue. We will probably have Senator Sullivan join us later. I think this vacant seat here would have gone to Senator Pirsch, who cannot be here today. The committee clerk is Sherry Shaffer, and when you come up to testify, please give the sign-in sheet to her. The sign-in sheets are beige colored and they're available at each entrance. Just fill them out, print your name clearly for the record, and when you take the seat to testify, I would ask you to be very clear in spelling your name, no matter how simple it might be. We need that for clarity in the record. Give...of course, give the sheet to the committee clerk when you arrive to testify. The order of business will be the introducer of these resolutions will have an opportunity to introduce them with an opening statement. There is no specific order in the testimony. We do not have pro and con as we do during normal hearings on bills. If you have any exhibits or any handouts you would like for us to have, give them to the pages and they will distribute them. The pages are Courtney Schuster from Lincoln and Haley Schwartz from Homer. So with

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that, I would ask you to turn off your cell phones or put them on silent or vibrate, so that we don't get disrupted. And we will begin with LR119. [LR119]

SENATOR PAHLS: Mr. Chair, are we going to use any lights today? [LR119]

SENATOR AVERY: I don't think we'll need to. [LR119]

SENATOR KARPISEK: Senator Avery, whenever you're ready. [LR119]

SENATOR AVERY: Thank you, Senator Karpisek. My name is Bill Avery. I represent District 28. My name is spelled B-i-l-l A-v-e-r-y. I am here to introduce LR119 which deals with the initiative and referendum and process and how petitions are circulated. This, historically, has been one of the most interesting and I should say also, one of the most controversial issues that this committee deals with. We...because we have a Unicameral system, it is thought by many that the initiative and referendum and process is our second house. That this is the means by which citizens can play a role in legislation that because they have the right to place issues on the ballot for popular vote they can pass laws, they can rescind laws, they can change the constitution and this, in a sense I guess you could say, provides a check on the activities that take place in this body, the Unicameral. This issue has often prompted lively debate and I suspect that it will again today. Last session, Senator Rogert introduced a bill dealing with initiatives and referendums. The committee...we did not advance that bill but we decided instead to do an interim study. The interim study states that the issues to be examined include determining how best to investigate potential violations of the process requiring petition circulators to read the object statement to every potential signor. And finally, studying what are appropriate requirements for the petition circulator, such as residency requirements, etcetera. There, of course, has been controversy regarding the behavior of petition circulators and some of our past initiatives. The government committee has held hearings on these concerns for the last several years. Bills have been introduced to address some of the issues, and I think you'll hear testimony this morning about

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concerns that the Legislature has restricted the initiative process to the point where it is difficult for citizens to use it successfully. A bill was passed in 2008 to limit how petition circulators can be paid and required circulators to be eligible to vote in order to circulate petitions. These new provisions are now being challenged in the federal court. It's my understanding that we will hear a proposal today that would eliminate or reduce the number of petition circulators. We may also hear about some other ideas, including use of the Internet to circulate petitions. So I look forward to the testimony. I hope you do too. I'd be happy to answer any questions. I believe, though, that you'd like me to get off this chair and let someone who knows a lot more about the process take my place. I see you nodding. (Laughter) [LR119]

SENATOR KARPISEK: Thank you, Senator Avery. Senator Pahls. [LR119]

SENATOR PAHLS: Thank you, Senator. Senator, I have a couple questions. Your saying, some of the issues are in front of the Supreme Court right now. That the changes we've made.... [LR119]

SENATOR AVERY: Right. Well, in the federal court system. [LR119]

SENATOR PAHLS: Or federal court, right. That some of the issues that are concerned, there have the concerns of the circulators and all that, that's what's in front of it. [LR119]

SENATOR AVERY: Right. [LR119]

SENATOR PAHLS: So that's going to be heard soon, later? Do you know, do you have any idea? [LR119]

SENATOR AVERY: I don't know. Christy, do you know where it is in the court system? [LR119]

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SENATOR PAHLS: But in other words, it's going through what I call our process. If we are messing something up, the courts are saying, hey, Legislatures, your messing things up. That's what that's all about. And what I find interesting, because I've heard some of the things that there are going to be...and I can feel the frustration because I'm frustrated a little bit on the tax exemptions, how I'm being stymied here by our own Legislature. But that's part of the process as continue to work through it. I also read one of the reasons why the state of California, which is very well known for all of its taking votes to the people, have really messed up the system there. That there are so many things have happened in the state of California that it's actually hard for the Legislature to answer some of the issues they have. And we know right now in California they are in a real mess and they attribute some of that is because they've had so many things have been brought forth and the people have passed legitimately, but some ways that does, you know, tie the hands of legislators. [LR119]

SENATOR AVERY: Tie the hands of the Legislature, yes. [LR119]

SENATOR PAHLS: So I mean, there are both sides to this story. I do understand the frustration of people saying that we are hand stringing them, but it can work both ways. That's what I'm saying, the courts, if they say we're doing too much of that, won't they rule against us? And then we'd have a chance to... [LR119]

SENATOR AVERY: Yeah. And there are states that don't have the initiative process in their constitution. [LR119]

SENATOR PAHLS: Yeah. But I'm just trying to get the point across so that if we are tying the hands of the people outside, the court's are going to say, you can't do that guys. I mean, I just see that's...and you're telling me that's in the works right now. [LR119]

SENATOR AVERY: That's in the works. [LR119]

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SENATOR PAHLS: Okay. Thank you. [LR119]

SENATOR KARPISEK: Thank you, Senator Pahls. Any other questions? Senator Price. [LR119]

SENATOR PRICE: Thank you, Senator. Senator Avery, a couple of quick questions and that would be, in all that we're doing here in the petition process, do you believe it...do you take that these actions could limit the number of citizens who can participate in this process? [LR119]

SENATOR AVERY: Well, we don't have a proposal, but we will hear some today that I believe will expand the opportunities for participation. [LR119]

SENATOR PRICE: Thank you. [LR119]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Seeing none, thank you Senator Avery. [LR119]

SENATOR AVERY: Thank you. [LR119]

SENATOR KARPISEK: Can we see a show of hands of how many people want to testify on this hearing? A couple? Thank you. [LR119]

SENATOR AVERY: All right, it's open now for the first testifier. Mr. Groene. [LR119]

MIKE GROENE: I'm Mike Groene from North Platte, Nebraska. I'm here as a citizen who has taken part in the past sponsored petitions. We've just completed a local one, a municipal one, in North Platte that will be, probably be on the ballot in May. [LR119]

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SENATOR AVERY: Would you spell your name for the record? [LR119]

MIKE GROENE: G-r-o-e-n-e. First, a couple of quick comments about what was said earlier. Senator Pahls there's been already a lot of court cases decided by the federal courts and the state Supreme Court defining what the relationship between the Legislature and the people's right to petition. And some of those I'll cover here. First, I'd like to remind you what our state constitution does say, Article III, Section 2: The first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature. There is no such statute in the constitution that is the reverse that said the Legislature works independently of the people. But here it says, it's independently of the Legislature. Also a couple of court cases that in the past have...by the way, back in '92 or '90, this committee took to the full house and it was passed, a restriction on...the people had to be registered voters in a county and they could only gather petitions in that county. Very similar to what you just passed, LB39, but on a statewide basis. The state Supreme Court threw that out and stated...this was Stenberg v. Beermann, in 1992: Unnecessary...any law that unnecessarily obstructs the people's right to participate in the initiative and referendum process and are therefore unconstitutional. A law which unnecessarily obstructs or impedes operation of the initiative and referendum process is unconstitutional. Two other instances. In 1940, in Winter v. Swanson, the state Supreme Court said: The Legislature is authorized to enact laws to facilitate operation of the initiative power. In 1966, they reiterated it by saying: The Legislature may enact to be enacted to facilitate referendum. Let me give you the definition out of Webster what the word "facilitate" means: To make easier or less difficult, help forward an action or process. No legislation in the last ten years that's come out of this committee has done that. It's all restricted and obstructed and impeded. None of it has facilitated the people's right to petition their government. Also in our state constitution it doesn't define a petitioner. It says the people. So is the petitioner the people? Is the voter the people? Is the sponsor the people? I hear the word circulator, petitioner. They are the people. They are not a subset. They are not defined individuals. They are the

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people who you cannot restrict or impede, so when you write laws about the petitioner as if it's different than the people, you're talking about the people. You're talking about the people's access to the petition to sign. That's what the petitioner is. It's one of the people helping another one of the people get an initiative on the ballot. So any time you restrict the petitioner, you restrict my access to that signature...to put my signature on that petition. You impede it. You obstruct it. You do not facilitate my ability to sign that petition. The courts have overall...the federal courts have done it all the time, turned your laws back. By the way, I've come to these hearings before. I've never seen an individual, as I am from the opposition, come up and say, they think they're petition rights have been harmed by aggressive petitioners, by out-of-state petitioners. The only people I've seen testify here represent organizations by their occupation, the NSEA, the League of Municipalities. Those are not individuals. Those are people organized that want more control over the Legislature. It's easier to control 26 legislators than it is 1.8 million people. They have the power, they have the money to back it up to influence you folks. That is why they try to restrict the petition process. It's that simple. But you want some facts about the petition process, not innuendo. They have come here over and over again repeating accusations of stories about aggressive petitioners. Complaints were made to Secretary of State, made to the Attorney General. None of it came to fruition. Nobody was ever fined, nobody was ever brought to trial. They were all accusations that have no basis and fact. But yet laws have been introduced in this committee on suppositions and claims, but no facts. Now I'll give you some examples of facts that are on the other side of it. After I sponsored the petition 423 to stop what was pending, I did ten complaints to accountability committee on public employees using public facilities and time to campaign against the people. Two of those out of the ten people were fined, were found guilty. Mike Nolan, the administrator of the city of Norfolk, and a librarian for the state historical society. The other eight were school teachers. The Accountability and Disclosure Commission threw them all out because of the Lancaster County court case that said local school board if they made an agreement for the union to use the facilities for union activities, that included any activity. But Senator Karpisek's bill, I think, corrected that, LB5...whatever it was. [LR119]

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SENATOR AVERY: It was 26. [LR119]

MIKE GROENE: Yeah, corrected that. That they can no longer do that so those...but anyway, and I understand part of what the League of Municipalities told you about Mr. Nolan, that it was incidental. It wasn't incidental. He used a city computer, at his city desk, on city time, to organize city administrators against our petition. And guess what the fruition of what that was, with the help of League of Municipalities. Due to Nolan's, along with the League of Municipalities activities, using government materials and money, petitioners were systematically being forced off public property, petitioners were threatened with arrest for attempting to peacefully collect signatures. This was in 2006 in public areas. Police officers, especially in Omaha, Lincoln and Grand Island, clearly believed that it was their duty to arrest petitioners peacefully circulating petitions in public areas. That was all due...do you know how powerful a city administrator is? He is the boss of the police chief. He is the boss of the fire chief. He sent those out. They sent it to other city administrators and they believed it. And the police chief seen it and they believed that they had the right to do that. We were forced to file a federal lawsuit to seek relief. The Nebraska League of Municipalities joined the lawsuit on the other side agreeing that the police should be able to arrest petitioners for trespassing in public venues. Federal judge, Richard Kopf, issued a temporary restraining on the side of the petition circulators. Sadly, it took an outside federal court to protect the civil rights of Nebraskans. I have seen no legislation responding to that lawsuit. I've seen on the other side of it. I've seen Mr. Karpisek's bill also changed it that those public employees can use now government materials and computers against the petitioners. I disagree with that totally. I agree with your reigning in the teachers unions but that was not good government. But clearly, so anyway after that the restraining order, the cities of Lincoln, Grand Island, and Omaha settled out of court. They changed their policies and they paid the legal fees of a hundred and some thousand dollars. Over and over again in these court cases, the state loses, and the taxpayers have to pay the legal fees because the courts have clearly said, you cannot restrict or impede my right to petition

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as government. But it continues to be done. Here's some...if you want to facilitate the petition process, here's some things you could do. Access. The ability of citizens to have access to petition to sign is critical to the initiative process. Federal Judge Richard Kopf understood that when he issued his temporary restraining order protecting the people's free speech rights over that of commercial and government property rights. Over and over again a city street has been considered, outside of a business has been considered a public property and a petitioner can be in front of a business downtown, in front of a library, in front of the courthouse. But what we have now is multinational corporation such as Walmart, malls, Target, that the public street in front of the store is owned by them. They have no care about local government. They have no interest at all and they restrict access of the petitioner and the people signing it from access to the front of their properties. In other states they have passed legislation telling those multinational corporations that if they want to do business in their state that they have to let people do their political process. In North Platte, where I live, I would say Walmart does over 50 percent of the retail business but you have no...but a petitioner has no access to those people because Walmart owns everything within a half mile of that front door. Legislation to help the petitioner to people...registered voting, I mean you could pass a law to state that anybody who wants to register somebody to vote, these multinational corporations have to give access, you know, so many feet from the entrance, where we need better access. And petitioners...well, in other...you passed 575 or LB39, the court has already overturned the time the Legislature said you had to be a registered voter in the county, said you couldn't do that. I don't see the difference between that and passing another law in 2008 saying you got to be a registered voter of Nebraska. Oklahoma, the Tenth Circuit Court of Appeals just overturned theirs. And you will be sued. There is a court case pending. I am part of it over this issue. We haven't filed it yet but we're going to...I have the freedom of association. If I want to associate with somebody from Oklahoma or Kansas who believes as I do and wants to help me get a petition on the ballot, I have that right. I've always said, what if the state of Alabama in the '50s would have said, people from other states couldn't interfere in their government and come down and help change their law, their Jim Crow laws. I see no

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difference. As long as they don't vote on it, people from other states ought to be able to...or like believers ought to be able to come help people in Nebraska help change their government. It's called the federal system, but we cross state lines to help each other. But anyway, there is a lawsuit in the process and we've got the precedent in Oklahoma, we've got the precedent in Nebraska on the county. Signatures requires. That's the big one. We need to go back to 10 percent if we voted in the Governor's election. Let's go back to people who actually vote. Motor voter and some of these other easy ways to register, I just collected 1,000 signatures myself in North Platte, help get that issue on the ballot. You wouldn't believe how many people don't even know if they're registered voters. But when you check, they are. They registered at the courthouse...I mean at the DMV, and have no idea if they're a registered voter, won't sign a petition, and they've never voted in their life. I don't think petitioners...people who want to do an initiatives should have to get 10 percent of the people who don't even know if they're a registered voter. If you go back to 10 percent of who voted in the Governor's election, you'll eliminate a lot of these problems. You will eliminate the aggressive petitioners, you will eliminate a lot of the problems we have. And remember, getting it on the ballot is just the first...I think the people from California might have gotten it on the ballot, but the majority of the citizens voted for those things. It's got to be voted by the people. We're just getting it on the ballot. So...and the Supreme Court is the one that changed that, not the Legislature. They interpreted an amendment that a couple of state senators passed to clarify it and both of those senators said they never intended it to mean that they eliminated the 10 percent of the Governor's election. So it was done by the state Supreme Court and that needs to be changed back. If we do that, you will solve a lot of problems. And then the blockers. We've have some aggressive...the aggressiveness in the petition process hasn't come from the petitioners. It's come from the blockers. Those folks who are paid to interfere, to take the free speech rights away from an individual trying to get his signature signed, and it's all been by certain powerful public employee unions. You restrict, rightly so, anybody...I think it's 500 feet from a voting precinct from trying to intimidate somebody from doing their voters rights to sign. To sign a petition is just as sacred a right as a...and when some bully gets in front of, between the petitioner

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and the signor, that's intimidation. But none of that has been addressed in this committee, and legislation there needs to change. In closing, clearly the people expect this committee to bring forth legislation that facilitates, makes it easier. That's what the courts have told you to do. I've always followed all the petition laws. I expect my Unicameral to also follow what the courts have told you to do, in the past your forefathers that were in this body, our facilitator constitutional protective initiative and referendum rights. So that's...one last thing. I always quote Mr. Norris. When you got the Unicameral done by paying college students a nickel a signature, more importantly the people would serve as a checkup on the possible abuse of power by their elected officials with the right to vote and petition, Norris said. And petitions. So thank you for giving me extra time, Senator Avery. [LR119]

SENATOR AVERY: Thank you, Mr. Groene. I have just one question. You seem to suggest that the irregularities and illegal activity are on the side of people who oppose any particular petition drive. Do you think that nothing happens on the other side that might be inappropriate or illegal? For example, failure to read the purpose of the petition. I means, that's been widely alleged. [LR119]

MIKE GROENE: There's been a court case and I think legal counsel would agree that said, you don't have to. There are people who are deaf. There are people...as long as they can read it. You can hand them a card as long as they can read it, that's also pounce to cover that...it's already been decided that you don't have to read it. The law hasn't been changed but the court case has been decided. You have to physically show it to them that they can read it. You can have a card or a piece of paper while one person is signing, you can hand it to him and they can read it. Or they can come up and say, I know all about it and they grab the petition and they can sign it. That's been...I think your legal counsel could fill that in. But there has been abuses, yes, there have. [LR119]

SENATOR AVERY: On both sides. [LR119]

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MIKE GROENE: Oh, yeah. And it's...yes, there has. I've seen it myself. [LR119]

SENATOR AVERY: And so have I. [LR119]

MIKE GROENE: But aggressiveness. But democracies, the democracy and freedom is never a tea party. There is aggressiveness on both sides and we all need to learn to put up with the conflict that our system works by. If you try to make it a tea party, a nice tea party, not the ones we've had, but you're taking rights away from people. There are different personalities in this world and they're going to all act differently. To your idea of aggressive person to me might be an individual that has passion about what he believes. And you start restricting that, I don't think we should. [LR119]

SENATOR AVERY: Senator Price. [LR119]

SENATOR PRICE: Chairman Avery, thank you very much. Mr. Groene, thank you for coming before us today providing the information and background. One of the things that I'd like to get your opinion on when we were talking about the 1994 ruling change that took it from the gubernatorial numbers to the registered voters. One thing that calls out to me is the issue of one will not know how many registered voters on the day of the petition. How much do you believe it impedes the people's ability to petition the government is bound up in the unknown numbers at the end of the day? I mean, when we want to say the target for the petition process is 150,000 signatures, to pull a number out of the air, you know we have a target, you know how to do it, you get your plan, but it could be maybe that day 175,000. You don't know until because of voters drive that could happen, all these things. How much do you believe it impedes the people's business by having a nebulous number like that to deal with? [LR119]

MIKE GROENE: The number is always in favor...it will be always in favor of excess because the death certificates don't keep up, people moving out of the community don't

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keep up. So the number is always exaggerated. I talked to my local county clerk. They sent a postcard off to people. If the person doesn't sign it and say...when they get evidence that the person didn't pay property taxes or didn't...the change of address, if that person does not send that card back, they stay on the rolls for two years and they might have moved to Timbuktu, California, but they stay on the rolls. By going back to 10 percent of the Governor's, who voted in...that's a solid number. And those are actually people who want to take part in their government. It's always...I'd say 10 percent. I would venture 10 percent could be easily, as mobile as our society is and people move around, it could be a 10 percent error against that impedes and obstructs the people's right to petition their government. [LR119]

SENATOR PRICE: All right. Thank you. [LR119]

SENATOR AVERY: Any other questions? Senator Janssen. [LR119]

SENATOR JANSSEN: Thank you, Chairman Avery. Mr. Groene, I just want to clarify. You had a long testimony there and I was paying attention, so... [LR119]

MIKE GROENE: Thank you. I'm glad I was early. I'm glad ours was first. [LR119]

SENATOR JANSSEN: ...I just want to make sure, because there's two things, you said. One, you said you understood LB626 so you're way ahead of me on that. The only good thing about that, though, was the introducer of LB626. [LR119]

MIKE GROENE: I didn't like it, but... [LR119]

SENATOR JANSSEN: The only thing good was the introducer of that bill, but so basically you're saying, are you saying, do nothing? I mean, you're comfortable with the way the process at it is now...? [LR119]

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MIKE GROENE: No. [LR119]

SENATOR JANSSEN: ...or do you have a specific...? [LR119]

MIKE GROENE: No, I'm involved in a lawsuit right now to change it about registered voters, you know. One of the things that amazed me, the opposite side made a big stink about that somebody was a felon. Well, I'm a Christian, I think people ought to have a second chance. And if they can't register to vote and they've changed their life and they can't get a job and they can get a job going out and getting signatures, you're restricting that person's ability to have an income to take part in the government in some way, if he wants to. So that registered voter restriction is not...it impedes and obstructs. So we're in a lawsuit there. The only part of Mr. Karpisek's LB626 that I agree with, is clarify that the unions when they agree with their school board or whatever that they can use, let's say a meeting room in the school, to do union activity, that does not include saying the union endorses a certain candidate. Like in my instance in Grant, Nebraska, where the teacher had yard signs for state board of education in her classroom, passing them out. The...and that was the court case in Lancaster County that the Accountability and Disclosure Commission said, no, they could do that because they had an agreement with the local school board to use it for union activities. That part of the bill is great. The part of the bill about letting...I mean, if public employees take a side and claim it wasn't even...and the bill isn't even clear that they have to have it in writing from the elected board that they were told to do research on it. It's not even clear. So after the fact, they could go hearsay, that yes, Senator Karpisek told me to do that, or county commissioner, what's his name, told me to do that. They don't even have to have a written order to say that they were told to do that. And to be able to put it on the Web site? That's taking a position. That is not independent of the Legislature, the petition process, it isn't. That bill is bad in that part. I was just telling...the one part is good, the rest of it's...it impedes and obstructs. It impedes and obstructs because you have government paid officials taking sides in a petition process. [LR119]

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SENATOR JANSSEN: I apologize. I wasn't paying as close of attention as I thought I was there, so, I wanted to make sure. [LR119]

MIKE GROENE: Yeah. I wanted to make clear that there was one good part in there. All parts bad. (Laugh) [LR119]

SENATOR JANSSEN: We've had several discussions about that. Thank you. [LR119]

MIKE GROENE: Yeah. [LR119]

SENATOR AVERY: Any other questions from the committee? [LR119]

SENATOR KARPISEK: Oh, I'd better chime in. (Laughter) [LR119]

SENATOR AVERY: Yeah, okay. (Laughter) Better defend yourself. [LR119]

SENATOR KARPISEK: Thank you. My name is Senator Karpisek. Thank you, I'm trying to be quiet here, Mike, but... [LR119]

MIKE GROENE: What...did I pronounce it wrong? [LR119]

SENATOR KARPISEK: Yes, but anyway. [LR119]

MIKE GROENE: Cap, all right. I'm sorry, let the R out. [LR119]

SENATOR KARPISEK: It's all right. Yeah, LB626 was a tough bill. What I didn't like is...I think Mike Nolan was...I think he shouldn't have got what he got and you can say what you think and I don't think it was from a public computer. I think it was his own...anyway, the fax, but you said it was... [LR119]

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MIKE GROENE: But I have the fax. I will forward you the e-mails. I will get you the e-mails he sent. [LR119]

SENATOR KARPISEK: Well you can...I've seen a lot of your fax, that's fine. We can disagree about that. My question is, okay, these people are still people and you say that they shouldn't as a union be able to do these things. They're still people. So the people that are involved are still people so you don't want to...and I understand. I was involved in the state fair petition process on trying not to get them moved and I was very frustrated on how it worked. So I understand. LB626, my intent, was just not these little nit-picky things, if someone took a paperclip to do something that they're going to get in trouble. Anyway, past that. I do agree that the petition process needs to be looked at and both sides have been bad on this. Now, you've said it's not the petitioners. I've been there. I...they've...they've tried to force me into signing things. I mean, so you can say it's not them, it is. I've seen it and you've seen it too. So that's just what I want to say. Let's not blame it all on one side. I'm blaming it on both sides. The blockers, they've got their right too, I guess. I don't agree with them. I don't agree with that, doing that, but you know, if somebody has the right to petition, then someone should have the right to say, don't do that. Now, I don't think they should get in the way, they shouldn't get physical, all that sort of stuff. So, I think we agree more than we disagree. [LR119]

MIKE GROENE: But passion and force is two different words. [LR119]

SENATOR KARPISEK: Absolutely. [LR119]

MIKE GROENE: I mean, I've never seen anybody force anybody, to try to force anybody to sign a petition. [LR119]

SENATOR KARPISEK: Oh, but they get pretty nasty. (Laugh) [LR119]

MIKE GROENE: Well, I don't know how...I haven't seen that. I've seen aggressiveness

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where they say, you know, this makes sense, what do...you know, don't leave it alone.
[LR119]

SENATOR KARPISEK: My other problem about the out-of-state and this comes from, again, both sides, the facts are very loose, very fast, both sides don't tell the whole truth. And that's what bothers me about the out-of-state people coming in. It doesn't affect them so you get...and it could be on both sides. I mean, the whole U.S. Teachers Union could come in and help the Nebraska teachers. My opinion, it's Nebraska issue, they should stay out. So... [LR119]

MIKE GROENE: Well, you say that about teachers union, but they did. In ours, they...millions of dollars came in from the National Teachers Education Association and so money is powerful, it's more powerful than an individual walking the street with a petition. [LR119]

SENATOR KARPISEK: And I agree. Sure. And, hey, I agree that everybody should stay out of it, so anyway. [LR119]

MIKE GROENE: But anyway, one point, I will get you those e-mails and one thing I know that Mr. Nolan told you that it was his personal computer and Wi-Fi. The city of North Platte didn't...Norfolk did not have Wi-Fi at the time that those complaints were made. He did not use his personal computer. He used the government computer in his office. I don't care what he told you. And all those facts were investigated by the Accountability and Disclosure Commission and they have all those facts and Mr. Daley would gladly share them with you. But he did organize the city administrators and all of that, that federal lawsuit all led from Mr. Nolan's activities. It wasn't just incidental. And I'm sorry I had to make a living, I couldn't make it to tell you that during the hearing for your bill, and I wish I could have. But, no, we need to make, facilitate. It's got to get on the ballot and then we have a hearty debate and everybody decides in the privacy of a voting booth how to vote. All we're trying to do is get it on the ballot. [LR119]

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SENATOR KARPISEK: And I agree. We need the facts, once it gets there, and before it gets there and from both sides. [LR119]

MIKE GROENE: Yeah. But anyway, I appreciate the... [LR119]

SENATOR KARPISEK: Thank you. [LR119]

SENATOR AVERY: Any other questions from the committee? Mr. Groene, I have one more. Currently the state of Nebraska requires that the statement of purpose be read to potential signor of the petition. The courts have held that it doesn't necessarily mean that the statement has to be read verbatim as long as the circulator can summarize it without doing so in a misleading manner. Do you think we need to change that in some way? And if so, how do you think we ought to change it? I can recall during one recent petition drive where I personally witnessed some very, very misleading statements made by the circulators about what the purpose of that petition was. How should we deal with that to come into compliance with the law? [LR119]

MIKE GROENE: I don't know. We pass laws all the time to stop people from doing things and they still do it. I mean, all the laws. That's the reason we have them and so you can't stop people from breaking the law. You try to educate them. Most people nowadays know what the petition...you know, communication, mass communication and stuff, people know what those petitions are out there. They've read the paper. Most people either want to sign it before you open your mouth or don't. That's what I've found. And... [LR119]

SENATOR AVERY: But a lot of the people don't know what the issue is and a circulator will say, well, it does this and you ought to sign it, and it sounds good. They sign it, but in fact what the circulator told them is misleading. [LR119]

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MIKE GROENE: But the problem with that is, and I find it too, you have ten people in front of you and you got to get 120,000 signatures, if you spent the time debating everybody on that, you would never get any issue. That would impede and obstruct the ability to get the signatures. So there has to be a minimal amount of time to ask that person to sign that petition. Otherwise, you have people walking by. I've had it a lot of times because this issue we did in North Platte, people know who I am, and a lot of people, just give me that Mike, I know who you are, I'll sign it. I said, no, I've got to tell you. So I give them a little bit but then five people behind him and they'll walk off because they don't have time. So we...to be able to just hand somebody something and say read this, and while the other person is signing, makes life a lot easier and I think the courts have said that that's okay. If you have deaf people, you have people...the ability to get the information to read or to verbally hear it, is there's no difference in and I think courts have cleared that up. I don't know, I can't remember if it was a Nebraska court case, but it was done by a federal court in a petition process. How do you get people from lying? I don't know. God's tried that since beginning of time and He never succeeded. I don't know how you're going to do it. [LR119]

SENATOR AVERY: Well, we probably do need to clarify this issue since the courts have ruled that the way we...the law reads in Nebraska now is probably not constitutional. [LR119]

MIKE GROENE: Yeah, it's not and we're taking it to court. And I don't want to spend tax dollars... [LR119]

SENATOR AVERY: But isn't your court case dealing with the total number of signatures? [LR119]

MIKE GROENE: No. [LR119]

SENATOR AVERY: No? [LR119]

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MIKE GROENE: No. That's already been decided. That's already been decided by the state Supreme Court by saying that it's...their interpretation was that electorate was the registered voter not an actual voter. In tentative law was that it was a voter. Somebody went in the voter booth and signed it and voted. The Supreme Court and it was changed...the law, it still reads in the state constitution is that...where is it? [LR119]

SENATOR PRICE: Article III, Section 4. [LR119]

MIKE GROENE: The whole number of vote, yeah, Article III, Section 4, the whole number of votes cast for Governor at the general election next preceding the filing of an initiative or referendum petition shall be the basis of which the number of signatures to such petition shall be computed. It's still in there, because it wasn't changed by this body. It was changed by the Supreme Court ruling. And you could change that back to clarify, no, we mean voter. We don't mean registered voter, registered electorate. It would be very simple but you would have to do it through the constitution amendment. You'd have to put it... [LR119]

SENATOR AVERY: Then remind me again what your court case would do. [LR119]

MIKE GROENE: It would challenge the registered voter of Nebraska on the circulator. [LR119]

SENATOR AVERY: Well, I thought that was what I was asking. [LR119]

MIKE GROENE: Yeah, yeah, that you have to be a registered voter in the state of Nebraska. [LR119]

SENATOR AVERY: Yeah, but your case doesn't deal with the reading of the statement? [LR119]

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MIKE GROENE: No. [LR119]

SENATOR AVERY: Yeah, okay. [LR119]

MIKE GROENE: That's been decided. [LR119]

SENATOR AVERY: Yeah, that's what I thought. [LR119]

MIKE GROENE: I think, Senator, if you check into that, it's been decided that it doesn't have to be read, I mean, to you. You can read it personally or you can walk up and say, I know all about it and I want to sign it. You can refuse to have somebody read it to you and sign the petition because you know it. [LR119]

SENATOR AVERY: Any more questions? Seeing none, thank you very much for your testimony. [LR119]

MIKE GROENE: Thanks for the time. [LR119]

SENATOR AVERY: Okay. Anyone else wish to address this issue of LR119? Welcome. [LR119]

MICHAEL KELSEY: Thank you. Good morning, Chairman Avery and members of the committee, my name is Michael Kelsey, M-i-c-h-a-e-l K-e-l-s-e-y. I'm the executive vice president of Nebraska Cattlemen and here representing cattle producers on this important issue today. Let me begin by sharing that our interest in this topic is the result of what we believe to be an abuse of the intent of the initiative and referendum process particularly in other states that have the same and similar process to Nebraska. We do not wish to see that abuse arise here in our state. I would also like to share with the committee that the petition process itself, that being gathering support in the form of

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signatures for a vote on a specific proposal, is a very important process to beef producers. An example of this would be the federal beef checkoff program. The beef checkoff is a producer funded, producer governed program designed to improve consumer demand for beef. Perhaps you've heard of our most popular slogan, beef it's what's for dinner. The checkoff was enacted in 1988 by a national referendum process. It has remained unchanged in terms of structure since that time. However, our industry is currently debating increasing the assessment rate of the checkoff. The process to make such a change would require a petition process with a referendum. While the checkoff petition and referendum process is governed by a federal statute and order, the beef act in order, there are similar concepts relative to Nebraska's petition process that Nebraska Cattlemen would like to share with you today. So in the context to the question of this hearing, we would like to suggest consideration of the following ideas. First, quite honestly paid petition circulators is a troubling concept to us. We understand the seriousness of this thought regarding its relevance to freedoms. There are no regulations within the beef act in order that prohibit paid petition circulators. However, the practice of paying a beef checkoff petition circulator would be a death nail in the coffin of a proposed change to that program. Now, again, arguably it is freedom to have the ability to pay petition circulators similar to the example of paying lobbyists. Yet the fundamental process of changing the constitution through the initiative effort is a question here and we believe has enough merit to have its own consideration for the practice of paying petition circulators. Recent history has shown that outside interests use massive amounts of money to fund, i.e. pay for, petition drives. While prohibiting paying petition circulators may be impossible considering constitutionality, in the very least, diligent public notice of payment schedules, amounts, and recipients should be made in an effort of complete transparency. Referring back to the lobbyist example, Nebraska state statute and rules have clear processes for the public records of individual lobbyist activity. This same concept could be applied to individual petition circulators, possibly. Quite frankly as well, I want to mention the idea of an Internet petition circulation. That has great trouble with us because, again, in terms of validating who that petition gatherer is, we think it's hard to do so right now with a person, imagine

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the complexity in trying to understand who is gathering those petitions on an Internet. Second, third party initiative writing should be considered. While there are processes in place to approve, if you will, the initiative to be offered to the public, the actual wording of the initiative is left almost entirely up to the founders of the petition movement. This gives great power in "wordsmithing" to establish a message in the initiative itself to sway the reader. The proposed initiative should be neutral in language. This perhaps could be accomplished by empowering the Secretary of State's Office, for example, to write the question that will be placed on the ballot. And finally, creation of a check and balance system for initiative referendums. I would ask you to...or recall your knowledge of our process as it compares to other states. No other state has a one-house, Unicameral system. And yet there are many states who have a very similar petition process to us and they have two-houses, a Senate and a Legislature, or a Congress, a representative, if you will. If the argument for the initiative petition process to be the second house is to be valid, then it perhaps should include a check and balance system. That system should respect the other house, in this case the Legislature, as well as the other branches of government, both executive and judiciary. In this line of logic we believe it worthy to consider allowing the Legislature to vote on initiatives that have been voted on by the people as well as place them before the Governor for confirmation signature. Consideration should then also be given to veto override power by the people should the initiative not pass the Governor's desk. Now one might advocate that this...I'm proposing a very lengthy process, yet we are discussing modification of the states most sacred document, the constitution. Due diligence would advocate that we take more steps than necessary to ensure that the integrity of the foundation of our government is upheld. I'm going to conclude by thanking the committee for studying this very important process of initiative and referendums, as well as the petition process itself. Nebraska Cattlemen look forward to continued dialogue in this important issue and commit to working with the committee to find sound proposals that preserve and protect this important process with respect to the people and the constitution. Thank you, Mr. Chairman. [LR119]

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SENATOR AVERY: Thank you, Mr. Kelsey. Questions from the committee? Senator Pahls. [LR119]

SENATOR PAHLS: Thank you, Mike. It's my understanding you would say, okay, let's loosen up the numbers of...needed to get something on the ballot, but your checks and balances having the Legislature and the Governor, would that be the balance of that what you're...? I'm trying to say, let's make it easier to get...to let the citizen get things on the ballot. But your compromise would be, then let the Legislature and the Governor have an opportunity to relook at it? [LR119]

MICHAEL KELSEY: Good question, Senator and we necessarily didn't propose, if you will, a set number. I think you've had some good proposals this morning, some fair proposals this morning in terms of the number on the petition. And certainly access to the petition is a very important process and needs to be preserved and even facilitated more importantly. So, yes, we want to be a part of that process as well in terms of understanding how to make greater access. Our question then is, if the concept of the petition is truly the second house, but you compare that to other states and let's use a state that has a very similar petition process to us and that would be Colorado. They have a two-house system in their government, a Senate and a representative. And yet they have almost the same petition process that we do. So if our petition process is the second house, then we really don't have a check and balance system for that similar to the logic behind the government structure of a two-house system. So what we would propose is some kind of consideration of a check and balance. Again, maybe that could be or perhaps that could be the Legislature then reviewing an initiative that the people passed and if they passed it, then it goes to the Governor signed. Again, what's very important in that though is the veto override by the established house that passed the initiative. In this case it would be the people. So again, I understand it's a very lengthy and complicated process but again we're talking about the constitution here. And so it might be wise for us to consider looking at that establishment of that lengthy process just to make sure we secure the integrity of the concept. Did that make any sense?

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[LR119]

SENATOR PAHLS: So in other words, you're looking...see, I'm looking for checks and balances. That's why I'm saying if we as a Legislature do something "wrong" the courts will say, you can't do that. So that's why I see the checks and balances, even though it's long and messy, but that's what you're doing is...have I heard this from you before?

[LR119]

MICHAEL KELSEY: We've talked about this in the past. I don't know that we've ever formally presented this in terms of a hearing but we've talked about this in the past of just trying to come up with an idea of the same process that you're doing, some type of check and balance system. And what I've proposed is using the same system, if you will, of the house check and balance as well as the three forms of government check and balance as well, and including the initiative process within that, so. [LR119]

SENATOR PAHLS: Okay. Thank you. [LR119]

SENATOR AVERY: Any more questions? Pretty creative thinking. [LR119]

MICHAEL KELSEY: Thank you, sir. We get off the ranch occasionally. [LR119]

SENATOR AVERY: You do? (Laughter) This might give us something to think about here on the committee. Thank you. [LR119]

SENATOR PAHLS: Could I just say one more... [LR119]

SENATOR AVERY: Yeah, sure. [LR119]

SENATOR PAHLS: The interesting thing about it because I was in North Platte a couple of weeks ago with my tax exemption concept and speaking to a number of cattle people

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out there, and what they're concerned about is we do away with all the exemptions and in a few years, certain groups would get them back and they would lose their sense of balance. That's why they're thinking about, should be going the referendum process to ensure that, you know, if we do something like that we hold ourselves...so the cattlemen, you do get off the ranch, right? [LR119]

MICHAEL KELSEY: Occasionally, we do, yes. (Laughter) [LR119]

SENATOR PAHLS: Thank you. [LR119]

SENATOR AVERY: Thank you, Mike. [LR119]

MICHAEL KELSEY: Thank you. [LR119]

SENATOR AVERY: Anyone else wish to address this issue? All right. Seeing none, we will close the hearing on LR119 and we will move to the next item on the agenda which is LR162. [LR119 LR162]

SENATOR JANSSEN: We'll now open the hearing on LR162. Senator Avery. [LR162]

SENATOR AVERY: Thank you, Senator Janssen. My name is Bill Avery, B-i-l-l A-v-e-r-y, representing District 28. The LR162 proposes to study the competitive bidding statutes in the state of Nebraska for the purchase of machinery or equipment. The study includes consideration of the total cost of ownership during the competitive bidding process. Really what we're talking about here is the total cost of the piece of equipment, which is sometimes referred to as the life cycle costing. That is looking at the overall cost, not just the cost to purchase a piece of equipment. Senator Price, I'm sure you're familiar with this, but the overall cost of owning and operating, including the operating expenses throughout the machine's working life, including, for example, the initial purchase price, scheduled maintenance costs, repair costs, fuel costs, and resale value

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and things of that sort. Current state law governing such purchases, and we're talking about most of the machinery and equipment here, requires that all purchases would require competitive bids and that these should be made to the lowest responsible bidder taking into consideration the best interest of the state, the quality or performance of the property proposed to be supplied, its conformity with specifications and the like and time to delivery. The current law also outlines several other elements that are given consideration including the life cost of the property in relation to the purchase price and the specific use of the item. Some companies feel that the state places too much emphasis on lowest responsible bidder and not enough emphasis on the life cost of the machinery. So the purpose of this study is merely to explore this issue and to see if we can come up with some recommendations on whether cost savings may be achieved in considering the total life costs or the life cycle of the property when purchasing machinery. We have people here who will address this and if you have any questions of me, I'd be happy to take them. [LR162]

SENATOR JANSSEN: Any questions? Seeing none. [LR162]

SENATOR AVERY: Thank you, Senator Janssen. Now we will entertain any testimony, comments from people who are here and wish to address this issue. Please come forward. [LR162]

TERRY TWIESTMEYER: Thank you, Senator. My name is Terry Twiestmeyer, T-e-r-r-y T-w-i-e-s-t-m-e-y-e-r. That being said... [LR162]

SENATOR AVERY: Would you spell that again, please? (Laughter) T-e-r-r-y? [LR162]

TERRY TWIESTMEYER: T-e-r-r-y T-w-i-e-s-t-m-e-y-e-r. [LR162]

SENATOR AVERY: Okay. [LR162]

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TERRY TWIESTMEYER: And I am president and owner of Twiestmeyer & Associates, we're based in Grand Island, Nebraska. We're a manufacturers rep firm. We travel the upper Midwest. We call on farm equipment dealers and heavy equipment dealers and we sell them product. I rep for about 15 different companies. Our Web site is twistequipment.com. You can see what we're doing. One of the companies that I represent is a cutter company and you probably have seen them as you drive down the highways and byways of Nebraska and other states and the reason for being here this morning I wanted to, as you mentioned, talk about life use of equipment but I also want to talk about the bidding process in general. A spec is put forward and many times we've met and exceeded the spec and yet at the end of the day, the least cost provider was chosen. So my statement to that is, why put out the spec? Just put out a very, very general statement and say the lowest bidder come forward and the business is yours. I don't think you want to work it that way. You probably don't drive the absolute cheapest automobile that you could drive. You're going to consider its usage, what kind of service would it give you, and what kind of resale would it have at the end of the period. And this is what, I think, the bidding process should be considered. The old adage, you get what you pay for, pretty much falls through with about everything that you buy. You may be spending a little bit more on the upper end of things, but at the end of the life cycle usage, it will be saving you money because, again, of resale and the issues that you do not come up with, the maintenance, and having machines down and people not being productive. My remarks are very brief. I'd be receptive to questions. [LR162]

SENATOR AVERY: Any questions from the committee? Senator Price. [LR162]

SENATOR PRICE: Thank you, Senator. Thank you very much Mr. Twiestmeyer. This is an issue near and dear to my heart. What I'd like to ask is, when you look at the specs...now this is for widget. Normally what you're talking about is a very tangible item, you know, they lay out specs for. And obviously this study also has undertaken all acquisition activities of the state. But the question I would have to you is, do you see the state asking for like the mean time critical failures, the up times, sparing, and whether or

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not there was a commercial off the shelf, parts for it, like if it's one of your pieces that's an ordinance ending up being a proprietary solution that the state always has to go back to a certain vendor. Are any of those facets currently let out with the specs? [LR162]

TERRY TWIESTMEYER: Not to my knowledge but we try to inform the various agencies that we would be doing the bidding of, you know, where parts would be available, etcetera. Because it's going to be very important for the continued life of the machine to be able to keep it going in a very timely manner. [LR162]

SENATOR PRICE: All right. Thank you very much. [LR162]

SENATOR AVERY: Mr. Twiestmeyer, that's right? Okay. I have a question. Your product, does it have a longer life span than much of your competition that might qualify as the lowest responsible bidder? Does it cost less over, say, ten or fifteen years to operate your equipment than some of these products that you lose out to in this bidding process? [LR162]

TERRY TWIESTMEYER: Yes, it does. And the way I can base that is I visited with maintenance barns across the state of Nebraska and talked to the maintenance supervisors. And they certainly have related that to me that at the end of the period, our cutters have shown that they stand up better, consequently down less, and less amount of maintenance. [LR162]

SENATOR AVERY: Is there any way in your bidding process that you could document that or do you do that? [LR162]

TERRY TWIESTMEYER: We can document and we show in the future. [LR162]

SENATOR AVERY: And you can show the actual dollar savings over the life span of the product? [LR162]

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TERRY TWIESTMEYER: I think it would be important. [LR162]

SENATOR AVERY: But you could do that in a bid? [LR162]

TERRY TWIESTMEYER: Yes. [LR162]

SENATOR AVERY: And you do it in your bids? [LR162]

TERRY TWIESTMEYER: Well, not right now. [LR162]

SENATOR AVERY: And what is the reason that you don't do it now, because it's not taken into account? [LR162]

TERRY TWIESTMEYER: Because it's not taken into account and it's not part of the bid parameter. [LR162]

SENATOR AVERY: Okay. Senator Janssen. [LR162]

SENATOR JANSSEN: Thank you, Chairman Avery. Mr. Twiestmeyer, I was going to call you Mr. Terry, make it easier on myself. (Laughter) Actually, this is kind of near and dear to me on this bidding. You talked about different factors. I agree with you, I wouldn't drive the cheapest truck that I could get or whatnot, unless that's all I could afford. Do you think there's some different factors that you go into this, and I'll bring you up to a speed on my particular situation is, there's three fire truck manufacturers within my district. I believe I'm the self-proclaimed leader per capita as far as senators go in the nation for fire truck manufacturers in their district. I don't know of any other ones, but there's three in my district, which is Fremont and Dodge County. And while I was on the council at Fremont we put out specs, and ended up buying a fire truck and not from the district even though I think it was better, I think it was better for the district to have that

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fire truck there. I think it's just unexplainable that these guys have to...the salesmen have to come to Fremont and have a client there and there's a fire truck goes by that is not one that is built right there in the county, even though the bid may have come in at 5, 10 percent higher. Do you think there should be any weighing...and I believe there is in some states, to the local vendor first? [LR162]

TERRY TWIESTMEYER: I can certainly understand your problem there, and I don't know how that could be addressed because a lot of the things that the state is bidding out...as an example there is no local vendor or manufacturer. I'd better clarify that, right. [LR162]

SENATOR JANSSEN: Right. And it goes both ways, so when I'm talking to the manufacturer in this case realizing that a high 90 percent of their business is outside of this geographical area or the state of Nebraska. So there's a give-take and I was just scratching the surface of this and that's why this is a very timely hearing of what you can do to be fair. I also own a business and sell a great deal outside of Nebraska and certainly would like to compete in California as well as Nevada and Nebraska, so. I was just wondering if that was something that you thought could be a factor or had any ideas, which is what these hearings are for. [LR162]

TERRY TWIESTMEYER: I certainly understand your problem being in Fremont, Nebraska, and seeing a fire truck go by that's not built down the street from city hall. But I would think in a situation like that, local should really have some bearing on where the bidding is going to end up to do business locally and keep the dollars in Nebraska. [LR162]

SENATOR JANSSEN: That was kind of my thought and it's also my theory and you can, maybe, answer this better than me is that if I write the spec, I'll get the bid. And a lot of times I'm seeing that happening. The spec is outside and we saw it in Lincoln where they made it just a mockery of the whole bid and spec process, so. [LR162]

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TERRY TWIESTMEYER: That was the basis of my first point that we've met and exceed specs and still don't get the bid. And, whereas, our competition has not met the spec and receives a bid. [LR162]

SENATOR JANSSEN: Well, I'm really interested in that, so if you have any information, please forward it to my office. [LR162]

TERRY TWIESTMEYER: You bet. [LR162]

SENATOR JANSSEN: Thank you. [LR162]

SENATOR AVERY: Any other...Senator Price. [LR162]

SENATOR PRICE: Senator, thank you, and one more time, Mr. Twiestmeyer. Does your firm do any business with the federal government? [LR162]

TERRY TWIESTMEYER: My firm, Twiestmeyer & Associates, does not. Some of the companies that I represent, they do. [LR162]

SENATOR PRICE: Okay. Within the federal government they have the concept to the best value. Best value takes into account all these parameters we're talking about here, life cycle costs, etcetera. And then they have what they call service level agreements. When you move a piece of agreement over to the state, are you absolved from maintenance contracts and the state takes on the maintenance and then you just provide parts, or...? [LR162]

TERRY TWIESTMEYER: That is correct. [LR162]

SENATOR PRICE: All right. And then Senator Janssen's concept there where you buy

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Nebraska. I know in Missouri they have a buy Missouri. The problem is, is that the best use of the people's money? So you're taking someone's tax dollars and you're saying...you know, that's where, I guess there's a schism, if you would, about tax dollars and then saying, we'll give you a 10 percent preferential because you're not, or you are a Nebraskan. So I just bring that up as we banter the concepts about and try to come to what's best for the people's money and getting the best bang for the buck, all things said. So thank you very much. [LR162]

TERRY TWIESTMEYER: Thank you. [LR162]

SENATOR AVERY: Let me ask you this. If you could change Nebraska law, how would you change it? Would you require that the consideration of lifetime cost of the machinery in addition to lowest bid or would you eliminate lowest bid? [LR162]

TERRY TWIESTMEYER: I would say the consideration of lifetime costs, number one. And if a spec is written, that the spec be adhered to. That all the parameters of the spec have to be met in order to qualify for final consideration in the bid. [LR162]

SENATOR AVERY: And then the state would take into account the cost, lowest cost, if...but in doing so, they would also consider the life cost of the product. [LR162]

TERRY TWIESTMEYER: Right. [LR162]

SENATOR AVERY: And then you would use that to balance and... [LR162]

TERRY TWIESTMEYER: To evaluate, yes. [LR162]

SENATOR AVERY: ...and evaluate the low bid. [LR162]

TERRY TWIESTMEYER: Yes. [LR162]

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SENATOR AVERY: Any other questions? Thank you, Mr. Twiestmeyer. [LR162]

TERRY TWIESTMEYER: Thank you, Senator Avery. [LR162]

SENATOR AVERY: Anyone else wish to address this issue, LR162? [LR162]

LARRY SCHMIDT: (Exhibit 1) Good morning, Senators. My name is Larry Schmidt and I'm a little nervous. This is the first time I've ever done this, so bear with me here. My name is spelled L-a-r-r-y S-c-h-m-i-d-t. I'm employed by NMC, Nebraska Machinery Company. We are a dealer of heavy equipment and I'm here to address to you about your purchasing practices of low bid which you led into with Terry Twiestmeyer. I've been a salesman for 29 years dealing with governmental agencies, my territory, and I deal with a lot of counties and municipalities on selling heavy machinery. And over the years I've watched these entities buy different ways, low bid, and then lately, I've experienced a lot of people using life cycle costs in determining their decision on the product that they buy, because of the things they've bought in the past have been low bid and they didn't get the bang for their buck, I guess, when it all come down to it. I have passed out an article to you that was put in the local Grand Island Independent. I'm from Grand Island and this is from Hall County where they purchased a motor grader and they used life cycle costs in determining their purchase that day. And you can see, there was \$30,000 difference between one manufacturer to another manufacturer and they went with the highest bid actually on this occasion because of past experiences. And I'd like to see a change in the way the state purchases their machinery based on life cycle costs and set up some kind of...I don't know how to say it, a way that you would evaluate your purchases based on...there's a lot of things you do depending on the product but fuel usage, you know, compare between one manufacturer and another, lifetime expendables, oils, filters, replacement parts, and a big one, of resale value. [LR162]

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SENATOR AVERY: Counties do this, don't they? [LR162]

LARRY SCHMIDT: Yes, I...right now, I cover a territory of five counties. And I have three of my counties that use this a lot. You know, they've got past records, they have purchased several different brands and have studied this and kept good records on fuel, what it cost to buy the parts, things like this, and then can determine with this. You know, in today's world, fuel can be a big thing. You know, if, say one manufacturer burns a gallon more an hour, you know, here, what a year ago, we had fuel at \$4 a gallon. Well, if a machine's got a life of ten years, let's say, 1,000 hours a year, 10,000 hours, \$4 a gallon, that's \$40,000 that could be just going out the pipe of that machine, which maybe there was only a \$15,000, \$20,000 premium to buy that product, to buy the next better product for. And that's just fuel. Then you can go into resale. Like I said, life expendables, oils, things like that. Availability of parts. You know, down time. I deal with the city of Grand Island too on selling them machinery and we do a total cost bid there where we do all the servicing on the machine, we do the oil changes, we take care of the machine totally during its life cycle. It's at the landfill which they...they burn up a lot of hours, I guess, I'm trying to say on this machine, so they put on say 8,000 hours in four years. So we take care of this machine, we take care of all the repairs, and this is all in this bidding process. [LR162]

SENATOR AVERY: Any questions from the committee? Thank you, Mr. Schmidt.
[LR162]

LARRY SCHMIDT: Thank you. You bet. [LR162]

SENATOR AVERY: I am pleased to welcome Senator Kate Sullivan from Cedar Rapids, who is joining us. Anyone else wish to address LR162? Welcome. [LR162]

TOM MEYER: (Exhibit 2) Good morning, Senators. My name is Tom Meyer, T-o-m M-e-y-e-r. Easy one this morning for you. I am Pierce County's...one of Pierce County's

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three commissioners. I'm also an independent businessman in the community also. I was going to address you this morning as far as, basically competitive bids. Been involved with several heavy equipment purchases the last few years, or whatever. And the two purchases that I was really involved in is one that we did not take low bids. We, particularly myself, did a little more research as far as fuel consumption, life expectancy of the machine, and resale value at the end. We tend to put more hours probably on than most and getting more bang for the buck. And that some of the things that those... I guess I don't really want to say I was attacked but I was addressed at one of our commissioner meetings why we spent the extra dollars to purchase a machine, which made me famous, I guess, because I put a little article in our local papers and here I am. (Laugh) But I feel that it's going to put more responsibility, if you do change this, on the purchasing agent, whoever is in charge of purchasing this, because of the fact that instead of just taking low bid they're going to have to do a little work on it now. They're going to have to do a little research and stuff like that which I think broadens your horizons that you understand what's all involved in this. It's just not, well, give me the bid and this is what we're going to take and whatnot. And in the long run I think that the county that when we did our purchases are going to be better for it because of longevity, of fuel consumption. You want to get right down to some of the pollution factors as far as if you're burning less fuel, you're putting less stuff in the atmosphere or going green, or whatever. If the machine is lasting longer, you're not filling it into a scrap heap somewhere. You're going to continue to use that machine through its serviceable life, which I think needs to be addressed also on it. So, I think that's about all I have unless you have questions for me. [LR162]

SENATOR AVERY: Thank you, Mr. Meyer. Actually I had seen your article previously and had read it and I appreciate you coming today and sharing with us. Does the committee have any questions? Senator Price. [LR162]

SENATOR PRICE: Senator, thank you. Mr. Meyer, I'd like to applaud you for your foresight and stewardship of the public's money by taking and having the courage to

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look at the total cost to the people in this way. And I'd also add that when you talk about adding more research time for the buyer, it may be somewhat relieved by putting those specifications out in the bid and also by making sure that those specs are validated by your county board so you can say, it wasn't a one person, the buyer is not standing in the road by themselves defending when the public asks why. You say, because these are processes and these are already agreed on that we would take the total life cycle costs into account. So again, I applaud you and thank you very much. [LR162]

SENATOR AVERY: Anyone else? Seeing none, thank you for your testimony. [LR162]

TOM MEYER: Thank you all. Have a good day. [LR162]

SENATOR AVERY: Next testifier. [LR162]

LAURA PETERSON: (Exhibit 3) Good morning, Senator Avery, members of the committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm the state risk manager and the general counsel for the Department of Administrative Services. I'm appearing here today to discuss the current competitive bidding process used to procure goods, including machinery and equipment, as a result of LR162. Nebraska law currently requires sealed competitive bidding for all goods over \$25,000. In these cases the state awards to the lowest responsible bidder. In practice this means that the state first evaluates the bids for whether or not they are responsible. A determination of a responsible bid can be based on several elements, which I'll discuss shortly. Then out of those bids, determined to be responsible based on those elements, the state awards to the lowest cost. I distributed a copy of Nebraska Revised Statute 81-161, which provides a list of elements that shall be given consideration in addition to price when determining the lowest responsible bidder who received a contract award from the state. Each of the elements is considered if they are appropriate for the type of commodity being purchased. And depending on the type of commodity, different elements may be prioritized. For example, one of the elements to be considered is compliance with the

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time requirements of the bid. Essentially that's a delivery date. Delivery dates may be extremely important for commodities such as road deicer which is needed for the safety of the traveling public in the winter season. Another element is performance of a personal property, including commonly accepted tests of usability. Performance is critical for commodities such as bulletproof vests for law enforcement, and testing is critical for equipment where a separate state law mandates certain tests, for example, for tractors to be sold within the state of Nebraska. There's a separate law that governs what tests have to be done before it can be sold. The state also prioritizes the use of life cycle cost. For example, we have done so, recently, when we bid the state contract for vehicles, which is used...that contract is used both by state agencies and by political subdivisions. It's important to keep in mind that state agencies have valid reasons for prioritizing certain elements of a bid for goods, including bids for equipment and machinery. For example, the state may specify a 50 horsepower tractor and we may receive bids both on a 50 horsepower tractor and a 75 horsepower tractor. In this scenario, the cost of the 75 horsepower tractor may be higher and the vendor may indicate it's a better deal over the life cycle of the tractor. While the state may have other priority considerations such as mechanics trained in a certain kind of engine, the state may have a stock of spare parts for that certain horsepower tractor that can be used in the new machines but could not be used in a higher horsepower tractor. We may have backup equipment, availability for downtime. We may not keep the tractor, for example, until the end of its useful life. The current process allows for state agencies with the assistance and oversight of the Department of Administrative Services State Purchasing Bureau to consider all relevant elements of a bid resulting in the best overall deal for the state and its citizens, whether the bid is for consumable products such as road materials, food items, and office supplies, or for property such as equipment and machinery. Thank you for allowing me to testify. I'd be happy to answer any questions.
[LR162]

SENATOR AVERY: Let me start first. You...we have here an article that appeared in The Grand Island Independent and it compares three pieces of equipment. These are

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motor road graders. One manufacturer charges over \$155,000 for one piece of equipment, another \$164,000, and then the low one \$135,000. But over the life of the product, the usable life 15 years, that lowest priced item would cost \$232,000. That would include fuel consumption, annual fuel cost, service cost, those sorts of things, trade-in value. But the most expensive item at the point of purchase would actually be almost \$30,000 cheaper to operate over 15 years. If DAS were making that purchase...but I guess this would be the Department of Roads, but if you were making that purchase given current law, what do you think would be the likelihood that you would go for...that you would actually purchase the product that cost nearly \$30,000 more at the point of purchase, but then would cost about the same amount less over the life of the product? [LR162]

LAURA PETERSON: Let me talk about the auto contract that we did just in the fall of last year. We bid vehicles every year. And in that case, we did a life cycle cost purchase. And although some of the items...you have a list in the LR162 of things that can go into a life cycle analysis, and some of those for our purposes are disregarded because they are not relevant. So if, for example, we do intend to keep the vehicle until the end of its life...until the end of its possible life. We generally keep all vehicles approximately 85,000 miles, give or take. And so we make a determination that each of the vehicles can last until 85,000, and then we do not do a total life of the vehicle, so we take that out of your list out of our analysis. But, for example, one of the things that we do take into consideration in total cost in making that purchase is fuel consumption, and we take as part of the bid. The manufacturers of the vehicles are required to tell us what their fuel miles per gallon is, both for city driving and for highway driving. And then we confirm the mileage that they've given us. There's a...I don't know if it's a federal government report or a national standard, and confirm what they've told us or alter it based on that national report. And then we take an average cost for fuel, and then we take an average miles driven, and we add that into the total cost of the vehicle. So you would take the base price, and then you take the fuel price over the life of the vehicle that we've calculated, and then that's the price that you're comparing. It's not just the

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base price at the point of the purchase, but it's also the fuel consumption. We don't consider the services standards because we are not purchasing services for vehicles from the vehicle manufacturer or even from the resalers. We have separate contracts for oil and parts and all of that, and we have mechanics on staff who maintain state vehicles. So, you know, to the extent you are purchasing maintenance services, you would want to calculate that in. But on vehicles where we're doing it ourselves, we obviously do not calculate that. So in that example, clearly...I mean, I don't remember and I have that documentation, we can find out for you, I don't know if the cheapest one for the base price ended up being the one we took when we calculated in fuel over the life of the vehicle and all of that. But, yes, I mean, the current statute allows for the department and the agencies who are bidding through us to utilize life cycle cost along with the subtle other factors that are in there that are critical depending on the type of good. [LR162]

SENATOR AVERY: I note here that life cycle costs is number 6 on a list of 11. Are these ranked? [LR162]

LAURA PETERSON: They are not. That is a list of items to be considered, but they are not in priority order. [LR162]

SENATOR AVERY: And would you admit that there is an informal ranking of these elements taken into account in the actual decision as to which vendor gets the contract? [LR162]

LAURA PETERSON: I do not believe that there...on a regular basis, there's any informal order. I believe that on each individual bid for goods the buyer and the procuring agency are responsible for looking at the list and determining which ones are important and relevant and which ones are not, and which ones are prioritized for that particular bid. I'm not aware of any standard prioritization of that list for every single bid. I don't believe that exists. [LR162]

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SENATOR AVERY: Do you think there's any preference given to low bid? [LR162]

LAURA PETERSON: I think that list of elements is primarily determined first to decide whether the people qualify or not, and not so much with life cycle cost because really that goes into the cost, our cost factor. What we do is take those elements, things like delivery date, performance of the product if we do testing. I know they...I happen to be familiar with the bulletproof vest. They do...they actually do testing of it to make sure that they do what they're supposed to do. Those things are used to either let people in or out as a responsible bidder and... [LR162]

SENATOR AVERY: They meet minimum specifications first before they get in the door. [LR162]

LAURA PETERSON: Right, and some of the things on that list are built into that minimum specification of being a responsible bidder. Some of that list, particularly life cycle cost, then is actually calculated into the cost of the bid. So if we are using life cycle cost, we add the base bid and whatever life cycle additional cost we've determined, whether it's just fuel or whether it's fuel and maintenance or whether it's fuel and maintenance and life of the product. We calculate that to be a dollar amount, we add it to the base bid, and then we award to the lowest cost but it's not the lowest initial cost, it's the lowest cost over the life of the bid. [LR162]

SENATOR AVERY: So am I...let me see if I understand you correctly. You are saying that you already do in your competitive bid process, you already take into account the life cycle costs of the product? [LR162]

LAURA PETERSON: Not on every single product. [LR162]

SENATOR AVERY: Machinery? [LR162]

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LAURA PETERSON: I can't tell you that we do that on every piece of machinery, but I know we're doing it for vehicles. I know we've done it for some machinery. I know we have not done it for other pieces of machinery. So, I mean, I cannot tell you that...I would be lying if I told you we did it on every single piece of equipment or machinery. [LR162]

SENATOR AVERY: All right. Do you think that might be a good idea to do? [LR162]

LAURA PETERSON: I think there are always reasons why it would not be. I am always hesitant--and you've heard me in this committee on several occasions--to mandate anything for every single case. I think that there are valid reasons for it to be considered and valid reasons for it not to be consider, and to mandate that it be done with no possible exception can potentially tie the hands of procuring agencies and procurement officials. I mean, hopefully they're doing that when it's valid to do that. Hopefully they're responsible professionals and responsible stewards of the state of Nebraska's money, and if they are not doing it, they have a reason, and if they are doing it, they also have a reason. [LR162]

SENATOR AVERY: And you would say they are always valid reasons? [LR162]

LAURA PETERSON: I would hope if they're not doing it they have a valid reason. I also think that it's the kind of thing that procurement officials and agencies are becoming more and more aware of--fuel consumption costs. And so I think we're getting more and more practiced in adding it into our bidding process. And so I think if you pulled bids from automobiles five years ago, you would see we were not doing that. And I think if you pulled the ones from last year and this year, you would see that we are. And so I think it's...you know, it's an awareness and I think we're doing a better job. [LR162]

SENATOR AVERY: How would you explain the differences then between the way

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counties make their purchases, particularly in these motorized road graders, road vehicles and the way the state handles these purchases? [LR162]

LAURA PETERSON: I'm just not familiar with county purchasing at all, so I really can't...I mean, other than what I heard today, I can't tell you that. I'm sorry. [LR162]

SENATOR AVERY: Okay. Yeah. Okay. I understand. [LR162]

LAURA PETERSON: I'd be happy to work with you on that and we're happy to work with you on what we are doing, what we're not doing, and improving the process. But I personally think that the statute itself provides for...when we buy such a huge range of kinds of goods, and if you start to specify, you know, for each different kind of good, all of the things that do or do not would need to be considered, it becomes very difficult framework to operate in. And I think we'd rather work on the implementation side where the current statute really provides for all of the elements that I think have been talked about today. It just doesn't mandate certain ones for certain kinds of goods. [LR162]

SENATOR AVERY: But the outcome is different for counties than it is for the state even though you're saying that we have all the elements here in responsible bidding criteria that would lead to the purchase of the kind of equipment that actually counties do purchase but the state does not. [LR162]

LAURA PETERSON: Well, I'm not sure. And there are a whole host of reasons why an outcome for a city or a county can be different than the outcome for the state. And then partly because we're purchasing for several...we may be between a statewide contract for a piece of equipment, but that piece of equipment is going to be used by the Department of Roads, the Game and Parks department or Commission and they need to be delivered all across the state. And so it takes...you can get several different types of bidders even bidding on the state's contracts that you would get on one or two pieces of equipment at the local level. We also may have a whole list of options, a whole list of

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requirements that at the county level they don't need because they're going to use one piece of equipment for a very specified use. We may be writing specs that are broader because Game and Parks is going to use it for one thing, the Department of Roads is going to use it for another. And then we also draft all of our specifications for equipment and vehicles to allow for cities and counties to purchase off of our contracts if they prefer to do that than having their own local bid. And several, especially in the vehicle arena, do purchase off the state's contract. [LR162]

SENATOR AVERY: Senator Price. [LR162]

SENATOR PRICE: Senator Avery, thank you very much. Thank you, Mrs. Peterson. The questions I have are when we talk about a statement of work and the requirements there and what might be a Section M of a RFP, are we clearly as a state identifying these evaluation elements and giving the bidders the order of which they will be considered whether they're waited or not? Because it seems that sometimes we may be holding within the state, within the buyer and the procurement official office some of these requirements and that bidders may not get all of them so they can fully understand, one, whether to bid or not to bid, can they meet the requirements. And I also want to make sure, again, we've been talking about heavy road equipment, but we recently had a rather unfortunate thing with the health information systems area where I'm unsure that all requirements were well articulated, and that those milestones were understood by the contractor so that when we wanted, say, failure to provide service, we can point clearly to a benchmark that wasn't met. So, again, to open it up further beyond just road graders and cars, is it a state policy to ensure all evaluation criteria are well articulated and the wait of those? [LR162]

LAURA PETERSON: I think there's a significant difference in process between services and goods. And so to the extent that this LR was limited to goods, the answer to your question is they're very clearly articulated. There's no scoring like what you would see on the services side, which is what you're referring to. There...on the good side what

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happens in most of the bids for all kinds of goods is there's a specification and beside it there are three places for a bidder to check: Yes, I meet it. No, I don't, or other. And if they mark other, then they have a opportunity to explain how they do comply but maybe meet...maybe I exceeded...I don't meet the standard, but here's why my product is equally as good. Okay. So in that list if you are yes, you're in, if you're no, you're out because they're mandatory requirements. So it's very black and white on the goods side. And then if they mark the other column, there has to be an analysis at the procurement level of whether what they are providing meets or exceeds the mandatory requirement. I think on the good side, the answer is yes. I think on the services side what you have is scoring, and the scoring that is available ahead of time is summary scoring information. And then a more detailed scoring is provided after...I don't want to say after the fact, but at the time that the...not when they are scored, but at the time the bids are received and opened publicly. And so, I mean, it's a little hard to compare the two; they're a very, very different process. Part of the reason for that though is that services are much more subjective to analyze than goods are. And then it's much more difficult to have a spec...to have someone answer yes or no when you're providing some sort of intellectual capital than it is a piece of equipment. [LR162]

SENATOR PRICE: And I would agree with you, but when we talk about goods, when we lump graders or 50 cars or whatever it is we're buying, that's not anywhere near the same as the goods of...I need paper, bond paper or regular paper. So I think when you look at that on a spectrum where we're rock solid when I order pencils and papers and we're a little squishy when we're talking about vehicles and goods like that because there's a lot of service involved in those vehicles to which I would add, when you brought up the point that we've an 85,000-mile benchmark for cars, well, using a 5,000-mile standard, that's 17 oil changes. There's a lot of service in 17...you know. So when we look at those costs and when we look at, you know, ring seals, when you look at semiannual and annual inspections on bearings, and you're having people do that and we're not doing as a county did with letting the service-level agreement being done by the provider and balancing those costs, those are some of the questions. Do we look

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at that within the 85,000-mile window, the cost of ownership? [LR162]

LAURA PETERSON: We do not, but the reason that we do not is because we have on staff state mechanics who do the oil changes. And so whether you buy a Chevy or a Ford or whatever you buy, we are doing an oil change on every vehicle every 5,000 miles using our own staff. So we're not procuring the service of doing the oil change and we're not altering our standard of how often we do the oil change based on which kind of vehicle. So we're excluding that because those cost are internalized and fixed regardless of which vehicle we purchase. That's the reason we're not doing that. [LR162]

SENATOR PRICE: And within that realm, though, if we go buy Compressed Natural Gas cars and we buy these alternative energy cars, then don't we have to send our staff to go get trained on the maintenance and that's an increase of...we have one person that says, I'll sell you...and whether you talk about the mileage. Okay. So I buy a fleet of the Toyota Prius, Prius... [LR162]

LAURA PETERSON: Prius. [LR162]

SENATOR PRICE: Prius--thank you. We buy a fleet of those, so we meet the great gas requirement. However, the maintenance costs, you know, are triple. You know, so now we've met one requirement and not considered another. And then part of that maintenance cost...and now we have to send everybody off to become a rocket scientist or something to do the maintenance because there's a big difference. I would like to know that we're using a level sophistication to include that within the 85,000-mile threshold as our cost of ownership. [LR162]

LAURA PETERSON: Right. I think right now the specs are being written to those things that our staff are currently qualified to do to the vehicle. And so we're not stepping out to take into consideration something extraordinarily different like the Prius. What we do

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when we start to consider...I mean, we have people who are trained in both regular fuel and in the E85 and those kinds of flex-fuel vehicles. And we take into consideration whether we're going to mandate that or not, and we have a fleet that combines those kinds of vehicles. We haven't taken the next step to talk about whether we want to move to something that's truly a hybrid. And when we go to incorporate something like that, we would do it at the spec level and we would do some analysis of the training costs, sending our people versus the efficiency. And we would do that prior to releasing the specs. And my suspicion is what we would do is what we've done in the past, which is we're going to enter a small number of those kind of vehicles to test them, and we would go out with separate procurement for those. And we might do a life cycle cost to compare between hybrids, but we wouldn't compare hybrids to all vehicles in one bid. I mean, that's what we've done in the past. We haven't done hybrids yet that I know of, true hybrids like the Prius or the...I think Honda has one also. But I assume based on past experience that's what we would do. [LR162]

SENATOR PRICE: All right. Great. Thank you. [LR162]

SENATOR AVERY: Senator Sullivan. [LR162]

SENATOR SULLIVAN: Thank you, Senator Avery. Continuing along that line, who sets the standard for the 85,000 and is that across the board as far as replacing the vehicles? [LR162]

LAURA PETERSON: They're letting some go a little bit longer and some go less, and we have some exceptions to the standard rules where Transportation Services Bureau might provide an exception to an agency for those mileage requirements. But basically what Transportation Services Bureau does is they're continually monitoring all of the costs of our vehicles, so, you know, how often...where there's a breakpoint that the maintenance starts to become more than replacing the vehicle. There are also some federal requirements for replacing the vehicles based on how we charge agencies for

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vehicles, A-87 requirements where if you're...you know, we're charging an agencies that is getting federal funds, we're required to replace the car in a certain amount of time on a plan when we set those rates initially. There are a whole host of calculations that are done by the Transportation Services Bureau to try to identify where the most appropriate or the closest to the most appropriate time is to replace that piece of equipment or to replace that vehicle based on all the kinds of costs that are associated with it. [LR162]

SENATOR SULLIVAN: So some go beyond 85,000 I presume. [LR162]

LAURA PETERSON: Absolutely. And that's sort of the fixed rule for the majority of the fleet that is used as a regular fleet car, but there are exceptions to all sorts of things based on specific agency needs, the type of use of a vehicle, all sorts of things. [LR162]

SENATOR SULLIVAN: Okay. [LR162]

SENATOR AVERY: Anymore questions? Senator Pahls. [LR162]

SENATOR PAHLS: Thank you. I do realize that there are standards and there's an organization there, but I'm just...how would I interpret this part of the handout that you gave to me at the very bottom that: All political subdivisions may follow the procurement principles set forth in section if they are deemed applicable by the official authorized to make the purchases. What does that mean to me? The official...these are the standards and then I'm in charge and I can... [LR162]

LAURA PETERSON: This is a set of standards that is mandatory for state government. [LR162]

SENATOR PAHLS: Right. [LR162]

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LAURA PETERSON: And some...my understanding is, some political subdivisions have their own purchasing either statutes or, you know, some sort of local ordinance. And so I think this is sort of a default. Political subdivisions may be allowed to use this, they may use it because they want to. But if they have their own set of statutes or their own set of ordinances that conflict with this, they wouldn't be able to. But the other thing that they are able to do but are not required to do is use statewide contracts. All of our statewide contracts are available to political subdivisions. So they can use this set of standards and do their own procurement or they can simply go out to our contract and purchase off it if they want to. [LR162]

SENATOR PAHLS: Okay. Thank you. [LR162]

SENATOR AVERY: Seeing no more questions, thank you very much for your testimony. [LR162]

LAURA PETERSON: Thank you. [LR162]

SENATOR AVERY: Anyone else wish to address LR162? [LR162]

BETH BAZYN FERRELL: Good morning. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm the assistant legal counsel with the Nebraska Association of County Officials. I wasn't planning to testify here today, but I just wanted to just sort of clarify a few things that have come up with respect to counties. Senator Pahls, the counties do have a specific set of statutes dealing with purchasing for counties, the County Purchasing Act. A number of the elements within the County Purchasing Act are the same. For example, the list of criteria that the state uses dealing with the lowest responsible bidder, that would be the same in the County Purchasing Act, so. I'd be happy to answer any questions that I could related to counties. [LR162]

SENATOR AVERY: Any questions from the board? Thank you. Anyone else wish to

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address LR162? Seeing none, we'll close the hearing on that and we'll move now to LR127, an interim study to examine the issue of election-day registration. [LR162]

SENATOR AVERY: My name is Bill Avery, spelled B-i-l-l, Bill, Avery, A-v-e-r-y. I represent District 28. I'm here to introduce LR127, which is a resolution calling for an interim study to look at the issue of election-day registration. The basic premise of this idea is to allow people to register and vote on election day. It's something that I sometimes refer to as "one-stop voting" where you don't have to be registered ten days in advance, but you can actually show up on election day, register at the polls, and vote. People who support this idea do so because they believe it increases voter turnout, especially among young people and especially among college students who often find themselves at university or college. They are busy maybe with midterm exams or preparing for final exams. They forget to change their registration to the location where they are residing in college, and they have not requested an absentee ballot, so they find themselves on election day closing out. They don't get to vote. Those who oppose election-day registration raise concerns about the difficulty of implementing EDR, as it is called. And I believe in Nebraska we have some special challenges with respect to how we would do it in this state because we have so many different ballot faces, as it is referred to, and it would be a bit challenging to implement it here. And the other objection raised is a philosophical one that is that you ought to be informed enough to get registered and, by golly, if you're not, then you don't get to vote. I think that young people, particularly college students, have particular problems sometimes in meeting some of the requirements we have in the law today. So I have supported this idea and I have brought two bills before the Legislature to implement election-day registration. Last session, if you recall, we had two bills, one by Senator Rogert and one by me. The response to that was that we discussed a number of options, a number of obstacles. We decided to study it. You will recall that the Secretary of State has in the past opposed election-day registration. He is, of course, the chief election officer in the state of Nebraska and his opinion carries considerable weight. The legal counsel for this committee and I have spent some time with the Secretary discussing various options.

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Some of those ideas we will bring forward perhaps at a later time. But I think it's fair to say his opposition has not changed. Just to put this issue in context, in 2008, Iowa became the eighth state to implement EDR, and they joined Idaho, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming. North Carolina has a form of EDR which allows registration and voting during the state's extended early voting period. I think it's interesting that six of these nine states that I have mentioned are all Midwestern. I don't know if that means anything, but it's something I find interesting and would like to have someone comment on if they think they can explain it. Connecticut allows unregistered residents to cast ballots on election day, but only for the office of president. It is not a widely used law at the present time throughout the country. There is, however, a great deal of interest in this among people who are trying to expand participation, making voting easier, and we will hear from some of those today. You will also hear from a student group that has been supporting this issue for the last two or three years. I'm going to stop there and allow people who are...will follow me to comment on this issue who know a lot about it. In fact, there is a group here from New York City or New York State that probably can talk with greater information and clarity on this issue than perhaps anybody in the country. [LR127]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions for the senator? Senator Sullivan, please. [LR127]

SENATOR SULLIVAN: Thank you, Senator Price. Senator Avery, does the data show that there has been, in fact, increased voter participation in these states? [LR127]

SENATOR AVERY: Yes. We had, in the 2008 presidential election, the highest voter turnout we've had in many, many elections. I think prior to that you'd have to go back to the election of Lyndon Johnson in '64 to compete with the turnout in 2008. But it was about 61 percent nationwide. But we have seen, in states where you have EDR, it goes up 6 to 10 percent, turnout does. And it's primarily young people. [LR127]

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SENATOR SULLIVAN: So that's where the increase lies then mostly among college students? [LR127]

SENATOR AVERY: I think that is the case. [LR127]

SENATOR PRICE: Are there...Senator Karpisek. [LR127]

SENATOR KARPISEK: Thank you, Senator Price. Senator Avery, I know the biggest thing that I've heard is that time for the election officials when this happens their probably already maybe understaffed. How can...is there a way that we can make it easier for them? Do you have any ideas on that? [LR127]

SENATOR AVERY: The easiest thing we could do to make it easy for our election commissioners would be to at least try it for presidential elections and just say, if you want to...you're not registered to vote, you want to register on election day, you can only cast your vote for president and vice president. That would be one approach. It would not satisfy everybody who wants to see full-fledged EDR and it would not satisfy people who have a philosophical objection to making voting easier. [LR127]

SENATOR KARPISEK: Do you think...how we've talked about it, would they be a provisional ballot then, ones that you'd register but they would put it in the provisional to make sure that everything checks out? [LR127]

SENATOR AVERY: That's one way to do it. But I think you can...we're going to have election commissioners here to testify and they know the mechanics of implementing an election. They can answer a lot of that. [LR127]

SENATOR KARPISEK: I'm just trying to think of how we could make it the easiest for the election officials because I know it's already a stressful time. And, again, they're understaffed, a lot of them, especially in the rural parts, are usually older, retired people

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that...it's a long day for them. And although I agree with the notion, I just try to come to some in-between to make it easier, so. [LR127]

SENATOR AVERY: I did receive an e-mail from one of these election workers, not an election commissioner, said that if we implemented EDR, she will quit. She will absolutely never work again for...on election day. Let me tell you, though, that I have had a conversation with Secretary Gale about something we might be able to do. It's a partial step to make it easier for college students to vote on election day. Right now the federal government has mandated that colleges and universities provide students, students who are in degree programs, provide them with notification that this is how you get registered to vote and send them information not on just how to register, but a registration card. What we do in the state of Nebraska is we can have these colleges and universities, in addition to forwarding the federal...or meeting the federal requirement, have them also send a request for an absentee ballot, so that college students not only have the registration card they can send in if they choose to change their registration while they're residing, say, in Lincoln for their college training, but they would also have the opportunity to request an absentee ballot. So they have advance notice and advance opportunity to get this done so that when election day comes and they're...they can't get back home to vote, they can at least vote by absentee. And it would make it easier and notification would be there. [LR127]

SENATOR PRICE: Good. Thank you. [LR127]

SENATOR AVERY: I think I might introduce that bill next year. [LR127]

SENATOR PRICE: Thank you. All right. Senator Avery, I have a couple of questions for you. One thing that comes to mind, already today we had a hearing on LR119, and one of the things that was brought up about the initiative and petition process is that the current way it's done is the number of voters on day submitted, registered voters, would you not see that this could exacerbate the challenge for the petition process to know

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how many signatures they need to get? [LR127]

SENATOR AVERY: No. Actually, the committee counsel just informed me a while ago that the way the law is in Nebraska, it's you have to be eligible to be a registered voter. That means you have to be a resident over 18 or 18 and older. You don't have to be registered to vote to be counted in that group that we count in order to determine how many signatures you need to get an issue on the ballot. [LR127]

SENATOR PRICE: Okay. Great. And then also, would there also be, with this solution that would be looked for, be a requirement that the students have an official government provided photo ID for the registering and voting at the same time just to ensure the validity? Like we said, we talked about provisional ballots, but there are a lot of students and like if you have a university, say, the size of the University of Nebraska, how will someone know about their ability to be a registered voter in the United States let alone in the state of Nebraska? I mean, how do they determine...I mean, I haven't seen a student ID and I would hate to have an ID that says, this individual is foreign and the student foreign, this one's not because...you know, you'd have to be able to say if they just showed up at a poll, how would you determine that? [LR127]

SENATOR AVERY: We don't require a photo ID to prove your identity. You can use all kinds of different forms of identification in the state of Nebraska. I believe a driver's licenses is sufficient. That's a photo ID. Student ID card, I'm not sure if that would qualify because foreign students also possess student IDs. [LR127]

SENATOR PRICE: Right. [LR127]

SENATOR AVERY: But perhaps a utility bill, something of that sort. I think we use many, many forms in this state. [LR127]

SENATOR PRICE: Thank you, Senator Avery. Any further questions? Thank you,

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Senator Avery. [LR127]

SENATOR AVERY: Thank you. [LR127]

SENATOR PRICE: Are there any other individual...how many individuals here would like to testify on today's subject? We have one, two, three, four, five, six. All right. Thank you very much. Well, first person. First person, please. [LR127]

ADAM MORFELD: (Exhibit 1) I also have a copy of my testimony for the senators. (Inaudible) My printer broke. I was going to print off 14 of them, but. (Laugh) Good afternoon. My name is Adam Morfeld, and that's A-d-a-m M-o-r-f-e-l-d. I'm the executive director of Nebraskans for Civic Reform. Nebraskans for Civic Reform is an organization that advocates on election and civic education reform. We are comprised solely of undergraduate and law students dedicated to improving our civic institutions in Nebraska. Our interest in election-day registration began two years ago when it became clear that college students and not only college students but young Nebraskans were disproportionately affected by registration deadlines. As a resident assistant during the 2006 midterm election, I saw no fewer than eight potential first-time voters who were unable to vote because they missed the Nebraska registration deadline. Half were already registered in their home counties, and the half never registered at all and did not understand the voter registration process in Nebraska. They were all new voters, but they were well informed about the candidates and they wanted and deserved to exercise their constitutional right to vote. There are those today behind me that will say that election-day registration is not possible in Nebraska, however, this is not true. election-day registration is not a foreign concept; it's currently conducted in a total of nine states: Maine, Minnesota, Wisconsin who adopted EDR in the 1970s; and then more recently Idaho, New Hampshire, Montana, Wyoming, and Iowa. It should also be noted that North Dakota requires no registration whatsoever. In all of these states, EDR has operated smoothly and enfranchised over 1 million voters during the last election. Now, it is true that Nebraska does have an unusual amount of political subdivisions and,

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thus, there are an unusual amount of ballot faces or "splits" or different ballots than in other states thus complicating the process in which the right ballot is given to the right voter. However, this problem can be mitigated by the use of precinct address books, which is currently used in Minneapolis and some of their larger precincts that have more ballot splits and faces like we do in Nebraska. Now, what this would be is a list of all the possible addresses in that precinct. And then it would also have which ballot goes to that individual address for that person that they'd be registering from. Now, one of the things that we realized yesterday when we had a discussion on EDR was some of the election officials and also Secretary of State's Office is that these street finders that these election officials have the use of may not be updated as regularly with the 911 system or database that they use to update these street finders. However, that can probably easily be mitigated by requiring the update to happen more often and frequently or before the election to give them enough time to print off these precinct address books that would then show which ballot each person would get. Additionally, precinct workers in Nebraska currently work with a large number of ballot splits, as we know, and regularly make determinations on which ballot style the voter should receive. This is an important part of their job. And despite record turnout in the 2008 General Election, there were no major problems that Nebraska poll workers had and they demonstrated their ability to process the high number of ballot styles. Our election officials have proven themselves to be a particularly adept group. And election-day registration presents a very manageable dimension to their skill set. The last year, Secretary of State testified that approximately 90 percent of eligible Nebraska voters were already registered. This, unfortunately, has little bearing on what EDR is trying to accomplish. For instance, during the 2008 General Election, 50 percent of Iowa voters that utilized election-day registration were already registered in the state of Iowa but had moved from one county to the next. Many of these did not realize that they had to reregister when they did that. Many voters who utilize EDR are already registered, but they do not realize, again, that they had to reregister. Last year, Secretary Gale also noted that in his testimony that he believed EDR addressed a registration problem which didn't exist and, thus, EDR would have no effect on turnout. Instead, Secretary

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Gale indicated that candidates and issues drive turnout. Secretary Gale, in my opinion, is partially right. Candidates can drive turnout. However, the statistics don't lie; EDR does contribute to a greater amount of turnout on election day by removing the registration barriers. Yet, in my opinion, the most important issue for you as lawmakers should not be what motivates people to vote, rather your concern should lie in ensuring that Nebraska's election law makes it as easy as possible for every Nebraskan to exercise their right to vote in a secure and accessible manner. Also last year, the Lancaster County Election Commissioner testified against EDR by noting that Nebraska allows provisional ballots which ensures an eligible voter gets the proper ballot if they are not properly registered in the actual voter book. This is not a counter argument to EDR. The provisional ballot method is fraught with uncertainty and proves to be a recurring headache among election officials who have to spend a week or so afterwards trying to figure out where everybody is at. During the November 2008 General Election, 60 percent of provisional ballots in Lancaster County were thrown out for voters who were not registered. That is 425 ballots out of 714. During the November 2006 General Election, 82 percent of provisional ballots were thrown out in Lancaster County for the same reason. election-day registration diminishes the number of provisional ballots cast and, thus, retains the mechanism for certain warranted situations. Better to properly register a voter than have their ballot thrown out on a technicality. EDR solves this problem in a way that provisional ballots cannot. I'd like to also note that we invited a representative from Demos who came from New York. Demos is an organization that has worked extensively on election-day registration issues and they can give you a better idea of what occurs nationally and how it's been implemented in other states recently. So I'd encourage you to ask her questions later on. I would also like to note that a lot of the election commissioners and election clerks that are probably here today are concerned about the implementation of EDR. And we had about an hour and a half long discussion about that yesterday. I think a lot of their problems and their concerns can easily be mitigated by changes to our election law or statute that would require for updated address books that would show which ballot goes to which address. So I think that's an issue that can be mitigated and it can perhaps relieve some of the stress

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before election day that they spend trying to update their books and make sure everybody is in the system. In conclusion, election-day registration minimized eligible voters from being disenfranchised by arbitrary deadlines in an accessible and secure manner. Nebraska has the necessary resources and tools available to administer EDR and all we require now is the political will. Will election-day registration require more effort on the part of the election officials and the Secretary of State's Office? Yes, initially, but if it's involving more eligible voters in our democracy, particularly young voters, is it worth it? Absolutely. I thank you for your time and patience and would be willing to answer any questions. [LR127]

SENATOR AVERY: Thank you, Mr. Morfeld. Any questions? Senator Sullivan. [LR127]

SENATOR SULLIVAN: Thank you, Senator Avery. Is it fair to say that most of your research and attention on this subject has been on college students and young people? [LR127]

ADAM MORFELD: Well, I think that's...yes, but I think that's because that we are college students and so our experiences stem from college students being disenfranchised. However, we see this as something that would not only effect just college students, but a lot of young professionals that are moving around, younger families. And then also some minority groups that often are not as heavily targeted by campaigns. [LR127]

SENATOR SULLIVAN: But with respect to the college students, and I assume you've talked with a number of them, are they most concerned about just not being registered to vote or having the ability to vote in their hometown, in their home area? [LR127]

ADAM MORFELD: I think it's about having the ability to vote, period. I don't think a lot of them are concerned whether they can vote in their hometown or whether they can vote in Lincoln when they come to college. I think the concern is being able to vote, period,

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and a lot of them don't realize the registration requirements that are required to do that because they're new voters. Some of them voted once, a lot of them never voted at all because they're 18 and they're coming to college. So I don't think that necessarily the concern is just in their home jurisdiction or where they're from. [LR127]

SENATOR SULLIVAN: Okay. [LR127]

SENATOR AVERY: Any other questions? Senator Janssen. [LR127]

SENATOR JANSSEN: A question, I think we've spoken about this quite a bit. [LR127]

ADAM MORFELD: Yes, we have. [LR127]

SENATOR JANSSEN: You probably know where I stand on this. I always like to think back to when I cast my first presidential ballot. I was college-student aged. I was in the military in the middle of the Persian Gulf and took the time and effort because it meant a lot to me to do that. So a lot of times, rightfully so or wrongfully so, I hear, why are we changing the whole system for the people that are too lazy to take part and get this thing to go ahead and get registered, get registered properly, whether you're at Peru, Wayne, Lincoln and you're from Fremont, Ogallala, wherever? [LR127]

ADAM MORFELD: Yeah. [LR127]

SENATOR JANSSEN: It doesn't take that much time. I assume you're registered. [LR127]

ADAM MORFELD: Um-hum. I am registered. [LR127]

SENATOR JANSSEN: And I guess that's going to be an argument and you...and I can argue about that quite a bit. But how do you respond to that? [LR127]

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ADAM MORFELD: Well, you know, the way that I would reconcile that in my mind is that we all grew up in very different environments. I grew up in an environment with a military family and the day that I was 18, my dad gave me a voter registration card and I filled it out or, you know, I wasn't getting birthday presents or whatever, you know. And so I think that, you know, I grew up in a very civically-engaged family and so, therefore, I registered to vote right away. But you also have to realize that a lot of people come from a lot of different backgrounds that necessarily don't instill that notion of civic responsibility right away, and that's something that they have to discover on their own. In addition, there are a lot of different circumstances that surround not only students but other people in their life. For instance, you know, this is one example of a good friend of mine. She filled out a voter registration card, gave it to her mother to turn in, and she went to the polls on election day and realized her mother didn't turn it in. She had every intention to vote, and yeah, sure, maybe that's her mother's fault and maybe she shouldn't trust her mother next time and just do it herself, but should that disenfranchise her from that...at that point in time to having her political voice and engaging in her civic responsibility? I don't believe so and I think that there are circumstances like that that come up, and that's something that election-day registration can mitigate. And particularly students, not only students but people that move from different parts of the state who don't realize they have to reregister. I mean, if you've never moved from a different part of the state, you just don't realize that you have to reregister sometimes. And that might be common sense to a bunch of politically engaged people like ourselves, but that's not to the common person, and I think I could make a good argument for that. [LR127]

SENATOR JANSSEN: So what I'm hearing is we need to change this system so we can get people registered to vote that aren't civically responsible? [LR127]

ADAM MORFELD: No. You know, I think that (laugh)...I think that there is this...and this is something that I addressed with Senator Avery yesterday in the discussion is that

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there's a lot of people that think that just because you miss a registration deadline, you're suddenly not civically responsible or civically informed. I have, for instance, an uncle, who I won't name, who has been voting in the same precinct for about 30 years. He's been registered in the same place; he's never had to reregister or update or anything like that. He tells me he votes party line. It doesn't matter if the candidate killed somebody, he would still vote for them as long as he was a part of that certain party. Is he an informed voter then because he registered 30 years ago? I don't believe so. So I think you can really...I don't think you can really compare or analogize registering to vote with being civically engaged and civically informed. [LR127]

SENATOR JANSSEN: Although on separate sides of this, I definitely appreciate the time and effort you've put into this, so. [LR127]

ADAM MORFELD: Thank you, Senator. [LR127]

SENATOR AVERY: Senator Price. [LR127]

SENATOR PRICE: Senator Avery, thank you. Mr. Morfeld, thank you for coming again and having the passion... [LR127]

ADAM MORFELD: That's all right. [LR127]

SENATOR PRICE: ...to engage. And we've spoken before and I won't go there, but the one thing that does begin to make me wonder, and maybe you can clarify for me... [LR127]

ADAM MORFELD: Um-hum. [LR127]

SENATOR PRICE: I have a potential voter in a new location shows up to the poll, would like to vote that day. [LR127]

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ADAM MORFELD: Um-hum. [LR127]

SENATOR PRICE: And perhaps, as in the case of many students, they're there for a period of time, maybe they got admitted to college at 17 so they didn't get the chance to get registered. All right? [LR127]

ADAM MORFELD: Yeah. [LR127]

SENATOR PRICE: They're 18 or 19, they decide to do it. They engage in something and they vote, and I know we've seen perhaps a...well, we'll roll this out only on the presidential. And nothing ever stays only at one thing once that proverbial camel's nose...so do you believe it's morally responsible and civically responsible that someone who will have no...may have no...mostly likely will have no responsibility to live with their inputs to vote in a community where they don't know, so let's say Lincoln? [LR127]

ADAM MORFELD: Yeah. [LR127]

SENATOR PRICE: Bunch of students and they say, yeah, I want to vote on that bond issue for a new school or a new civic center, and they vote and they are off. They're off to wherever. They're not left holding that bag. And when you look at down ballots, all of us would be considered somewhat down ballot, you know, or you look at city races. These people will have such an impact and they haven't been there, they won't live there, they don't have to contend with the results. [LR127]

ADAM MORFELD: Yeah. [LR127]

SENATOR PRICE: So would it be that they would get a ballot for their home of record or would they get a local ballot for where they are now? I haven't heard that one. Maybe that's buried in here and I didn't see that. [LR127]

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ADAM MORFELD: Well, I don't think it's addressed in the legislation that we've had. However, I mean, to answer that question...and that's only the second time I've gotten that question and it's a good thought. However, I would argue that you could say that about regular voters that are currently living in that locality. Who's to know that they're not going to be there in two years and have to live with their decisions at the ballot box? Also, I would argue that students, particularly in Lincoln, are a huge economic force for the economy here and they should have a say in some of the people that are elected and make the decisions that they have to live by for four years or possibly even longer than that. So I think that just because they...students or a mobile population may necessarily not be there in four or five years, it's hard to determine then. Should we make policies that would restrict them from exercising their voice in a city that, who knows, they may end up living here all their life? [LR127]

SENATOR PRICE: And granted there's always...there's never a clean solution granted. [LR127]

ADAM MORFELD: Of course. [LR127]

SENATOR PRICE: But as in the case of Senator Janssen and I know myself, I don't know about Senator Avery, when we voted for the absentee, we were voting in our home of record. [LR127]

ADAM MORFELD: Um-hum. [LR127]

SENATOR PRICE: And so therein lies, again, another big difference. You're voting your home of record. You weren't voting if you were in New York for New York's things, you're Texas or California's. [LR127]

ADAM MORFELD: Um-hum. [LR127]

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SENATOR PRICE: So there was that. And obviously there's not consternation or concern of that... [LR127]

ADAM MORFELD: Um-hum. [LR127]

SENATOR PRICE: ...you know, about I'm not there but I'm voting there. You know, and so I'm concerned because when you...how many students are in the University of Nebraska? [LR127]

ADAM MORFELD: I believe...well, the University of Nebraska-Lincoln, about 24,000, about. [LR127]

SENATOR PRICE: We don't see Lincoln's population grow by 24,000 every year because they all stay here, so it's a fair assumption that a good number of them leave, some stay, we'd be lucky, hopefully we'd grow our state and they'd all stay. [LR127]

ADAM MORFELD: Yeah. [LR127]

SENATOR PRICE: But we look at all the universities across the state, they don't all stay, so. [LR127]

ADAM MORFELD: I think it would be a fair assumption, though, that a lot of people would leave Lincoln at one point, students or nonstudents. Perhaps students have a higher probability. But when I first voted in Lincoln in 2005 when I moved down here from South Dakota because I grew up in a military family and so that's where we ended up and I came back home, you know, here to Nebraska to live, I didn't know if I'd be living in Lincoln or not, but I also know I probably have a big impact on...an aggregate, not just myself, myself and my students have a big impact on Lincoln and the economic viability of Lincoln and the taxes of Lincoln. I mean, and so I think that we should still

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have the same voice as anybody else that lived in Lincoln. [LR127]

SENATOR PRICE: Okay. So you are looking then at expanding this all the way down ballot? [LR127]

ADAM MORFELD: That's what I'm in support of. I would be willing to work with Senator Avery, you know, as far as a compromise with presidential. But, I mean, I truly believe that they should be able to vote down ballot for those districts because I don't think the government should get in the business of going, well, this person may not be very well informed because what about the other person that lived there for 20 years that never looked at the down ballot ticket and still votes blindly? I mean, it's hard for us to discern that. So I don't think that that should necessarily be the goal or the driving motivation behind supporting or opposing this legislation. [LR127]

SENATOR PRICE: Would you be open to meeting half way to say Nebraska residents would vote if they're here at school and they register to vote in their home ballot versus a Lincoln ballot or Kearney ballot? [LR127]

ADAM MORFELD: I think that you'd...you know, you may want to ask one of the election officials that question. I think you'd run into some complications of how to determine exactly where they are and stopping them from registering here in Lincoln because that's something they can currently do if they want to. I mean, does that make sense? Or yeah, I mean, they...I mean, because once you live in Lincoln, once you live in the dorm, for instance, I mean, your domicile is that dorm and you can register as...for that address and that dorm or that Greek house or whatever the case may be. So, I mean, I don't know how necessarily you'd police that or enforce that. [LR127]

SENATOR PRICE: Okay. Thank you. [LR127]

ADAM MORFELD: Yup. [LR127]

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SENATOR AVERY: Anymore questions? [LR127]

SENATOR JANSSEN: I just have one quick follow up. You had mentioned your uncle that you didn't name. [LR127]

ADAM MORFELD: (Laugh) Yeah. [LR127]

SENATOR JANSSEN: So what party does he belong to? [LR127]

ADAM MORFELD: He belongs to the Republican Party I believe. [LR127]

SENATOR JANSSEN: There's no issues with that then. (Laughter) We're fine then. [LR127]

ADAM MORFELD: I kind of figured that's where it was going, but. [LR127]

SENATOR AVERY: All right. Thank you, Mr. Morfeld. [LR127]

ADAM MORFELD: Thank you. [LR127]

SENATOR AVERY: Next testifier. We're approaching lunchtime and I would urge you to keep your comments brief if you can because we are going to reconvene here at 1:30 for continuation of the agenda which will include LR163 and LR126. Welcome. [LR127]

MARY BOSCHULT: Good morning, I believe. [LR127]

SENATOR AVERY: (Laugh) Barely. [LR127]

MARY BOSCHULT: (Exhibit 2) My name is Mary Boschult, it's M-a-r-y B-o-s-c-h-u-l-t,

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and I'm here to represent the League of Women Voters of Nebraska. The League of Women Voters of Nebraska believes every citizen should be protected in the right to vote. Since its inception in 1920 when American women earned the right to vote after a 72-year struggle, the League of Women Voters has worked in a sustained effort to expand the fundamental right to vote to all citizens. There is sometimes a covert resistance to helping certain groups gain access to voting because there is an assumption that they will vote either against the perceived needs of the local community or against the prevailing political party. Voters who are young, migrant, low-income, or of ethnic minority are among those citizens who most often face voting access barriers. election-day registration will assist all citizens in accessing their right to vote and, in particular, will encourage marginalized groups to participate in the political process that governs their lives. election-day registration is a safe, simple, and proven way to assure all citizens can secure their right to vote, and the League of Women Voters urges this Legislature to pursue election-day registration for citizens in the state of Nebraska.

[LR127]

SENATOR AVERY: Thank you. [LR127]

MARY BOSCHULT: Thank you. If you have questions for me or the League... [LR127]

SENATOR AVERY: Any questions? Seeing none, thank you for your testimony. [LR127]

MARY BOSCHULT: You bet. [LR127]

SENATOR AVERY: Next testifier. [LR127]

SANDRA STELLING: Senator Avery and committee, I'm Sandra Stelling, Jefferson County Clerk and Register of Deeds, S-a-n-d-r-a S-t-e-l-l-i-n-g, and I'm also a cochair of our legislative committee. I'm glad to be here. Hopefully we can come to some compromise on some of this. We had attended the meeting yesterday. Some of the

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things that we have come up with, Nebraska has the least amount of days in the big 12 for voter registration. With our ten days, everybody is more than that, even the ones...you know, even if they do have same day voter registration. Some of the concerns that we have are, we have to send out a confirmation after someone has voted. We have seen already some of these confirmations have come back, these people do not live there. Even if they, you know...sure, they're supposed to give us a utility bill or whatever. We still see some of these come back after we've confirmed maybe their driver's license. They've gone and gotten their driver's license. We get that...the voter registration from DMV. We send our confirmation to them, and it comes back. They do not live there. And, as a matter of fact, we've seen this in...we've had it twice in the last probably three months in our county. Another concern is our splits with all of our ballot faces. One thing that...another thing we've come up with so we don't have so many ballot faces would be for the committee to consider not rotating names on the ballots. This would eliminate some of our ballot faces in the primary. Registration deadlines, it's just another deadline. Okay? The students had a deadline to register for school. If they're going to be a resident of the state of Nebraska, they have to get their driver's license within 30 days. They have that opportunity then to register. You have to register your kids for school when they become school age. They also have to register for the draft. And most schools have government classes where they register voters, they register the students, and they go through the absentee request, what the students have to do. And most of the election officials will go to those schools, will register the voters, and explain all of that to them. Another thing that came up yesterday in our hearing is a 911 addressing. Not all counties have 911 addressing, and if your 911 person isn't going to give you that address immediately so you can get them the right ballot, we have a problem there. If the EDR does come in and, say, a family of four or five comes into this small village and there happens to be a school there...I have a little village in my county right now has three school districts. Okay. My kids go to X school. The property is actually in Y school district. Just because that voter was not informed what property their school district, you know, lies in, it could throw a school election very easily. It could throw a village election very easily or a township. I guess that's about all I

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have written down here. If you have any questions, I'd be willing to answer them. I know we're all getting hungry. (Laugh). [LR127]

SENATOR AVERY: Thank you for your testimony. I think we all recognize that given the ballot faces we have in Nebraska, that it would be difficult to implement EDR. In your opinion, would it be impossible? [LR127]

SANDRA STELLING: Well, nothing is impossible. [LR127]

SENATOR AVERY: Well, some things are. [LR127]

SANDRA STELLING: They keep telling us nothing is impossible, so. (Laughter) I guess if we're mandated to do it, we'll have to come out with some way that we can do it. I know yesterday it was brought from the lady from New York said that we could hire an extra election official just to do that voter registration. First of all, none of our precincts, unless maybe the larger ones, have a computer that would automatically do this. People only have so many maps. You can give everybody a map, but when you start overlaying all those maps to make sure it's the right school district, the same right NRD district, and all of this stuff it becomes very confusing, so. [LR127]

SENATOR AVERY: And the way you do it now, you have in front of each of the poll workers, you have all of the eligible races in which a particular voter can vote in, right? [LR127]

SANDRA STELLING: Well, according...in our printout book that we have, it tells them exactly which ballot they are to get because we have already done that. We've put them in the computer and it tells them on the voter registration list which ballot they are to receive. [LR127]

SENATOR AVERY: So you know how many ballot faces you have. Why couldn't you

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have a list of all of these ballot faces and the qualifying addresses for those? Would that be too difficult? [LR127]

SANDRA STELLING: Presently, I can't tell you whether our computer system will do it or not. [LR127]

SENATOR AVERY: I see somebody shaking their head. [LR127]

SANDRA STELLING: If they're shaking their head, yes, they...you know, we probably... [LR127]

SENATOR AVERY: It's shaking her head this way. (Laughter) [LR127]

SANDRA STELLING: Okay. That means, no. But if our...you know, it's very difficult to be...make sure that we don't...that we get them in the right district, so. [LR127]

SENATOR AVERY: Yeah. I understand. Any questions? Senator Karpisek. [LR127]

SENATOR KARPISEK: Thank you, Senator Avery. I just want to say that I was glad to hear you said hopefully you could find some compromise. I was very glad to hear that (laugh) because, you know, we've just heard a lot of "no way, it won't work," so I'm just very glad to hear that. Thank you. [LR127]

SANDRA STELLING: Thank you. I think it was apparent yesterday by the number of election officials that were here that we are open to listen to what is out there. [LR127]

SENATOR KARPISEK: Well, and thank you. I appreciate that because it...like I said, it's not easy but I'm glad to hear that, hey, that you sat down and talked about it. That's wonderful. [LR127]

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SANDRA STELLING: I thought there was very good discussion yesterday. [LR127]

SENATOR KARPISEK: Well, great. Thank you. [LR127]

SANDRA STELLING: Even though we don't all agree, we can set here and discuss it, so. [LR127]

SENATOR KARPISEK: That doesn't happen very often around here. (Laughter)
[LR127]

SENATOR AVERY: Thank you very much. Anyone else wish to address LR127?
[LR127]

DIANE OLMER: (Exhibit 3) Good afternoon. My name is Diane Olmer, D-i-a-n-e O-l-m-e-r, and I am the election commissioner in Platte County, Columbus, Nebraska. And I'm here representing the election law committee for Nebraska's Association of County Clerks, Register of Deeds, and Election Commissioners. And I'm here basically opposing the bills that have been introduced. And just as Sandra said, if there were some compromise we could come to, you know, we are not trying to...I think election commissioners sometimes come off as looking...as opposing anything new or anything that changes. And I guess we're the ones that handle the bill as you pass it. And so what I'd like to do today is kind of give you the...my perception of how it would work if either of those bills were passed that were introduced. And my main contacts always are with my poll workers and then with the voters. I worry about my poll workers in that they do a good job and I train them as well as I can. And on election day it's still...they're there and I'm here. And voters, I deal with them all the time. If the process isn't working I get complaints from them. If the poll workers aren't doing their job, if things aren't running smoothly, I get complaints from the voters. So I'm not only worried about my poll workers in getting the job done correctly, I'm also worried about pleasing the voter. And if we introduced or had EDR implemented in Nebraska...and there's been different

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discussion on if we have a limited ballot or a full ballot or if it should be handled at the courthouse or if it would be at the polls, all these things pose different situations. But right now if EDR was introduced and a voter...we have our poll workers already on election day, you have several types of voters that my workers have to know about. You have the voter that comes in, he's on the list, he's got the right address, he gets his ballot, he votes, his ballot goes in the box. And that technically is what most of the day is about. Then you have a voter that comes in, he's on the list. You ask him his name and address. Oh, he moved and he moved within the county or within the precinct. Okay? That voter gets handled a little differently. They fill out a voter registration, they get a ballot, they go to the booth, their ballot goes right in the box. Then you have the voter that comes in who's on the list, but where he usually signs it says, voted absentee. That's one of those...I instruct my poll workers whenever there's anything odd about the voter and the list, you right away have the inspector come over and deal with that so that you have...it's not just one person making the decision and you have the one who's supposed to be the boss of the precinct handling it. Anyway, this person whose name is on the list as voting may have asked for a ballot, maybe they didn't get it, maybe for some reason they didn't have time to vote it. They're here on election day so they decide just to come to vote. We did change...you did change the law a couple of years ago saying that person has a right to vote on election day, but they will vote a provisional ballot, meaning they fill out the forms just as any other provisional voter does, the registration, the oath. They go to vote, their ballot goes in envelope, and the envelope goes into the ballot box. And provisionals, as you all know, are decided on later if they should be opened and if they should be counted. So already we've had three different kind of voters come in. We also have...I forget which one I was...a voter comes in and they're not on the list. Like I said, the other three were all on the list at least. This one comes in, they're not on the list. The inspector comes over and the voter says, well, I was in Polk County and now I'm in Platte County, and I think I registered to vote at the DMV, but for some reason I'm not on this list. And so there, again, the instructor comes over, they do the provisional process. The thing I'm forgetting about the provisional process is, if this is a precinct with four different ballot types, it may

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require a call to the election office to decide. Every time you do provisional, it's not on their list what they get. The other thing is we have a voter that comes in that's not on the list and they just moved from one end of the county to another precinct. Okay. They also are going to vote provisional. Their ballots in an envelope, it goes in the box. And so the new thing that they're proposing is EDR. So that voter would come in...and I'm assuming it's at the polls just for this instance, they come in, they're not on the list. Okay. The inspector comes over. If EDR was implemented the way it's stated if they're at the polls, they would fill out a voter registration, show ID, sign an oath, and get a ballot, and their ballot would go right in the box. Notice, nobody else got to do that that wasn't on the list. My first comment about this is, you've just created another decision for a poll worker to make, even the new EDR voter would also have the problem about which ballot they get. You've just complicated the process for the workers which isn't, like I said, it's not impossible, we can deal with it, but every time you complicate things, you leave open the chance for more error. And I would be instructing my poll workers that you try to get ahold of my office so that we can help you with that decision. Is this an EDR voter? Maybe they forgot that they registered at the DMV. Maybe they're on the list? Maybe they're on a wrong list or something like that? So there would be required...in my county, I would try to...I would insist that the inspectors try to get ahold of me, not just me, my office so that we could help them with those decisions. You're also talking about a limited ballot or a full ballot. You have your provisional voter who gets a full ballot. If you would have a limited ballot for an EDR person, if a mistake was made in deciding what kind of voter they are--are they provisional or are they EDR--you could have a provisional voter who should have got the full ballot only get the presidents or vice versa. If they decide the EDR person was supposed to be provisional, then they would have their ballot in the envelope and we would reject their ballot because we find out they weren't registered to vote. Anyway, there's more decisions and anytime you introduce more decisions, there's more of a chance for error. And communicating with the election office in a perfect world, but sometimes...and I could have a hundred lines, sometimes the lines will all be full and sometimes the voter doesn't want to wait and they leave angry. I'm just saying the other thing I've always been kind of concerned

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about is the provisional voter comes in, and even the person who moved from Humphrey to Columbus, his ballot goes into an envelope and we decide later shall we count his ballot. One of the first things we do, or the very first thing, is we check to make sure they're registered after the election is over. The second thing is we look at that old book where their name was on the list and we make sure...not the old book, the book that came from that other precinct. We make sure they didn't sign in there and vote because they are on a list at a different precinct. So we do make sure with the provisional process that they don't vote twice. If they have signed the other book, we would never open that envelope, we would reject that provisional. But in the provisional process, at least they'd be registered in the right spot for the next time. Now, what concerns me is EDR comes in, guy moves in from Wisconsin, he goes through the process, his ballot goes right in the box. How do we know that he didn't have an absentee that he voted already in Wisconsin? There's no provisions that I've seen on checking on that and the only way to check would be to hold up his ballot. I guess there's a...seems to me a discrepancy in trust as far as people in our county. The ones that just moved from one end to the other, we're going to watch them, but the guy who moved in, even though he has ID, we're just going to let him go. And then the other thing about ID is we require ID of the guy who moved in, but we don't require ID of the man who moved from Humphrey to Columbus. There's another discrepancy which...I'm not in favor of ID, but if we're going to do it in one instance, I think we need to have it fair and even for all voters involved. The idea of having things done at the courthouse, that seems like a good idea and we should...since we have all the records and the maps and should be able to give them the right ballot and all of that, it seems like a good idea, except I know from past experience if even just one voter in the wrong precinct doesn't want to drive ten miles sometimes to the right precinct. Now, if I have a voter in Newman Grove, which is the farthest end of my county, he's not going to be pleased to show up in the polling place and have the poll worker say, well, sure you can vote today, but you got to go to Columbus. I think the idea of EDR is for convenience for the voter. I don't think some of these things are going to be convenient because it's going to hold up the line. It's going to hold up the line every so often. It's going to make the

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process difficult, just time calling back and forth to the courthouse. It's not going to be a convenient thing. When people call me about even provisional voting when they forgot to register when they moved, they call me and they say, okay, Diane, I could just show up on election day? My answer to them is, yes you can, go to this polling place and you can show up and it's going to take you about 15 minutes longer than it would have if you'd just come to my office, I'll help you fill the forms out, you walk in with it. I do everything I can to help the voter out. I'll fill out...we will never give them a ballot, but we would fill out the registration. We would put on there already signed by me. They get this ballot split, all those kinds of things. So even with a provisional voter moving from one end of the county to the other, we do things to make it easier for the voter. And making it easier for the voter is making it easier for my poll workers because when you've got dissension or people unhappy there, you know, it can really disrupt the voting area. So I'm not saying it's impossible. We could. There's a chance for more wrong ballots being given out. The...I know they say there's very little error in these other states as far as people voting twice and all that. How do we know? We're worried about the ones that move from one end to the other if they vote twice. Why are we not worried about the one that moved in from Wisconsin? And if you move something from the polling place to my office, there will be confusion among the voter. One will end up at the polling place, have to drive to Columbus, not be happy. The wife registered, she votes here; the husband goes to Columbus. It's going to make things confusing to the voter. It won't be convenient and can we do it? We can do it. But the question you asked before about the...our computer system right now, our computer system does not have a report that we could print out. We call it a street address. I could print a street address out for my...for a certain precinct and would have listed all the different addresses. But what that does note is the precinct part, and precinct part is a general name that we give a part of Butler Precinct that gets this certain kind of ballot. So there's the computer, there's precinct parts, and then precinct parts sometimes get combined, sometimes they all get their own depending on how the races fall, so precinct parts are not ballot type. And I know if the Secretary of State was here he would say, we just probably got through with Power Profile is our new computer system that links all the

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counties, and it's pretty much settled. They've complied with the contracts. We can't ask them to do anything else in there without paying a lot of money. This would be a lot of money and I don't know where...I don't know if you worry about money, but in my budget in my county and everybody else it would entail a lot of money to implement that into the computer system. It's something that's not there now. [LR127]

SENATOR AVERY: Thank you. Thank you. Any questions? Seeing none, thank you, Ms. Olmer. [LR127]

DIANE OLMER: Okay. Thanks a lot. [LR127]

SENATOR AVERY: Next testifier. How many other people wish to testify on this issue? Just one more. Okay. Thank you. [LR127]

ALLEGRA CHAPMAN: (Exhibit 4) Good afternoon, Chairman Avery, members of the committee. My name is Allegra Chapman, A-l-l-e-g-r-a C-h-a-p-m-a-n. I'm from Demos, a network for ideas and action, a nonprofit nonpartisan group in New York that works with policymakers and advocates across the country in pursuit of a more vibrant and inclusive democracy. To that end, one of the things that we've been pushing for in a long-standing campaign is election-day registration, also known as same-day registration. A proven reform that has shown to boost voter turnout across the nine states that do have election-day registration already in place. This is clearly a heated topic and people have many different opinions on this. And I was happy to be here yesterday to be able to speak with many people who naturally have some concerns about this. So I hope to be able to address some of those concerns and to make a few points. And don't worry, I'm not going to be reading these six pages of testimony. I've simply condensed some information that I hope you can use when you're reviewing the rest of the materials. As Adam and others have already pointed out, same-day registration, one of its best benefits is that it has the ability to boost turnout across the board and to include people, voting groups, who have traditionally been marginalized.

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When we first started looking at Nebraska when you were considering adoption of same-day registration, we consulted with a couple of political scientists. And they did a study for Nebraska and found that if the state were to implement it, you could see about a 5.5 percent increase across the board of voters coming to turnout. This would also affect minority groups and substantially affect the voter turnout for college students, youth between the ages of 18 and 25, and people who are moving pretty often. So not only is this bringing in new populations, but it's also solidifying and protecting the voters who are already in place, people who have registered before but for whatever reason are no longer on the books. So I believe Adam pointed out that Iowa, which was the state in 2008 that most recently enacted same-day registration, saw I believe it was about 46,000 registrations used with same-day registration. About half of those were for new registrants and the other half were for reregistrants of voters who were already in the system. And, you know, this has to happen, reregistration has to happen for several reasons. People will move and they will not have registered in time. Say somebody gets married and she's changed her name, but she didn't have the chance to reregister in time. And as we've seen in the past few elections, administrative error can account for a lot of these problems. So in 2008 during the general election, I was working an election protection site. We got calls from all across the country from people saying, you know, I voted or I'm sorry, I registered to vote at a DMV and they didn't process my application or didn't go through when I showed up at the polls. You know, I did this at a public assistance agency, it didn't go through. Other things that we see is that, you know, as states have to go through and keep their list clean, they go through purging. Sometimes those match ups just result in accidental purgings of people who should be still in those books. So I think it's also an important reform to protect voters who are already in the system. It also ensures against high rates of provisional ballots being used. And if a voter comes in, he thinks he's on the rolls, turns out that he's not for whatever reason, say, he thought he registered at DMV, it doesn't come through, it's very disappointing for a voter who's waited in line that whole time, believes himself to be a registered voter only to then be given a provisional ballot which may or may not be counted. What, in the 2004 election, we saw that one-third of 2 million provisional ballots weren't counted.

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That's a problem. Not only does that hurt the voters who then may be disillusioned and perhaps not return, but it also hurts poll workers who have to deal with the counting of provisional ballots. Iowa...again, I think Iowa is a good state to compare because it has a similar population to Nebraska's, they, too, had a ten-day registration deadline before adopting EDR and decided nonetheless this was an important reform to them to capture more people and to make sure that it was available to all Iowans. So Iowa initially had in 2004...even after HAVA's implementation, in 2004 they had over or close to 15,000 provisional ballots cast. After they implemented election-day registration, you saw that number go down to one-third, so it was less than 5,000. Nebraska has had similar numbers in this most recent election period, so it was around 15,000 also of provisional ballots that had been cast. You could see those numbers go down drastically. And the reason I bring that up is because the counting of provisional ballots is a costly and time-consuming process. You know, when we think about the costs that are involved with election-day registration...and I will get to that in a bit because I know that is an issue of concern for poll workers and for the state at large, but when you look at the process of counting provisional ballots, I believe Diane said it may take 15 minutes or longer to do a provisional ballot. That's a lot of time. That's a lot of time that poll workers don't have. It's a lot of time that voters don't have. So it's a costly process and we've seen that, the counting of provisional ballots after the fact. And it also hurts voters who may later find out after that process is finished that their vote, in fact, didn't count once they called that hot line and they realized my vote never went through. In the state of Nebraska, 3,500 in the last general election did not have their provisional ballots cast. That's a disappointing thing. So what I do want to talk about then is some of the worries that people have been voicing here, one of them being costs. You know, again, with Iowa we interviewed, you know, some of their poll workers and the Secretary of State's Office and spoke with some other officials there, and they told us...they kind of gave us a breakdown and accounting of how much it would cost them. So for each county it costs \$2,000 to implement this process, \$2,000, and that includes hiring a new poll worker for election-day registration because to be sure it's going to be busier. It's not going to be very much busy...it's not going to be an influx of people because if we

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remember, keep in mind, those numbers of 5 percent increase. You could just sort of consider what that might look like for a rural area or for an urban area, you could add about 5 percent to that. So it will take a little more time, but if you get another poll worker in there--and if you'd like, I can answer some questions afterward about sort of the practicality of what it would look like on election day in a polling place--and you account for, you know, getting some more forms, then I think you could probably see costs approximate to those in Iowa. We also...people also discussed the problem of how efficient this is going to be, how difficult it's going to be for poll workers on election day. And that's a real concern, that's something that we're mindful of. I have to say that poll workers across the board in these other states, some of which have been doing this for 30 years, some of which, you know, just a year now, but poll workers have said across the board when we conducted a survey of about six different states that most, the good majority of them found that even though they had had worries before, fears about what this was going to look like, that as it turned out on election day it was a somewhat easy process for them to handle. They got trained. They had an extra worker in place typically, and things went pretty smoothly. They also noted...and I think Diane also mentioned that she's worried about angry voters, they also mentioned that when voters realized that instead of having to vote by provisional ballot, but instead are getting a ballot that they know are...they can cast right then and there, that that makes them much happier and that makes the process smoother. Lastly, I did want to mention that all of this can be done without compromising election integrity. Again, three states have been doing this for 30 years: Maine, Wisconsin, and Minnesota. They've done this without the problem of fraud. And so I think we can trust our sister states that if there had been a problem...and states regularly after each election will conduct an audit to see whether people do live where they do, whether they are who they say they are. And if it turns out that that's not the case, there are prosecutions in place. So I'd almost say that election-day registration makes it safer. Anybody can register through the mail, but on election day, you have to show up, you bring your utility bill or your identification or whatever it is to prove who you are and show where you live and, you know, also look an election official in the eye, a government person sign your name saying you are who

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you say you are, that's a level of security that you're not going to get through the mail. So I would say that it's actually a safer bet. So I'm finished with my testimony. I'd be happy to take any questions, especially on maybe some of the other worries and concerns that people have expressed. [LR127]

SENATOR AVERY: Thank you, Ms. Chapman. Questions from the committee? I appreciate your testimony. I think we've just about run out of gas here. (Laughter) Thank you very much. [LR127]

ALLEGRA CHAPMAN: Thank you, Chairman. [LR127]

SENATOR AVERY: Thanks for coming all the way from New York to help us out on this issue. [LR127]

ALLEGRA CHAPMAN: I'm happy to do it. It's very dear to us. Thanks. [LR127]

SENATOR AVERY: Welcome. [LR127]

GLENDA DeBRIE: (Exhibit 5) Thank you. Thank you for having us, Senator. We appreciate the opportunity to express our concerns and try to explain to you why there is concerns about the integrity of the election. There was some conversation earlier about the integrity of the election-day registrant ballot. [LR127]

SENATOR AVERY: I need to have you spell your name for the record. [LR127]

GLENDA DeBRIE: Oh, I'm sorry. My name is Glenda, G-l-e-n-d-a, last name is DeBrie, D-e-B-r-i-e. [LR127]

SENATOR AVERY: Thank you. [LR127]

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GLENDIA DeBRIE: Okay. I guess my biggest concern about election-day registration is there is no way for us to know whether or not this individual has registered in another state and possibly voted an absentee ballot. Once a person that registered on election day puts that...or the poll worker puts that ballot in the box, there's no taking it out. With provisional voting it gives us the opportunity to look and see whether or not that person that voted is actually qualified. But if you do election-day voting or registration and voting, it would be very difficult to know which ballot to pull out of that box, you wouldn't be able to do that. That was something that you couldn't do. So as far as election-day registration, that's my main concern. Fortunately, in Buffalo County--I am the election commissioner in Buffalo County--most of our schools do election day or do registration with their students. So we don't have a lot of people that don't get registered if they want to be registered. The schools are very progressive in trying to make sure that their students have the ability to register, they bring it up. Our radio stations, our TV stations, the newspaper, we put notices in the paper. And I don't really think there are that many people that aren't informed. There's times where the campuses actually have voter registration on campus with more than one party, has to be two parties that do that. My only problem...and I think it's a problem of somewhat a problem for all of us, there's the integrity of the election. As I said, if that ballot is deposited in the box from someone that had registered that day, what's to keep that person from getting an absentee ballot from their home state and we have no way of knowing that? So they get an absentee ballot there, they come here, they register to vote here. There's no time to check on that because we're talking election day, and that ballot goes in the box, and how do we know whether they voted more than once? I guess that's my biggest concern about the whole situation. I'm in favor of whatever it takes to make our elections smooth, but I also have one precinct that has 15 ballot faces. I train my poll workers before every election, not just the primary and the general elections. We have training every time we have an election. And their told what was required of them. They've got...they understand the provisional balloting. They understand why we do it provisionally. If there's somebody that hasn't been registered, we go back, we check files. Possibly the person had moved. We check everything we can possibly check to allow that person's vote, but if they're not

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eligible, they're not eligible and we can hold that ballot and never...you know, we don't put it in the box, in other words. It doesn't take us 15 days to go through provisional ballots. We usually are finished with that...I think the biggest election...I've been there for 15 and a half years, and the biggest election we've ever had was the last general election, the presidential election. And we were three days going through our provisional ballots. The Secretary of State is good about keeping us updated on people that have transferred out of state. We get envelopes from them and notices from other states when people have moved to another state. We go the same with our...with people that have moved out of Buffalo County. The communication between the Secretary of State's Office and the election officials, I believe, is very good. They work very hard and we all do too. Our main goal for all of us is to do the best we can on election day. And if you've put a ballot in the box that possibly shouldn't be there, then are we doing the best that we can do? That's my big concern. It is a concern. I don't know how it can be fixed. I don't know. I can't think of any reason that we would take just basically someone's word without a way of going into our system to see whether that person is a legal registrant or not. There again, I guess my big concern is the integrity of the elections and I know all of us try very, very hard to do what's right. And this, to me...I'm going to mention Iowa and Minnesota, also, mainly because I did go on a fact-finding trip with Adam to Iowa with some other officials. My biggest concern there is that they don't have everything on the ballot. I mean, the schools do their ballots, they do their elections. The cities do their elections. They don't have everything that we have on our ballots, so they wouldn't have the ballot splits that we have in our elections. So it would be much easier if we had the same thing, but it isn't that way. We have everything that pertains to each precinct in that ballot. So school districts, NRDs, public power districts, ESUs, we've got a cross section going from one precinct into another which makes our ballots much more complicated than what it is in Minnesota or Iowa. So, like I said, my big concern is the integrity of the voting. [LR127]

SENATOR AVERY: Thank you. [LR127]

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GLEND A DeBRIE: You're welcome. [LR127]

SENATOR AVERY: Just one quick question. You're the only testifier who raised the issue of voter fraud. [LR127]

GLEND A DeBRIE: Um-hum. [LR127]

SENATOR AVERY: Usually when we discuss this issue and I've heard it discussed in a lot of different places and different states, the voter fraud is the number one problem that people raise. You do know that all states have heavy penalties for voter fraud? [LR127]

GLEND A DeBRIE: Right. [LR127]

SENATOR AVERY: And in particular the impersonation that is in-person voter fraud. [LR127]

GLEND A DeBRIE: Right. [LR127]

SENATOR AVERY: And you may not know this, but in those states that do have same-day registration, a number of studies have been done to try to find out if there has been an increase in voter fraud that accompanies the implementation of election-day registration, and there has been no evidence anywhere in the country that this is the case. And I would add one other point that even if you did have some isolated instances of voter fraud, somebody voting here in Nebraska that should have been voting in Iowa, that's not going to turn the election in most cases. [LR127]

GLEND A DeBRIE: No, I agree with that. [LR127]

SENATOR AVERY: It would take massive systematic organized fraud for it to make a

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difference. [LR127]

GLENDIA DeBRIE: I agree with that, but I think the system that we're currently using at this point, the registration program that the state has helped us obtain, I think we can keep a pretty solid handle on what is going on. If I have a person that registers on election day go to their polling place or the polling place that they think they should be at and they receive the wrong ballot, then that's still the wrong ballot, they shouldn't have voted that. It depends...we have anywhere from 3 up to 15 different ballot faces depending on the election, so. [LR127]

SENATOR AVERY: I agree with you. That's a serious problem for Nebraska that not all states have. [LR127]

GLENDIA DeBRIE: Yes, it is. Yes, it is. And I honestly believe it would be somewhat of a nightmare for us. And I'm not complaining because it's the only sensible thing that I can think of is if we go to election-day registration, I would think that we would be much more comfortable if they came to our office and we could send them to the correct place. The street file isn't going to work. I'm in a growing community. We have new subdivisions all the time, and it's not always...you can't tie a name to the address, as was suggested before. So, sure, it would be more difficult and if someone could convince me that that's the way to go without having major problems and not causing a problem with the integrity of the election, then fine. But I need somebody to convince me that we won't have those problems. I deal with the election...like I said, I've been there for quite some time, and we...as all election officials do, I believe, in Nebraska, we go out of our way to do everything we can so the voters do know when the elections are, do know when registration deadlines are. In fact, I had a special election that crossed county lines in September, and there was almost 300 people from another county, there was 12 people from another county. And I actually wrote letters, send a copy of the ballot language, and sent absentee request forms to each one of those people to make sure that they knew about this election and had the opportunity to vote

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absentee if they wished. So I feel strongly about elections, but I don't want to see them corrupted in Nebraska. [LR127]

SENATOR AVERY: Thank you. Any questions from the committee? Senator Giese. [LR127]

SENATOR GIESE: Thank you, Chairman Avery. Ms. DeBrie, then can you tell me with 100 percent certainty that every ballot that goes into the box now is legitimate? [LR127]

GLENDA DeBRIE: I feel it is. Yeah, I do. Yes, I do. [LR127]

SENATOR GIESE: Okay. [LR127]

GLENDA DeBRIE: Now, exception is the provisionals and they're put in a special envelope so you can sort them out, but all ballots including provisionals go in the ballot box, but it is in an envelope so that the provisionals are separated once they get to our office. [LR127]

SENATOR GIESE: Thank you. [LR127]

GLENDA DeBRIE: You're welcome. [LR127]

SENATOR AVERY: And you can do the same thing with EDR ballots. [LR127]

GLENDA DeBRIE: It's not ever been brought up. The way I understand it, you put it in the ballot box. But, yeah, that would be great. I mean, if we had to do this, I'd much rather see it done that way than I would just dropped in the box because if that person isn't eligible, then there's no way you can pull that vote. [LR127]

SENATOR AVERY: Yeah, yeah. Thank you. [LR127]

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GLEND A DeBRIE: Thank you. [LR127]

SENATOR AVERY: Great. Anyone else? Okay. Seeing no other testifiers, I will close the hearing on LR127. Invite you all back at 1:30. We have two other resolutions to consider, LR163, LR126. We will begin promptly at 1:30. Thank you for coming, appreciate your attention. [LR127]