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Government, Military and Veterans Affairs Committee
January 30, 2014

[LB676 LB747 LB778]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 30, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB676, LB778, and LB747. Senators present: Bill Avery, Chairperson; John Murante, Vice Chairperson; Dave Bloomfield; Tommy Garrett; Russ Karpisek; Scott Lautenbaugh; Jim Scheer; and Norm Wallman. Senators absent: None.

SENATOR AVERY: Those of you who were not here earlier, we are running a little bit late because of the meeting of the Executive Board. We had three bills that we had to hear in one hour and I think that that's pretty hard to do. Maybe we can do that today, Senator, although I doubt it. Anyway, welcome to the Government, Military and Veterans Affairs Committee. Before we start on our agenda which, by the way is posted outside the room, and that is the order of bills that we will follow. Let me introduce my colleagues on the committee. Starting on my extreme right here, Senator Tommy Garrett. Senator Garrett is from Bellevue. And next to him is Senator Dave Bloomfield from Hoskins. And next to him, sort of, is Senator John Murante who is the Vice Chair of the committee. He is from Gretna. On my right is Christy Abraham who is legal counsel for the committee. And I am Bill Avery, Chair of the committee, and I represent District 28 here in Lincoln. And you're in my district now, Senator. Senator Russ Karpisek is on my left, he is from Wilber. Senator Norm Wallman will be here in a few minutes, I'm sure. He is from Cortland. And Senator Jim Scheer from Norfolk is less there. And on the end is Sherry Shaffer who is the committee clerk. If you wish to testify for or against any of these bills, we ask that you fill out this green sheet of paper, provide the information requested in as clear a print as you can provide, and give that to Sherry and she will enter the information into the record. If you have material that you would like for us to...additional material that you would like for us to look at or a copy of your testimony, we ask that you provide us with 12 copies. If you do not have them, we have a page who is over there and his name is Colton Wolinski. And Colton will get copies for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

us if you do not have your 12 copies. If you wish to record your support for or against any of these bills but do not wish to testify, there is another form that we ask you to sign into. And those are available on tables at each entrance to the room. I'm going to ask you to observe some rules. Number one is, turn off your cell phones, any electronic devices that make noise. We ask also that you observe the kind of rules of normal, polite behavior. Do not cheer for or against, do not demonstrate for or against any of these bills. These are Senator Chambers' bills and they tend to be a little bit controversial. I wouldn't say that about these two, necessarily. But we want to maintain order and decorum so, please observe that. We would...we have a procedure. The introducer makes the initial statements on the bill and that is followed by a period of time when the opponents...proponents are allowed to speak. Then proponents are...then opponents are allowed to speak. And then neutral testimony is taken. Closing remarks are reserved for the senators. We will be following or using the light system. The green light is worth four minutes. And during that time, you have four minutes to make your comments. When the amber light comes on, you have one more minute to wind up your testimony. And when the red light comes on, you should be finished. We would ask you to pay attention to what is said prior to you taking the stand because sometimes you can be repetitive. If someone else has already made your arguments, you need not do it because it is in the written record. And I am pleased to recognize that Senator Lautenbaugh is joining us today. He is here from Omaha, District 18?

SENATOR LAUTENBAUGH: Yes, sir. [LB676]

SENATOR AVERY: All right. The order of business: LB676, and followed by LB778, followed by LB747. We will begin with LB676 and invite Senator Chambers to open on that bill. Welcome, Senator Chambers. [LB676]

SENATOR CHAMBERS: Thank...it's good to be here. Mr. Chairman, members of the committee, I'm Ernie Chambers, I represent the 11th Legislative District in Omaha. And this bill is designed to do some tweaking--which is a word I don't like but, anyway,

Transcript Prepared By the Clerk of the Legislature
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Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

people understand that--some minor adjustments to existing law. And rather than read the language of the statute... [LB676]

SENATOR AVERY: Excuse me, Senator. [LB676]

SENATOR CHAMBERS: Yes. [LB676]

SENATOR AVERY: We do know you, but would you please spell your name for the record? [LB676]

SENATOR CHAMBERS: Yes. A-q-r-l-m-z-y. It's spelled differently than it's pronounced but the way...I'll spell it the way it's pronounced. C-h-a-m-b-e-r-s, my last name. E-r-n-i-e, my first name. [LB676]

SENATOR AVERY: Thank you. It's a formality. [LB676]

SENATOR CHAMBERS: And now, since you're going to be such a stickler, really that's not correct. Chambers is my first name. That's the name I had when I came into the world. Ernie is my last name because that was bestowed upon me last. But I'm trying to go along with the program to the extent that I can. This bill, rather than being read by me, will be summarized. But any questions you have that you may want to ask for clarification, I will answer them. One of the parts of the bill will require candidates and petition circulators to file an end of the year bank statement of their campaign account. It simply means that whatever the standing is of your account at that time, you'll obtain a statement from your institution where the account is and file it along with other things that must be filed at that time. There are dormant accounts. I even had one from when I ran many years ago. In fact, what was in it wound up going to the Attorney General's Office or wherever it goes when it's unclaimed. So it would make it possible for the Accountability and Disclosure Commission to monitor these inactive accounts. But it would also keep the commission apprised of what's going on with live accounts.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

Because there is no requirement like that now, a person could be taking money out of the account inappropriately, using it for purposes that are not allowed under the law. And it's not discovered as time is going along and bad things can accumulate and happen. And that's not theoretical, that has happened. A second aspect of it would prohibit personal loans/borrowing from campaign accounts. There are certain malefactors who will take that campaign money, misuse it, and when they're caught they will say, I was borrowing it from my account. My committee loaned me the money and I intend to pay it back. That will be prohibited by saying there will be neither personal loans extended or any borrowing. It raises the commission's ability to fine from \$2,000 to \$5,000. These are suggestions made to me. And I'm presuming that when the supporters speak for this bill, the rationale will be given. But that doesn't seem an unreasonable amount to me. Otherwise, I would not have even suggested it and supported it. I would have been willing to present it to give an opportunity to defend it and justify it. The final would require restitution, in appropriate cases, and the bill mentions those to whom restitution may have to be made. And you can find that but if you want me to find it, I will. And here's a little text material. If auditors have access to a year-end bank statement, the plundering of campaign funds could easily be detected and could not continue over a period of years, as in the case of former Senator Council. Dormant accounts of former candidates/elected officials cannot be monitored by the commission without a yearly bank statement. And many such accounts do exist. Prohibiting personal loans/borrowing from campaign funds will prevent a candidate--when caught in the act of plundering--from alleging that funds were merely "borrowed" with the intent of repaying them. Increasing the maximum fine for abuses related to campaign funds accords more realistically with the nature of the offense and may have a greater deterrent effect. Public confidence may be bolstered by these provisions. And for the record, I read from my statement of intent. So should somebody get a transcript, they won't have to try to hunt down the statement of intent. That is my presentation. If you have any questions you want to put to me, I will answer them. If you'd want to wait until I close, after you've heard those who speak for and against, I'll do that. Whatever is your pleasure. [LB676]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR AVERY: Thank you, Senator. Let's try questions now. Senator Bloomfield.
[LB676]

SENATOR BLOOMFIELD: Thank you, Senator Avery. [LB676]

SENATOR CHAMBERS: Oh, except for Senator Bloomfield. [LB676]

SENATOR BLOOMFIELD: Senator Chambers, I may be down testifying at your committee by the time you get to close. So I'm going to ask you a question now. This is not your intent to prevent a candidate from loaning his campaign money, is it? [LB676]

SENATOR CHAMBERS: You can't take money out. [LB676]

SENATOR BLOOMFIELD: Out, but I could... [LB676]

SENATOR CHAMBERS: Once it's in that account, you can't take it out. [LB676]

SENATOR BLOOMFIELD: But you could take it out to repay a loan that you made to that campaign, is my question. [LB676]

SENATOR CHAMBERS: Well, see, I don't campaign so I'm having trouble. You mean I, as a candidate, will put my money into the campaign account? [LB676]

SENATOR BLOOMFIELD: If you're running short when you're campaigning and you have a few dollars in your own savings account, you can take that out and loan it to the campaign. [LB676]

SENATOR CHAMBERS: Okay. [LB676]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR BLOOMFIELD: You're not, in any way, trying to eliminate that process, are you? Or to eliminate the possibility of paying yourself back? [LB676]

SENATOR CHAMBERS: Out of the campaign funds? [LB676]

SENATOR BLOOMFIELD: Yes. [LB676]

SENATOR CHAMBERS: I would rather that the experts address that... [LB676]

SENATOR BLOOMFIELD: Okay. [LB676]

SENATOR CHAMBERS: ...because it's beyond my... [LB676]

SENATOR BLOOMFIELD: Okay. [LB676]

SENATOR CHAMBERS: ...realm of not only... [LB676]

SENATOR BLOOMFIELD: That's fine. [LB676]

SENATOR CHAMBERS: ...knowledge, but I hadn't even contemplated such a thing happening. Okay. [LB676]

SENATOR AVERY: That is a rather frequent practice where you're running short on fundraising and you make a loan to your campaign. And then with the idea that later on down the line when fundraising improves, you might be able to pay yourself back. [LB676]

SENATOR CHAMBERS: All right. Well, in my situation--not meaning to boast or anything--I reject contributions but some people insist on it. And I never spend all that they give me so I donate whatever was in there to a charity. And that's why...I'm not

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

trying to be evasive. I'm just not familiar with some of these practices. [LB676]

SENATOR AVERY: Would that charity, in any way, be designed to protect and preserve mountain lions in this state? [LB676]

SENATOR CHAMBERS: Well, I have a charity before that. And I'm taking legislative action to take care of the rest of it. [LB676]

SENATOR AVERY: Just tweaking you. Any additional questions from the committee? [LB676]

SENATOR CHAMBERS: Thank you. [LB676]

SENATOR AVERY: Thank you, Senator. We will now take proponent testimony on LB676. Proponent testimony. Welcome, sir. [LB676]

JACK GOULD: (Exhibit 1) Senator Avery, members of the committee, my name is Jack Gould, that's J-a-c-k G-o-u-l-d. And I'm here representing Common Cause Nebraska. I feel a little more comfortable knowing that Senator Chambers will close so that I can pass questions on to him if I get in trouble. It's always good to have Senator Chambers at your back. LB676 is really a crucial bill in the sense that the credibility of the Legislature, the credibility of campaign funds, is really at stake. As you have heard, the Accountability and Disclosure Commission requires disclosure of contributions over \$250 and expenditures over \$250. And that is cross-checked by Accountability and Disclosure. The problem comes in when we have contributions under \$250 and the fact that the balance is not cross-checked. It's reported but not cross-checked. This leaves a lot of room for some problems. I think the key is that this bill would provide, once a year, your December bank statement which would show the balance that is actually in the account. And this is a reasonable request and it doesn't involve a great deal of paperwork. It's simply a way for the auditors to be able to cross-check that element

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

along with the other things that they do. The other factor that comes into play is the question of the loans. It does make it illegal to borrow money and use it for other things. I know you...Senator Bloomfield was asking the question. The borrowing, as I understand it, for repaying yourself is legitimate as long as the money was used for the campaign. But it would prevent buying a television set or something of that sort with your campaign money, taking a loan out, that kind of thing. The fact that Senator Chamber's brought up, the dormant account, this is something that I think Frank Daley will talk about here shortly. But it is a big problem. There are many accounts that are sitting for 10 years, 15 years. When they are not closed out, it usually ends up that someone dies or someone decides that the account has to be closed out. But there's been no check on the balance for 10 or 15 years. The way this would work, you are still under the law. Even though it's a dormant account, you must file a statement showing no money in and no money out under \$250; that's still required regardless. But this would give that total amount, the balance in the account, an opportunity for the auditors to be able to check that on a yearly basis so they can see if there's large changes in the money. Now I know, again, this is a sensitive issue. And I know that many of you...I often bring sensitive issues. But it's one that I think is vitally important because over the last eight years, we really have had two legislators that have been convicted of crimes regarding campaign money. And I think it's fair to say that had the balances been reported yearly, that those violations would not have taken place. Accountability and Disclosure is extremely good about picking up those kind of things. And they would have, if they'd been able to see the balance, they would have reported that to the individual and said, hey, look, there's something wrong here. And you would have had an opportunity to correct it before it became a problem. But when you have someone taking money for a five-year period and it's always under the disclosure amounts, then you begin to see that there's a flaw in the system. And Accountability needs to have this legislation in order to provide a good opportunity to see what's really in the accounts. The fine's raise from \$2,000 to \$5,000 and the requirement for restoration, I think these are things that we all recognize are important; certainly, the restitution part of it. Again, I want to just restate the fact that it's...this is important to the integrity of this body. And

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

this is the committee that oversees how campaign funds are used. And so, really, it's your responsibility to ensure that this system is trusted by the public, and it remains in good order, and respected. Thank you. [LB676]

SENATOR AVERY: Thank you, Mr. Gould. Questions from the committee? Senator Murante. [LB676]

SENATOR MURANTE: Hi, Jack. Welcome back. I asked you this question a couple of months ago when we talked about this the first time. [LB676]

JACK GOULD: Right. [LB676]

SENATOR MURANTE: And I'll ask it again. If we pass a law that forces candidates to submit to Mr. Daley at NADC a bank statement identifying everything that has gone into and come out of a campaign fund over the course of a year, why are we...why would we continue to have the requirement that we have these tedious campaign statements that are about as fun as filling out as IRS forms? Why do both is, I guess, what I'm saying. [LB676]

JACK GOULD: Well, I...first of all, I know that Frank Daley is going to speak to the issue. [LB676]

SENATOR MURANTE: Uh-huh. [LB676]

JACK GOULD: And so I don't want to steal his thunder here. But I know one of the problems is, the periodic reporting is important because you, as a candidate, want to know what the other candidate is doing. And so that regular reporting process is something that would have to be maintained. [LB676]

SENATOR MURANTE: Uh-huh. [LB676]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

JACK GOULD: Now if you are willing to support the idea of reporting everything, I mean, I would certainly be in favor of that. It's just the periodic reporting... [LB676]

SENATOR MURANTE: Sure. [LB676]

JACK GOULD: ...so if we were to file bank statements regularly so that your opponent could see how much you had and how much you spent, I would be very much in favor of that. [LB676]

SENATOR MURANTE: I would just... [LB676]

JACK GOULD: Yeah. [LB676]

SENATOR MURANTE: ...from the perspective of a candidate, if you're asking me which is more burdensome... [LB676]

JACK GOULD: Yeah. [LB676]

SENATOR MURANTE: ...so go on your bank's Web site and click a date... [LB676]

JACK GOULD: Right. [LB676]

SENATOR MURANTE: ...period and have a bank statement developed, print it out, and give it to Frank Daley or go through his...these forms which are not at all fun to deal with and take...I can get you the bank statement in about 30 seconds. It takes me a couple of weeks to figure... [LB676]

JACK GOULD: Yeah. [LB676]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR MURANTE: ...to file all of the campaign statements. [LB676]

JACK GOULD: Could...would you be in favor of regularly filing? I mean, like respecting the dates but just filing... [LB676]

SENATOR MURANTE: Sure. [LB676]

JACK GOULD: Okay. No. I...sounds good to me. You've got to convince Frank, that's the... [LB676]

SENATOR MURANTE: I think we've got a few people on this committee we'd have to convince as well, but. [LB676]

SENATOR AVERY: One of them wants to ask a question next. [LB676]

SENATOR MURANTE: Thank you. [LB676]

SENATOR AVERY: Senator Lautenbaugh. [LB676]

SENATOR LAUTENBAUGH: Thank you. And hello, Mr. Gould. I guess we're having a conversation through you. You just read the bill, though, probably as I do. And that's just requiring a statement at the end of the year that shows the balance at that time, correct? [LB676]

JACK GOULD: Correct. [LB676]

SENATOR LAUTENBAUGH: Not some annual statement of the whole account. [LB676]

JACK GOULD: No, no. [LB676]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR LAUTENBAUGH: Okay. [LB676]

JACK GOULD: No, it would just...the most important thing is a bank statement of the balance. That's really what they want to look at. The actual filings during December would be there, though. [LB676]

SENATOR LAUTENBAUGH: Right. [LB676]

JACK GOULD: I mean, I don't try to deceive you. But the balance would be the key thing for the auditors. [LB676]

SENATOR LAUTENBAUGH: Okay. So we're reading it the same way. Senator Murante and I can talk outside the hearing. [LB676]

JACK GOULD: I like what he's saying. [LB676]

SENATOR AVERY: Senator Bloomfield. [LB676]

SENATOR BLOOMFIELD: Thank you. You ask for restitution. [LB676]

JACK GOULD: Yes, sir. [LB676]

SENATOR BLOOMFIELD: If restitution is made, where does the money go? [LB676]

JACK GOULD: Back into the account. And then the account can...go ahead. I'm sorry. [LB676]

SENATOR BLOOMFIELD: And if we by that time found that person guilty, does that account still stand? And what happens to it at that point? [LB676]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

JACK GOULD: Well, it still would be in possession of the candidate. But the candidate at that point, if they're going to close out the account which I would assume they would do, the money could be donated to a number of charities. It could be donated to the political party. I mean, the same options would be there. [LB676]

SENATOR BLOOMFIELD: Okay. [LB676]

JACK GOULD: But the money...the idea is... [LB676]

SENATOR BLOOMFIELD: Well, I just wanted to make sure... [LB676]

JACK GOULD: Right. [LB676]

SENATOR BLOOMFIELD: ...that it wasn't going back into... [LB676]

JACK GOULD: Right. [LB676]

SENATOR BLOOMFIELD: ...a fund that the candidate had no control over or that the people that donated it maybe wouldn't have a shot at getting part of it back. [LB676]

JACK GOULD: Exactly. No, that's exactly right. [LB676]

SENATOR BLOOMFIELD: Okay. Thank you. [LB676]

SENATOR AVERY: Mr. Gould, do you have any insight as to how this restitution would work? Somebody determines what the amount of the restitution is. Would that be the A and D Commission? [LB676]

JACK GOULD: Well, in the past, I mean, the two criminal convictions, it was determined by the Attorney General's Office as to how much money. It required an investigation into

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

the actual account which they took. Accountability and Disclosure can order an audit if they realize...if they feel there's a major violation. But I think in both of those cases, it wasn't something that Accountability and Disclosure pulled up because they really had no access. I think Frank would say both cases, the reporting was excellent. I mean, money in and money out looked good. There was no violation, there was no problems with Accountability and Disclosure reporting. The problem came when outside individuals reported a problem to the Attorney General's Office. And that investigation revealed the amount of money missing and then restitution would be required. Now I'm sure that if Accountability did an audit and found the problem, they could ask for restitution as well, under this bill. [LB676]

SENATOR AVERY: Actually, I read in existing law that the commission would be responsible for making that determination. [LB676]

JACK GOULD: Okay. Thank you. [LB676]

SENATOR AVERY: Any other questions? [LB676]

SENATOR GARRETT: I have a question. [LB676]

SENATOR AVERY: Yes. [LB676]

SENATOR GARRETT: Thank you, Senator Avery. The fines going from \$2,000 to \$5,000. Is that meant to be a deterrent? And is that the same fines the NADC would charge against other violations? [LB676]

JACK GOULD: I think the reason that the fine is increased is the \$2,000 fine is almost 20 years old. And there was a time when that really was a deterrent, you know. [LB676]

SENATOR GARRETT: Uh-huh. [LB676]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

JACK GOULD: So I think the increase to \$5,000 is simply recognizing inflation and saying, well, there has to be something there that is meaningful. And so, I think that explains the \$5,000. [LB676]

SENATOR GARRETT: Okay. And would that be per offense, because a lot of times violations are...there's more than one violation. [LB676]

JACK GOULD: Multiple. I think that would be up to Accountability and Disclosure. I mean, this is the maximum fine they could charge. Rarely...I mean, most fines that they levy are not even \$2,000. They're usually less than that on whatever the violation might be. But this would give them the opportunity of a \$5,000 fine which I think, in some cases, would be a deterrent. [LB676]

SENATOR GARRETT: Okay. Thank you. [LB676]

SENATOR AVERY: That \$5,000 would be the upper limit. [LB676]

JACK GOULD: Right. Right. [LB676]

SENATOR AVERY: Right. And the commission can decide to do something lower. [LB676]

JACK GOULD: Right. [LB676]

SENATOR AVERY: And they have a range of options. They can... [LB676]

JACK GOULD: And this committee could decide. [LB676]

SENATOR AVERY: They can pick one option to hold the person accountable or they

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

could do two or three or all of them if they want. [LB676]

JACK GOULD: Correct. [LB676]

SENATOR AVERY: Yeah. Okay. Any more questions? I don't see any. Thank you, Mr. Gould. [LB676]

JACK GOULD: Thank you. [LB676]

SENATOR AVERY: Any other proponent testimony? Welcome, Mr. Daley. [LB676]

FRANK DALEY: Thank you, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Accountability and Disclosure Commission and I'm here to express the commission's support of LB676. Perhaps I can start by just responding to some of the questions that were posed. I know Senator Bloomfield has left us but to respond to his question, the bill does not affect the ability of a candidate to make a loan to his or her own committee and then to have the committee repay that loan when it's able to do so. What the bill does is, it prohibits the committee from making a loan to the candidate. And that's the idea behind this. Second of all, with regard to these bank statements, what the bill is looking for is a bank balance as of the end of the year. So we're not looking for all of the bank statements for the entire year showing all of the transactions. We're looking for a bank balance as of the end of the year or close to the end of the year. And the reason for that is, candidate committees...in fact, every committee, files a campaign statement...an annual campaign statement with a closing date of December 31 or it files a post-general election campaign statement with a closing date of December 31. And that way, we can look at the committee balance and compare it to the bank balance and see if they're reasonably close or materially close, that sort of thing. The next question I heard is, what about this restitution situation?

What is that all about? Well, certainly, what seems to be just is not simply to charge civil

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

penalties if we find that there is a violation. There are a number of situations in which a person or a committee or a governmental entity has been harmed by the actions of someone who is subject to the Accountability and Disclosure Act. Currently, we can assess a civil penalty but the entity or person is saying, well, when do we get our money back? And the commission is forced to say, we can't help you with that. So let me give you some examples. If a treasurer of a political action committee were to take money illegally or use money illegally from the committee, besides finding there is a violation and perhaps assessing a civil penalty, the commission would also determine the amount of the loss and, as part of its order, could require that person to repay the committee. Let me give another situation where that might occur. If we're talking about a situation where, perhaps, a county board member has used the county dirt-moving equipment to do some dirt work on his or her property and has made no payment to the county, they have essentially illegally used county property for their own personal benefit, that might be a situation in which the commission could determine the value of the use of the equipment and require that person to repay the county the value of that. The next question I heard is the \$5,000 civil penalty. Mr. Gould was correct, the last time the civil penalty amount was touched was in 1999. Currently, the commission can assess a civil penalty of anywhere from \$0 to \$2,000 per violation. And LB676 would permit the commission to assess a civil penalty of \$0 to \$5,000 per violation. I do want to emphasize, this is not the late filing fees that are typically assessed for failing to timely file a campaign statement. Those are still set at the rate of \$25 per day and the bill doesn't change that at all. So let me go back to this whole concept of the bank statement and tell you why I think it's important and what it really means to the commission. For the purposes of the commission, the main benefit is to allow the commission to reconcile the cash balance on the campaign statement with the cash balance that's shown by the bank on an annual basis. And in most cases, that allows the commission to see that, okay, maybe there's something that hasn't been reported properly. Maybe there's some bookkeeping process that the committee has that's not working out very well and so things aren't being accurately recorded. This provides us with the opportunity to bring it to the attention of the committee so an amendment can

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

be filed and so that we have good and clear and accurate campaign statements. And in fact, most of the time, that's what's going to happen is that we're going to see some minor thing that needs to be corrected that's easier to do if you're doing it on an annual basis looking at a year's worth of records than the current situation now where the committee is trying to dissolve, there's a real discrepancy, we're looking at 4, 6, 8, 10, sometimes 20 years' worth of records trying to figure out the discrepancy. And finally, I guess, at the end, if you've got someone that is attempting to misuse campaign funds, perhaps the fact that they have to submit a statement once a year showing the bank balance will deter that conduct. And if it doesn't, perhaps the commission will have the ability to see that conduct on a more timely basis. Thank you, Senator Chambers, for bringing LB676. And I thank the members of the committee for the opportunity to testify today. [LB676]

SENATOR AVERY: LB676. [LB676]

FRANK DALEY: LB676. Thank you. [LB676]

SENATOR AVERY: Senator Scheer has a question. [LB676]

SENATOR SCHEER: Thank you, Senator. Frank, a couple of things. On the fine, are those...are they to the campaign committee or would they be to the candidate? [LB676]

FRANK DALEY: The answer is an unequivocal "it depends." [LB676]

SENATOR SCHEER: Okay. [LB676]

FRANK DALEY: And here's what it depends upon. It depends upon who commits the violation. Some violations are committee violations. Some violations are candidate violations. So if it is, for example, a failure to file a campaign statement, not just late but a complete failure to file a campaign statement, in that case, we would probably be

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Government, Military and Veterans Affairs Committee
January 30, 2014

charging the committee and the candidate. And if the committee were able to pay, would accept it from the committee. On the other hand, if it's something whereby the candidate is misusing campaign funds, using them for a fully personal purpose and not for a campaign purpose or some purpose authorized by law, then we would be looking to the candidate for that. [LB676]

SENATOR SCHEER: Follow up. On the fines, where do those dollars go? [LB676]

FRANK DALEY: Currently, those dollars go into the Accountability and Disclosure cash fund. [LB676]

SENATOR SCHEER: Okay. So they go to your department, exclusively. [LB676]

FRANK DALEY: They do. [LB676]

SENATOR SCHEER: Okay. So I...just to clarify, using an example that was in earlier testimony, if somebody--which happens, I think, probably more often than not--that the candidate is the person that also does the filing, I would imagine, in a great many times. So if they have done something inappropriately and it is caught and so then we tell them they have to put restitution back into the campaign fund, so they put the money back in. But yet, then, the campaign ends up paying their fine. [LB676]

FRANK DALEY: Uh-huh. [LB676]

SENATOR SCHEER: I mean, it really doesn't affect the candidate. [LB676]

FRANK DALEY: And again, those are the types of things we're concerned about when we decide who the investigation or the formal action ought to be against. [LB676]

SENATOR SCHEER: But, I guess, in my interpreting your answer and I may have

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

missed it... [LB676]

FRANK DALEY: Uh-huh. [LB676]

SENATOR SCHEER: ...so I'll be more specific. The dollars for fines can be paid by the committee for both the committee and/or the candidate. Is that correct? So if you fine the candidate, their committee can pay that fine? [LB676]

FRANK DALEY: No. [LB676]

SENATOR SCHEER: Okay. All right. Then I misinterpreted that. Okay. The second one with the statements, how close are you going to be able to really determine that from the basis not a lot of campaigns would receive a lot of smaller donations or cash donations? And I think the threshold is what, \$250? And under \$250... [LB676]

FRANK DALEY: More than \$250 is or \$250 or more is reported, that's correct. [LB676]

SENATOR SCHEER: Okay. So a campaign may get a multitude of \$100s or \$25s or \$50s. Those aren't reported, they're just lumped. [LB676]

FRANK DALEY: Correct. [LB676]

SENATOR SCHEER: And your expenditures are only required as of a certain amount as well. So depending upon the campaign, you could have sort of a wide deviation that wouldn't necessarily show up in a statement. Would that be true? [LB676]

FRANK DALEY: Well, see, the thing is that some contributions are itemized. But even those that are not, are part of a total that's reported on the summary page of your campaign statement. [LB676]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR SCHEER: So the cash ones are included in that total amount? [LB676]

FRANK DALEY: That's correct. [LB676]

SENATOR SCHEER: Okay. And so your expenses as well then? [LB676]

FRANK DALEY: Correct. [LB676]

SENATOR SCHEER: Okay. Never mind. Moot point. [LB676]

FRANK DALEY: So theoretically, the second page of your campaign statement is kind of like your checkbook ledger. And it should come reasonably close to the ending balance on your final bank statement toward the end of the year. So what we would be looking for is something that's reasonably close because we understand there are going to be... [LB676]

SENATOR SCHEER: Sure. [LB676]

FRANK DALEY: ...checks and things that are in transition and so forth and so on. On the other hand, if we see a wide difference, that may be something where we're asking to reconcile it. It may mean there's no problem, it's just there are big checks that are still out there. [LB676]

SENATOR SCHEER: Okay. Okay. [LB676]

FRANK DALEY: And we figure those out and move forward. It may be that when we look through the campaign statement, we can see exactly what the problem is. The X, Y, Z PAC reported giving you \$1,000 and, for whatever reason, you neglected to report that. And so the solution to something like that is file an amended campaign statement that includes that transaction. And the balance is back where it should be. [LB676]

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Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR SCHEER: Okay. Well, thank you. I apologize because I wasted your time and the committee's because I should have done my homework. Thank you, Senator. [LB676]

SENATOR AVERY: More questions? Senator Lautenbaugh. [LB676]

SENATOR LAUTENBAUGH: Thank you, Mr. Daley, as always, for coming. I think we're maybe making something simple more complex than it is. And that's not Senator Scheer, that's everyone. The statement would never be a substitute for the disclosure we do now. There's no bank statement I've ever seen that breaks out the deposit by what's in the individual deposit nor would it disclose where the funds came from or how they were spent. [LB676]

FRANK DALEY: That's correct. [LB676]

SENATOR LAUTENBAUGH: It's just amounts on the statement. [LB676]

FRANK DALEY: That's correct. [LB676]

SENATOR LAUTENBAUGH: So if we just file bank statements with nothing else, that would be a step backwards in transparency. [LB676]

FRANK DALEY: What that would essentially do is, it would, in effect, throw out most of the campaign statement. I'd just have page 2 which is the ledger, if you will. [LB676]

SENATOR LAUTENBAUGH: So this bill seeks to give you a year-end statement so you can kind of compare the bottom line with the bottom line on a bank statement. But all the other disclosures of names, amounts, and expenditures are necessary for everything else you do. [LB676]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

FRANK DALEY: That's correct. [LB676]

SENATOR LAUTENBAUGH: But that's not on the bank statement. [LB676]

FRANK DALEY: That's correct. [LB676]

SENATOR LAUTENBAUGH: Okay. [LB676]

SENATOR AVERY: Any more questions? Senator Scheer. [LB676]

SENATOR SCHEER: Yeah, thank you, Senator. One more, Frank. With the bank statement--more of a technical question--that becomes public record, correct? [LB676]

FRANK DALEY: It does. [LB676]

SENATOR SCHEER: Okay. How are we protecting those committees as far as the bank account number... [LB676]

FRANK DALEY: Uh-huh. [LB676]

SENATOR SCHEER: ...and addresses or balances that would stop somebody from taking that information and making some type of a counterfeit check... [LB676]

FRANK DALEY: Uh-huh. [LB676]

SENATOR SCHEER: ...and utilizing it? [LB676]

FRANK DALEY: Well, we can do a number of things. And this can be done either by rule and regulation or amendment by this committee. Understand, what we're really

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

interested in is the balance. [LB676]

SENATOR SCHEER: Well, I understand. [LB676]

FRANK DALEY: Yeah. [LB676]

SENATOR SCHEER: But mine is a security question. [LB676]

FRANK DALEY: Yeah, and...right. And so having received something from the third party, that is the bank, that tells us what the balance is, maybe there's no particular reason to keep that record, only record the balance that's shown as of a specific date. [LB676]

SENATOR SCHEER: Okay. [LB676]

FRANK DALEY: And maybe we need to have some discussions as to whether or not that requires some specific amendment to the legislation that will permit the commission to do that. Or something that indicates that it's not a public record, though I'm not in favor of that. I'd rather either note the balance and return it, either shred it or return it to the candidate or committee. But again, if there's a way simply to get the balance from the third party, that is the bank, record that number, I don't see that there's any particular need for us to keep that particular record at that stage. [LB676]

SENATOR SCHEER: Okay. Well, I was just concerned about the information. [LB676]

FRANK DALEY: Sure. And I understand. I understand completely. [LB676]

SENATOR SCHEER: Thank you, Senator. [LB676]

SENATOR AVERY: So Mr. Daley, you're suggesting that we might want to put some

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Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

language in this bill that would protect the account number? [LB676]

FRANK DALEY: If there is some concern about that issue, then that might be a way to accomplish that. [LB676]

SENATOR AVERY: I'm not suggesting we don't trust you and your staff but with identity theft the way it is, you know, you might toss these in the trash. The next thing you know, somebody's account has been encroached upon. [LB676]

FRANK DALEY: I understand. I understand. [LB676]

SENATOR AVERY: Senator Lautenbaugh. [LB676]

SENATOR LAUTENBAUGH: I don't want to beat a dead horse but the commission wouldn't gain anything from knowing the actual account number, as long as you know the financial institution. If you needed to know more, you'd always have the tools to find it anyway... [LB676]

FRANK DALEY: Correct. Right. [LB676]

SENATOR LAUTENBAUGH: ...wouldn't you? So we could submit them redacted. [LB676]

FRANK DALEY: Yeah. The only thing is that I want to be sure that it's coming from...well, I want to be sure that it's actually ultimately from the bank. That's the main thing. [LB676]

SENATOR LAUTENBAUGH: Sure. But just the number redacted would satisfy all your purposes properly? [LB676]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

FRANK DALEY: Sure. That would be okay as well. [LB676]

SENATOR AVERY: So we couldn't sit down and fake a document and submit that? That wouldn't be good. [LB676]

FRANK DALEY: Could or whether that's the intent? [LB676]

SENATOR AVERY: All right. I don't see any more questions. Thank you, Mr. Daley. [LB676]

FRANK DALEY: Thank you very much. [LB676]

SENATOR AVERY: Any additional proponent testimony to LB676? Proponent testimony? Any opponent testimony? Neutral testimony? Senator Chambers. [LB676]

SENATOR CHAMBERS: Mr. Chairman, members of the committee, after this discussion, I'm glad I've never had to campaign. When I ran this time to get back into the Legislature, people in the community and outside of the community said that the person I ran against had money in the bank already--or wherever you put it--and promises of money, had had campaign fundraisers where there was a big container and people put money in it and no report had to be made of that. All kind of things. I called Mr. Daley because there were people in my community who were alarmed for me and I said, I'm not going to beg for any money. So I asked him about the requirements for setting up a campaign committee or whatever you call it. And I had read the book and got lost. So he told me what would be required. And I said, well, suppose somebody else wants to do this because I'm not going to do all this stuff? He said, well, if you had this committee--and I might have added to it for my own purposes--you cannot direct them, you cannot veto what they do, you cannot meet with them, you cannot consult with them, and some of that I may have added. So I let these people know, you're free to establish this committee. Find out from Accountability and Disclosure what you have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

to do. I can have nothing to do with it whatsoever. I cannot talk to you about it. I cannot be apprised of what you talk about at your meetings. If you keep minutes, I'm not allowed to read those minutes. I, in other words, cannot do anything. And if you do anything that ought not be done, it's not on me, it's on you. I'm not going to tell you anything that you should or should not do. You get that information. And they got the information. There were some billboards. And even there, people were careful about what they put up because they showed one of me and one of the little poodle. And I'd approve of that for any reason. She deserved to be lionized. And...it sounded like a pun but it wasn't intended. Senator Avery and I are discussing mountain lions regularly. But to show you how careful I try to be because I don't want any comeback on me, I do my own income tax and it's not that difficult because I don't have that much. I realized a year or two after I'd filed that I had given a speech for which I was compensated and I didn't report it. So I wrote to IRS and told them about this and they sent me a form asking did...were you contacted by the state? No. By the IRS? No. And they indicated on there that if the answers to these questions are no--I don't even know how they phrased it but anyway--they said that the amount is so small, you don't even have to pay that amount. No notice would have been taken of it. But at the time I filled out that confession, I sent them a money order. I'm still waiting for them to return that to me. But that's how careful I try to be. I'm not saying that I'm more honest than anybody else. I'd rather not claim something that I can and avoid the aggravation than all these other things that you all are talking about. But if I were going to conduct a campaign, I can see where these questions would be very pertinent and you would want to cross every T and dot every I that you knew would be the case. Then based on what the two people who spoke in favor of this bill pointed out, they are able to tell if there is some legitimate mistakes or, even if they're not, you'd be contacted. They won't just drop the hammer on you right away. And you'll be given the opportunity to make the record clear. I told Mr. Gould that any of this kind of legislation that it was determined needed to be brought in and would serve a good purpose, I would bring it. But I would need help when it came to explaining it because I don't have experience with any of it. And then sometimes people give me compliments and they'll say, well, most people think that you're honest and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

there wouldn't be any motive you'd have because there's nothing I'd gain from any of this. And if you have any questions of me on that bill, I would answer them. But I tried to anticipate and cover the waterfront. [LB676]

SENATOR AVERY: Thank you, Senator. Any more questions? So you stay right where you are. We're going to end the hearing on LB676 and move right into LB778 and recognize Senator Chambers again. [LB676]

SENATOR CHAMBERS: Mr. Chairman, members of the committee, for the record, I'm Ernie Chambers, E-r-n-i-e C-h-a-m-b-e-r-s. I represent the 11th Legislative District in Omaha. This is a bill that I played a part in drafting. Some people refer to it by an acronym MECA, the Metropolitan Entertainment and Convention Authority. When I agreed to do this, I already had some concerns about the way MECA was functioning because I knew of an incident where a judge and members of the judge's family were given freebies, and that didn't seem right to me--by MECA--special places to park, reserved parking so other ordinary citizens might have to scramble but not the judge, and some prime seating. And I don't know why anybody in the world would want to go to the concert, as it was called, all that (inaudible) and so forth, but there's no arguing of tastes, reserved seating, other benefits. I was not aware that this operation was not subject to the Open Meetings Laws or to rules related to conflicts of interest that apply to other officials, whether elected or appointed, to outfits that spent literally millions of dollars of public money. When I saw recently where a lady was appointed as a member of the board who had the largest contract with that board of anybody. That failed the smell test with me, whatever kind of organization they claim to be. And I had written to the head of that board and I forget to whom else pointing out why that should not be. And when she had alleged that she lived within the area of Omaha where she'd have to live, but she had a house costing maybe 10 or 12 times as much in another county, it looked to me then like people were playing fast and loose. So I have indicated that my residency was questioned, and the World-Herald had put something in an article that cast aspersions on the lady who works with me. Had they not implicated her I would

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

have told them, if you think I don't live where I say I live, file a complaint and go to the county attorney and whatever the punishment is impose it on me. But because somebody who is innocent was involved, I broke my usual practice and justified myself. I sent them utility bills, phone bills, tax statements, insurance premium payments and statements, and pointed out if they check their own records, they'd see I had a subscription to the morning edition of their newspaper, such as it is, for more years than any of us could count. So then they backed off that. And I was talking to this editor. I said, why do you even want this article? If I'm not interested in it, why do you want it? He said, the article never should have contained that information, and had I been in town at the time it would not have been in the article. It was unattributed. There was no evidence or documentation. I said, well, it's done, so what. He said, we don't want that to be used in a campaign statement against you, and it cites the World-Herald as the authority for it because it was inaccurate, and it was inappropriate. So when I wrote to this MECA outfit, I said, just let the person document in the way that I documented. Naturally, I never got a response, not anything. So when I learned that there was interest in legislation that would require this organization to be subject to open meeting laws, to public records laws, and conflict of interest laws, that was right up my alley, right down my street. If I lived in a tree house, right in my tree house. And it was knocking on the correct door. So those who were interested showed me a draft of legislation. I sometimes on the floor will mention Occam's razor. It was so detailed. It went into specifics about what this organization would be doing, and I said, that's too complicated so I will come up with language that I think states what needs to be stated. And that's why you have the following in the bill. "Any entity jointly formed or constituted between a political subdivision and another entity..." That would mean once that political subdivision was there, if the other entity were another political subdivision, if it were an organization--however put together--they jointly formed an entity, they were covered. I wanted to be sure that in all that verbiage that was in the original draft, no matter how big a contract was between the city and contractor, say for building roads or whatever, that particular contracting party would not be covered by this in terms of revealing information that maybe was not the public's concern. The amount of the contract and all

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

things related to that are one thing. But going into the activities and operations of the contracting party is something else. I thought that a definition of this kind, by making the political subdivision the focal point and using another term that was general, that could cover any organization or operation of any description, kind, or variety, it would cover not only MECA. I understand that these kinds of operations exist other places. That's why I selected or came up with that language, and it didn't take long for me to do it. But I'm going to read again my statement of intent. It covers what I want to be sure is in the record. Then I'll answer any questions you have. Then I'll make a brief comment. For reasons easily grasped, laws addressing openness and transparency in government operations are known collectively as sunshine laws. Indeed, the Political Accountability and Disclosure Commission was popularly known as the Sunshine Commission. A famous judge, and I think it was Louis Brandeis but not being sure I just said, a famous judge opined regarding the most effective means of making judges--and this is my language--straighten up and fly right. Sunlight is the best antiseptic. The public spotlight on that judge and what he or she is doing was one of the best ways to keep judges toeing the line. Continuing, the bill was inspired by secretiveness of Omaha's Metropolitan Entertainment and Convention Authority, a quasi-governmental operation which is formed jointly with the city and whose members are appointed by the city council and the mayor. And it spends millions of dollars of public money. LB778 applies to any "entity," not just to MECA, that falls within its purview. Such an entity is jointly formed or constituted between a political subdivision and another entity. In a nutshell, LB778 extends to such entities, the reach of statutes dealing with open meetings, public records, and conflicts of interest. Exempted from public disclosure are "trade secrets and other proprietary or commercial information which would give advantage to business competitors." That was a concession to what I was told about the nature of the work that they do, concerts and things that they mention which somebody else may be competing with and so forth. I didn't have any interest in that, maybe others do. But the main interest that I have in covering would be the public's business which ought to be done in public. Some people were wondering about the way I described this entity, and I indicated that there's no pride of authorship on my part. If there's a better way to state it,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

and the better actually does cover what needs to be covered, and it is not so complex and meandering that it loses people, I'm not averse to that. So I've given my reasoning, what the bill does as clearly as I can. I'll answer any questions at this time. I will listen to the testimony and do the best I can in responding to whatever I feel needs to be responded to make my position clear or to give clarification if you think I can offer it.
[LB778]

SENATOR AVERY: Let me start by observing that it is often an argument for not pursuing this kind of legislation because MECA is a 501(c)(3), a nonprofit, and the Attorney General apparently has issued an opinion that MECA in particular is a 501(c)(3) and does not then...is not then required to disclose their records or to practice open meetings. What would be your response to that? [LB778]

SENATOR CHAMBERS: The statute determines the status of organizations. Maybe vis-a-vis the federal government 501(c)(3) status has a meaning, but the Legislature is entitled, as long as what it does is not in conflict with federal law, to describe the status of individuals, entities, organizations within its boundaries. And that's what this legislation is designed to do. And if the Attorney General's Opinion is thought to trump the law, I think I can call the attention of my colleagues to the fact that there had been more than one such opinion that legislators could not constitutionally receive expenses during the session. But I rejected that. I felt my reasoning was as good as his and better, and we went to court and won. At that time, Mr. Sokol was on the MECA board. He was, if not a mentor or a patron of Attorney General Jon Bruning, they were close enough together for the Attorney General as one hand to wash MECA's hand, where Mr. Sokol sat. And I'm saying this for the record because I think that's what happened. To me, the Opinion is not well reasoned, but I certainly don't think it would prohibit, and I don't know that there was an attempt to do that, the Legislature from taking action. But to get around that, what I consider nonsense, I'm offering legislation. And if MECA people think that it's unconstitutional, there is a remedy that they can seek by way of the courts, that I will not be deterred from taking action that I think is appropriate in the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

interests of the public just because the ones who benefit from things being the way they are saying, well, we don't like it and you can't do it. Well, yes, we can. And that's what I want us to do. [LB778]

SENATOR AVERY: Well, I have long argued that organizations like this, that essentially hide behind 501(c)(3) status that only exist for a public purpose, and they spend public money, they ought to be eager to open up their records. They ought to be eager to open up their meetings. Now, not everybody... [LB778]

SENATOR CHAMBERS: Are you asking me, or making a comment? [LB778]

SENATOR AVERY: ...agrees with me on that, but that's been my position. [LB778]

SENATOR CHAMBERS: As much as I could hear right because you begin...after you talk you begin to modulate more quietly. And I know modulate is not it. You speak less loud, and I don't hear it all. But from I got in the first part... [LB778]

SENATOR AVERY: My wife says I speak too loud. [LB778]

SENATOR CHAMBERS: Well, you're talking to me now, and I appreciate if you continue to speak at your regular... [LB778]

SENATOR AVERY: She calls me Foghorn Leghorn. (Laughter) [LB778]

SENATOR LAUTENBAUGH: Well, that was an unwise admission. (Laughter) [LB778]

SENATOR AVERY: Senator Scheer. [LB778]

SENATOR SCHEER: Thank you, Senator. Senator Chambers, in listening to the opening the only thing that I just wanted to clarify you made several comments in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

relationship to the appointee that was not a resident and should not have been appointed there. But they don't appoint their own...at least MECA does not appoint their own members. It's either the mayor or the city council. [LB778]

SENATOR CHAMBERS: Right. [LB778]

SENATOR SCHEER: So really that problem was more of the city's jurisdiction rather than MECA... [LB778]

SENATOR CHAMBERS: But the board could have acted to not accept that. There was action that they could have taken, and they said they did not want to do anything until they saw whether the city would do anything about that person. But the board can take action to remove a member. [LB778]

SENATOR SCHEER: Okay, thank you. [LB778]

SENATOR AVERY: Any other questions? Senator Lautenbaugh. [LB778]

SENATOR LAUTENBAUGH: Thank you, Senator Avery. And for clarity's sake I understand that the board is not subsidized by tax dollars anymore. The public funds we're talking about are of what source, that they currently expense? [LB778]

SENATOR CHAMBERS: Taxes and I don't know all of the sources of the money, but I understand some of the turnback money as it's called that comes back to pay off bonds would go through MECA. But there will be people who can answer all of those questions and there might even people from that organization. I don't want to misstate anything that's beyond my knowledge. [LB778]

SENATOR LAUTENBAUGH: That's fair. Okay. [LB778]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR AVERY: Thank you. Any more questions? I don't see any. Thank you, Senator. [LB778]

SENATOR CHAMBERS: And I will stay. [LB778]

SENATOR AVERY: You'll close? [LB778]

SENATOR CHAMBERS: Yes, I will. [LB778]

SENATOR AVERY: Okay. We are open to proponent testimony. Welcome back. [LB778]

JACK GOULD: (Exhibit 1) Senator Avery, members of the committee, my name is Jack Gould; that's J-a-c-k G-o-u-l-d, and I am here representing Common Cause Nebraska. I kind of want to start with a little bit of history. Back in 2010, Mayor Suttle went public with an offer that had been made to him by MECA in which he indicated multiple millions of dollars was to be given to the city if the mayor would drop his efforts to create a 2 percent entertainment tax. Now we're taking Mayor Suttle at his word that this took place. The fact is that there was no public meeting, there was a question as to how this was resolved, and it was thought that the vote on the multimillion dollar arrangement was to come from a phone vote which would be, by open meetings and open records laws, a violation. The concern over that forced Common Cause to file a complaint with the Attorney General's office arguing that an open meetings violation had taken place. In the decision, and there may have been decisions since then, but the decision that we received from the Attorney General's office after several months of consideration, was that no one really knew what MECA was. They weren't sure whether it was public; they weren't sure whether it was private. And this was coming from the Attorney General. At that point, MECA did say that they would abide by open meetings laws, but they made it clear that they were not required to follow open meetings laws. Since that time there have been a number of questions raised. One is the question of the \$35 million that is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

being proposed that would be city tax dollars for the construction of a new hotel. That would go through MECA. That's a considerable amount of money on top of many, many millions of dollars that have already...tax dollars that have already gone into MECA. That to us says the public should be able to see. They should be able to see where their tax money goes. Now the bill clearly identifies the fact that entertainment contracts are not included in the disclosure. We recognize the fact that there are competitive issues involved in those kinds of contracts. And for that reason they are exempt. I know people have been confused by that. And a lot of people think that somehow those contracts would be visible as well, but they would not be visible. It's the public money coming in that we're concerned about. It's also a concern when we saw one of the board members, as Senator Chambers pointed out, receiving a multimillion dollar contract for cleaning, and the person was sitting on the board. Now you'd say, okay, that clearly was wrong. But was even more wrong is when members of the press asked to see the conflict of interest statement, and in reality there was no conflict of interest statement filed with Accountability and Disclosure. MECA didn't feel that was necessary. But they did claim they had their own conflict of interest statement. When the press asked to have that revealed, MECA indicated they didn't have to do that. So we're concerned here with three serious public issues: one, the Open Meetings Law; two, the open records law; and three, the need to have conflicts of interest visible. I think at the bare minimum from what we've heard this morning is that it's necessary for us to at least know what MECA is. Somebody has to sit down and define, are they public or are they private. But with the amount of public dollars that are flowing into MECA, it seems to me that they need to be under all of the laws that I mentioned. Thank you. [LB778]

SENATOR AVERY: Thank you. Questions from the committee. Senator Murante.
[LB778]

SENATOR MURANTE: Welcome back, Jack. My question pertains to lines one and two of the bill. It's...basically just pertains to the definition of what is covered under the bill. So I really have two questions for you. First of all, by that definition how is MECA

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

covered? And second, is anything else in the state of Nebraska covered by this bill, any other entity? [LB778]

JACK GOULD: Well, as Senator Chambers pointed out, this bill has been looked at by a lot of lawyers. [LB778]

SENATOR MURANTE: That's too bad. [LB778]

JACK GOULD: And many, many suggestions were made as to how to make it effective so that it would affect MECA and would leave out some of the entities that would not necessarily need to be scrutinized by the public. And that may be some of the (c)(3)s that Senator Avery has mentioned. But it became a very complicated bill. And I know that when Senator Chambers looked at it, he felt that simplicity was better. And he also has mentioned that he's more than willing to work with people to make sure that it covers what is intended. But in as far as Common Cause intent in the bill, we feel that those three issues need to be covered and that MECA should be abiding by those. [LB778]

SENATOR MURANTE: And would any other 501(c)(3)s in the state have to operate under these provisions that you're aware of? [LB778]

JACK GOULD: That comes back to the lawyers again. [LB778]

SENATOR MURANTE: Okay. [LB778]

JACK GOULD: I am not a lawyer, and I am not going to try to fool you with that. I cannot tell you. But I think it's important you know the intent. And I think that's what Senator Chambers is concerned about as well. [LB778]

SENATOR MURANTE: Thank you. [LB778]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR AVERY: Any other questions? Thank you. [LB778]

SENATOR GARRETT: I have a question, Senator Avery. [LB778]

SENATOR AVERY: Oh, Senator Garrett. [LB778]

SENATOR GARRETT: Thank you. You talk about public dollars flowing into MECA. I see in the testimony here, receive an additional 35 million for a new hotel. I guess I'm at a loss how much total we're talking about, and what are these funds used for. Is this tax increment financing? What is it exactly? How is MECA using these funds? [LB778]

JACK GOULD: Well, initially when MECA was created there was a lot of public money as well as private money brought into the arena. I can't tell you the total amount. I can tell you it's multiple millions of dollars. I am sure some of the other folks that will be testifying will be able to give more exact amounts. But the current one is what triggered our concern, when we saw 35 million being proposed in tax dollars be used for the hotel. That was a concern that we had on top of what had happened back in 2010 when we filed our complaint. [LB778]

SENATOR GARRETT: Okay, I guess I'm still at a loss. The \$35 million for the hotel, is this for construction of the hotel? I mean... [LB778]

JACK GOULD: Yeah, it's to be constructed on MECA site. [LB778]

SENATOR GARRETT: Right. [LB778]

JACK GOULD: It's going to be right where the arena is, and it would be financed largely by tax dollars. [LB778]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR GARRETT: Okay, thank you. [LB778]

SENATOR AVERY: Thank you. Any more questions? Thank you, Mr. Gould. [LB778]

JACK GOULD: Thank you. [LB778]

SENATOR AVERY: Additional proponent testimony? We are on LB778. Welcome, sir. Good afternoon. [LB778]

MARTIN BILEK: (Exhibit 2) Good afternoon, Senators. My name is Marty Bilek, M-a-r-t-y B-i-l-e-k, and I'm representing Jean Stothert, Mayor of Omaha, today on this bill, LB778. And I'm afraid that a lot of what I have to say you've heard already. But I'm going to try to put a little bit different spin on it. But I'd like to start off by saying that as many of you know and, especially Omaha senators, MECA had a very good year last year. It's been reported in the World-Herald. And if you look back over the last ten years, you could describe MECA as being a great success. And there are...the people that get the credit for that are Roger Dixon, who's there right now, and the MECA board. They're to be commended. But having said that, we do have a little issue of transparency here that's before us today. And the Omaha mayor is actually...in a way, this is all very simple. Right now there are state laws as you know that require governments to be transparent, that require governments to publicize their records, make them public. They require governments to prevent and define conflict of interest. They require governments to have open meetings. Nobody disputes the necessity for that. What creates the wrinkle here is that MECA is a 501(c)(3). It's a private organization in many respects. The city owns the building. The city owns the property. MECA runs it. They do a very good job. The taxpayers paid for it, and that's really the rub here because since this is a taxpayer-funded entity, many would agree that MECA should abide by the same transparency laws as other government entities do. And Mayor Stothert agrees with that as well. The only other thing that I would add to that is it's important that you note that this bill does include safeguards against the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

competitiveness that's necessary to run a successful convention center arena. Those safeguards are already there. If they weren't, we would be somewhat skeptical of this bill because it would be counterproductive. We want to be successful. We have been in the past. And if there needs to be...if some of the records are considered sensitive and we need to be discrete, then so be it. We're for that, but we think the bill accomplishes protections that we need in that regard. So that's why we're comfortable with this particular bill. The last thing that I might add here is that, you know, there has been some conversations about, well, why don't you folks in Omaha just handle this yourself; just get together in a room. You're all kind of in agreement here, just handle it. The problem with that or the reason that we're somewhat...that argument lack a little bit of luster for us is because previous mayors in Omaha have tried to tackle this problem. They've been somewhat unsuccessful. It's before us now. And at the end of the day we feel that maybe it's just best if this bill, once enacted, would give these requirements the force and effect of state law, and maybe that's desirable. Thank you. Questions?
[LB778]

SENATOR AVERY: Thank you. Questions from committee? Senator Murante. [LB778]

SENATOR MURANTE: Hi, Marty. Welcome down. [LB778]

MARTIN BILEK: Good afternoon, Senator. [LB778]

SENATOR MURANTE: Good afternoon. Question for you relative to the financing. How much money does...how much taxpayer dollars does MECA receive right now? [LB778]

MARTIN BILEK: You know, others will come behind me and be able to answer that question a lot better. You know, we do get fees for parking. There might be some other fees that are collected. Obviously there's a considerable amount, the debt service on the bonds in considerable and ongoing. So I'll defer that question to others behind. They can give you a better answer. [LB778]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR MURANTE: Okay. And in the letter that I read that's from the mayor, what I found interesting was the second sentence, that we can't pick and choose or make exceptions about public information. But in this bill aren't we kind of making the exception to 501(c)(3)s? Isn't the bill the exception and not the law as it exists right now? [LB778]

MARTIN BILEK: I think what the mayor means by that or what our intention is, is there's government entities, city, county, state, and they all have to abide those regulations. And we really...and a lot of people see people MECA as a government entity even though it isn't. And I can understand why they see it that way because we do too. So what we're saying is, let's be consistent here; that taxpayers have a lot invested in this facility. And so therefore, they should be transparent. Let's be consistent in that regard. [LB778]

SENATOR MURANTE: Thank you. [LB778]

SENATOR AVERY: Senator Lautenbaugh. [LB778]

SENATOR LAUTENBAUGH: Thank you, Senator Avery. Thank you for coming today, Mr. Bilek. [LB778]

MARTIN BILEK: You're welcome, Senator. [LB778]

SENATOR LAUTENBAUGH: You mentioned that other mayors have tried and failed to resolved this. Should we have more faith in your boss and my friend, Mayor Stothert? [LB778]

MARTIN BILEK: You know, that's interesting you ask that. [LB778]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR LAUTENBAUGH: That's a trick question. (Laughter) [LB778]

MARTIN BILEK: Let me answer it anyway though. This is going to get resolved one way or the other, put it that way. [LB778]

SENATOR LAUTENBAUGH: Okay, then, something easier. Shouldn't we just sell MUD and pay our bills? (Laughter) I don't have any more questions. [LB778]

MARTIN BILEK: Now you got me. (Laugh) [LB778]

SENATOR AVERY: Senator Scheer. [LB778]

SENATOR SCHEER: Yes, and again my ears may not hear correctly, but did you just say that you agree that MECA was not a government entity? [LB778]

MARTIN BILEK: It's not. It's a 501(c)(3). It's a private entity legally. The city owns the property. The taxpayers are paying for it. So basically, the way I see it anyway, MECA has become sort of a hybrid. But regardless, we feel these laws should apply, these transparency laws. [LB778]

SENATOR SCHEER: Okay, but it's not a government entity but we want the government laws to apply to it? [LB778]

MARTIN BILEK: Exactly right. [LB778]

SENATOR SCHEER: Okay. [LB778]

MARTIN BILEK: For all the transparency reasons that we had mentioned. [LB778]

SENATOR SCHEER: Well, certainly, sir, but I mean it could be some other entity is a

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

501(c), and so now we want to know what's going on with that organization. Why are we picking and choosing...just a minute...why are we picking and choosing which one of these 501(c)s that we find appropriate to look into or to have these specific laws apply to? [LB778]

MARTIN BILEK: Because the government in Omaha, the mayor's office and the city council, name people to that board, so that gives it sort of a government flavor. But more than anything, the taxpayers of the city of Omaha have hundreds of millions of dollars invested in that facility. [LB778]

SENATOR SCHEER: You have money invested but if you have...if the city, the county, or whomever has chosen to allow some entity to rent it or to manage it, that's a management agreement. And if it was ABC Shows managing the Qwest Center or Ameritrade, you would have no access to what they do, relationship to how they pay their bills or they contract their amusements or the concessions or anything else. Would that not be true? [LB778]

MARTIN BILEK: What I'm saying in this case...and by the way, I'm looking at this as LB778 in regard to MECA only. I understand that some think that it could be more broad and widespread. But my interest is only in how it affects MECA, or at least my testimony is. But I can tell you that since this is a hybrid and somewhat unique, again I think the transparency laws should apply to it. I think this LB does that. If there are unintended consequences, I think there should be...you know it should be vetted so that doesn't happen. [LB778]

SENATOR SCHEER: Okay, thank you. [LB778]

SENATOR AVERY: Just for the record, there is a precedent in this Legislature for treating or trying to craft laws to require 501(c)(3)s to abide by open meetings law and public records law. That was the Nebraska School Activities Association, which exists

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

for only a public purpose and that is to manage school activities. And we were talking about in that case a whole lot less money, a whole lot less money. But there was public money, and there was no other reason for the organization to exist except for a public purpose. It was my bill. It got the unanimous support, at least an amended version, it got unanimous support in the Education Committee and died on the floor because of a very clever attack by a colleague of mine. (Laughter) [LB778]

SENATOR LAUTENBAUGH: Moving right along. (Laughter) Look at the time. [LB778]

SENATOR SCHEER: In fairness to your (inaudible) though, Senator, you had a bill introduced. It didn't go anywhere, so I can hardly say that... [LB778]

SENATOR AVERY: No, it did go somewhere. It got unanimous support in the Education Committee. [LB778]

SENATOR SCHEER: Well, I understand, but it's not a statute so I mean it really...I can't say that's precedent though. [LB778]

SENATOR AVERY: But, to finish the story, the NSAA now abides by the terms of that legislation. And they've been very, very good about carefully opening up records and meetings. But we had more in the bill. It was a total reorganization of the distribution of representatives and all kinds of things like that. It was good legislation, and I think Senator Lautenbaugh would agree. (Laugh) Here's a point that hasn't been made: There are not a lot of 501(c)(3)s in the situation of MECA or the NSAA in this state. There are just not a lot of them. And I don't even know if there are any others. I mean in the Lincoln case we created a JPA, a joint public authority. And it is a public authority. It does abide by open meetings laws, and it does abide by public records law. So MECA is a different breed, and I appreciate you coming in. [LB778]

MARTIN BILEK: And I agree, and that's why I refer to it as a hybrid. That's why we're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

here is because it's a little bit confusing. If it was a government entity pure and simple, LB778 wouldn't be necessary. [LB778]

SENATOR AVERY: Well, I appreciate your testimony. Any other questions? Thank you. [LB778]

MARTIN BILEK: Thank you, Senators. [LB778]

SENATOR AVERY: Any more proponent testimony? Okay, any opponent testimony? Good afternoon, sir. [LB778]

ROGER DIXON: (Exhibits 3, 4, and 5) Good afternoon, Chairman Avery, members of the Government Affairs Committee. For the record, my name is Roger Dixon spelled R-o-g-e-r D-i-x-o-n. I'm the president and CEO of the Metropolitan Entertainment and Convention Authority testifying in opposition to LB778. Thank you for allowing me this opportunity. As you know, Nebraska has undergone many exciting changes over the past decade due in no small part to the efforts that were led by Senator Brad Ashford. Those who know Senator Ashford know that when he is passionate about something, he sticks with it until the end. Thanks to Senator Ashford's tenacity, we have a very successful facility and tremendous revitalization not just in Omaha but also across Nebraska. Chairman Avery, you too should be congratulated on your leadership along with Mayor Beutler and many others who are now seeing the same transformation here in the capitol city. The turnback tax legislation supported by the Legislature was the brainchild of Senator Ashford. Senator Lynch and many others including Senator Beutler, Senator Brashear, and over 42 other senators led the charge. The state's role has been pivotal and has served as a catalyst to the success that exists as a result of CenturyLink Center Omaha. To date, more than \$29 million has gone out to communities across the state. Now, the Pinnacle Bank Arena will add even more dollars to that success. In Omaha, the level of private-sector support is unprecedented and something we as a community are very proud of. An impressive \$75 million was

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

invested to build the CenturyLink Center followed by another \$35 million for TD Ameritrade Park, home of the College World Series. These public-private partnerships don't end there. Whether it's the world-class Henry Doorly Zoo, the Johnny Carson Theater in Norfolk, or the Homestead Heritage Center in Beatrice, we are fortunate to have so many generous people in our state. While I appreciate Senator Ashford and Senator Chambers bringing this bill forward, including the need to protect our competitiveness, it is also important to share that MECA already does much of what this bill ask. We recognize there is room for improvement, but as you all are well aware, the devil is in the details. As we interpret parts of LB778, we feel there could be some uncertainty and unintended consequences is why...although we do not oppose transparency and certainly support the language providing some protection, we're here today to oppose the bill. MECA is a 501(c)(3) nonprofit organization that was structured as a private entity because that is what community leaders, citizens, and donors wanted. They traveled to other cites and toured other facilities, quickly concluding that in order for our venue to be successful, it needed to be run by a nongovernment entity, like a business, and without the burdens of bureaucracy that could put Nebraska at a competitive disadvantage. And it had worked really well before in Omaha with privatizing our municipal zoo. And it's worked further since with some of our performing arts society facilities. In the past 10 years of operation, CenturyLink has welcomed close to 13 million people. We have hosted hundreds of concerts, family shows, sporting events that fans used to have to travel to Kansas City or other cites to see. Through the support of the community, we have landed high-profile events like Olympic swim trials, U.S. figure Skating Championships, and many NCAA championships that bring thousands of visitors to our state and result in millions of dollars in economic impact. As a result of this success, MECA has taken zero funds from the city for the past five years. And because the way the facility is managed, due in no small part to the oversight of our board, MECA is able to set aside funds to ensure our facilities have been maintained and are competitive so far without going back to taxpayers for help. Our investors demand accountability. Our agreement with the city requires that we provide yearly audited financial reports. Our board of directors is appointed alternately by the mayor

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

and city council who help guide us. MECA complies with Open Meetings Act and our board members disclose all potential conflicts of interest, two things this bill requires. However, Nebraska's arenas and convention centers need to be careful here. We're competing successfully for far more national events than we ever thought we would in the ten years our doors have been open. If other cities and states can ask us for proprietary information and they will, they will use it against us. We will continue to follow the Open Meetings Act and hold public meetings to have and follow certain document disclosure requirements and to look at the tightening our existing conflict of interest rules. I'm including a copy in my testimony...a copy of our code of business ethics for your review. We support transparency and appreciate this opportunity the Legislature has given us to work on this issue. We have reached out to the mayor and city council that we work through our local agreement to address these concerns. We respectfully ask this committee to hold this legislation so we can have that dialogue. We are confident with the mayor's leadership and that of the council, we will bring more transparency to the process through better communications and through those negotiations at the local level. We pledge to work more closely with our local public partners and to come back to you with our update. We also appreciate the opportunities this hearing has provided for us to share some historical perspective with you today and to share some of our concerns with the existing language. Please know that we are grateful for the commitment made by the Legislature, the city, and the private sector. We are confident because of this partnership our facility will continue to be successful. Thank you and happy to answer any questions. And by the way, I did bring a letter from the Omaha Chamber of Commerce. Supporting our... [LB778]

SENATOR AVERY: Supporting your position? [LB778]

ROGER DIXON: Yes. [LB778]

SENATOR AVERY: Well, thank you, Mr. Dixon, for your testimony. Would this meeting and negotiations with, or dialogue as you call it, with the mayor and other principals,

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

would that be necessary if this bill is passed? [LB778]

ROGER DIXON: We had begun meetings with the mayor's office and with the president and vice president of the council talking about more transparency. Mayor Stothert's stance on transparency is not surprising as elected officials all like to see that. We just need the time to work through this and see exactly what we're dealing with. We see the concerns that come out. We just want the opportunity locally to remedy this. [LB778]

SENATOR AVERY: One more question, what does MECA gain by continuing to insist on 501(c)(3) status? [LB778]

ROGER DIXON: It's a contractual situation. We are required by our agreement, and we are a leaseholder on the property the city holds. We had signed a 99-year lease on CenturyLink and that lease also includes TD Ameritrade Park. Civic Auditorium is under a management agreement. But it is required in the agreement that we maintain our 501(c)(3) status, and I believe that equates back to the bond stature and how they were sold. And it's going...everybody's like, well, this needs to go to an attorney to get the real answer. I will do the same thing. Check with the attorneys. [LB778]

SENATOR AVERY: Okay, questions from...Senator Scheer? [LB778]

SENATOR SCHEER: Clarifying your statement because I was wondering about that. You actually, as an entity, lease the facilities from the city? [LB778]

ROGER DIXON: That's correct. [LB778]

SENATOR SCHEER: So it really is...you could have just as easily been ABC Company as the lessee of those. And if they were a private corporation, none of this would be involved. Is that a fair assessment? [LB778]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft
Government, Military and Veterans Affairs Committee
January 30, 2014

ROGER DIXON: Exactly. [LB778]

SENATOR SCHEER: Okay. [LB778]

SENATOR AVERY: Any other questions? Senator Murante. [LB778]

SENATOR MURANTE: There has been a lot talk about MECA's finances, where they get their money. I think I recall in testimony that you haven't received any taxpayer dollars in five years. Is that accurate? [LB778]

ROGER DIXON: That is correct. [LB778]

SENATOR MURANTE: Okay, there was some talk about a \$35 million hotel that kind of...I'd never heard of before. Could you expand on that at all? [LB778]

ROGER DIXON: News to me too. [LB778]

SENATOR MURANTE: Okay. (Laugh) [LB778]

ROGER DIXON: I'm not sure what Mr. Gould was talking about. Our involvement on that hotel is, we hold...it was part of our leasehold. And that's parking Lot G, commonly called the Pinnacle Site. And during negotiations for what is now at TD Ameritrade Park, they wanted to take away additional parking. And in our lease agreement with the city requires a minimum amount of parking. And so we negotiated through that, and we got Lot G, but we also asked for the development rights for that property. And it's nothing other than a conduit for the city. And we, in concert with the city, put together an RFP and let it out for that property for a hotel developer. We were fortunate a local developer won the chance to do that. It is Shamrock Development. There is no money coming from MECA to that property other than what we spent for the RFP and legal fees that our attorney charges for representation during the negotiations. The only thing I can

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

come up with, that \$35 million, is from TIF. But again, that's something that you would have to talk with the city legal department. But there is no other money that I'm aware of that I can tell you that Moylan, the principal with Shamrock, is paying the city for that land. He's building the hotel through--I'm going to throw out an acronym here--EB-5. It's a new financing process. And he's got investors and First National Bank involved. We anticipate closure of that sometime in February. But other than TIF money, I don't think there's any other city money going in there. [LB778]

SENATOR MURANTE: Okay, thank you. [LB778]

SENATOR AVERY: Any more questions? You made a statement that I found very interesting, that officeholders like transparency and openness. Am I right, you did make that statement? [LB778]

ROGER DIXON: It was in my testimony, yes. [LB778]

SENATOR AVERY: Yeah, my experience has not been that, not at all. I championed open meetings legislation in the eight years I've been here. I had a bill last year, a pretty comprehensive bill on public records. I had a heck of a time getting public officials to agree to comply with, in an honest manner, the way in which the law was already written. That's why we had to have a bill last year. I need to meet some of these public officials you're talking about because that has not been my experience. [LB778]

ROGER DIXON: I was talking more about transparency, Senator, that...and Mayor Stothert has been very forward on wanting more transparency and... [LB778]

SENATOR AVERY: I'm not questioning that. [LB778]

ROGER DIXON: But as far as open meetings, we are...it's a contractual obligation on our side. It's not statutory. Our legal counsel makes sure that we follow what we're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

required to do. And as we said, we vet all of our contracts. Anything over \$20,000 has to have board approval, and that's done. There is no vote unless it's in a public setting. And we hold meetings as required. During construction of the facilities we held monthly meetings, if not more. After construction, again, we're dealing with volunteers that are our board members and to make sure that we don't take advantage of their time, we only have meetings when there's issues to be discussed. [LB778]

SENATOR AVERY: So really your objection to this bill is the public records portion because you already comply with the Open Meetings Law. [LB778]

ROGER DIXON: To some degree. We do, as I said, we give the city our annual audited financial report which they just did receive. Our biggest concern is the wording in it as far as who defines what's competitive. And I'm afraid the way it reads to me and to our legal counsel as well that the way it's going to be defined is through the courts. And it's going to be an attorney's annuity fund. And we'd prefer it not to get to that point. That's why we would prefer to do this on a local... [LB778]

SENATOR AVERY: But that would happen because you would challenge it in court. [LB778]

ROGER DIXON: No, we would say it's competitive. And they'd say, no, it's not. And so we're in court because it's just not concerts. It's sponsorships. It's leases that we do with different people. There's a myriad of different things we deal with. It's no different than what Pinnacle Bank does as far as some of their sensitive records as well. [LB778]

SENATOR AVERY: Okay. Any more questions? Senator Wallman. [LB778]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for coming down here. [LB778]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

ROGER DIXON: My pleasure. [LB778]

SENATOR WALLMAN: And I realize that for a venue such as, say Madonna or somebody like that, is that a standard price or a minimum price? Do you know what they charge? [LB778]

ROGER DIXON: Well, as far as for the artist itself, the artist usually pretty much sets a percentage of what they receive. It could be 85 percent, 90 percent, 95 percent; Jimmy Buffett is a 105 percent. So you're paying him from your side of the ledger as well. But really what gets the artist, and we found this out with Madonna because we bid against Kansas City, we didn't sharpen our pencil enough. And that's what the nature of it is. You know, and that's what we're going to run into with our sister facility here in the state, the Pinnacle Bank Arena. We didn't sharpen our pencil enough on Katy Perry. They won out. Good for them. [LB778]

SENATOR WALLMAN: Thank you. [LB778]

SENATOR AVERY: We don't win very many. (Laugh) [LB778]

ROGER DIXON: You guys are doing okay. Now you remember we did not stand up against that. Tom Lorenz is a friend of mine, good people. [LB778]

SENATOR AVERY: I was right in the middle of it. We did have to limit the number of seats, however. [LB778]

ROGER DIXON: That was a senator from Omaha that did that. That was not by our insistence. [LB778]

SENATOR AVERY: Well, we agreed to it. Any other questions? Thank you, Mr. Dixon. [LB778]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

ROGER DIXON: Thank you. [LB778]

SENATOR AVERY: Any other opponent testimony? Any neutral testimony? Welcome back. [LB778]

FRANK DALEY: Thank you, Senator Avery and members of the committee. Again, my name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Accountability and Disclosure Commission. I'm here testifying in a neutral capacity as to LB778. The language of the bill as currently drafted is very broad. And at this time we're unable to determine how many entities it might apply to. So we're unable to make a determination how many entities we would ultimately have to reach out to to provide education in this area. However, nevertheless we do want the committee to know that if either Senator Chambers or the committee is in need of assistance in redrafting or changing the language that we are certainly at your service. And that completes my testimony. Thank you very much. [LB778]

SENATOR AVERY: Thank you. Any comments or questions? Thank you, Mr. Daley. [LB778]

FRANK DALEY: Thank you. [LB778]

SENATOR AVERY: (Exhibit 6) We have one letter of opposition that needs to be read into the record. This is from the North Platte Valley Water Association. And it is provided by Steven C. Smith, general counsel. That ends the hearing on...no, Senator, you want to close, don't you? (Laughter) [LB778]

SENATOR MURANTE: You've been cut off three or four times today, Senator Chambers. [LB778]

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Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR CHAMBERS: Thank you. Mr. Chairman, members of the committee, I'm Ernie Chambers back again. I'm glad I have some training in the law, but I'm also glad that I understand obfuscation by bureaucrats, by spokespersons such as Mr. Dixon. They could have sent a lawyer here. They could have sent the chairman of the board. They send somebody who can say at appropriate times, I don't really know. There may be money, I don't know how much. I don't know what this refers to; I don't know what that refers to. And there's been created an aura where you feel like you've been dealt with authoritatively. You have been trifled with. They wouldn't do this in front of the Judiciary Committee because I'm on that committee. Senator Ashford is not here because he's the Chair of the Judiciary Committee, and they're meeting. Senator Ashford cosigned this bill. Senator Ashford is the one. Senators, who is the former Speaker? [LB778]

SENATOR WALLMAN: Flood. [LB778]

SENATOR CHAMBERS: Before him. [LB778]

SENATOR AVERY: Brashear. [LB778]

SENATOR CHAMBERS: I wanted to see you on your history. Right. (Laughter) Senator Brashear. On this throwback money, they had been trying to get that. What it says is, a certain amount of the taxes that would be realized on the operation of this hotel and goes to the state will come back to them so they can apply it against the bonds and other things. They couldn't get that through the Legislature because I stopped it every time. And I have an article I'm going to show you all, but I didn't know we were going to have this to have to deal with. You know how they got the throwback money? Senator Ashford, and he'll admit it, he did it in an article. Senator Chambers stopped this legislation. And he said the only way he would agree to it is that when this kind of use is made of tax money, some of it has to be earmarked for the communities that have been ignored by the city, by MECA, and all these other operations. So as a result of what I

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Government, Military and Veterans Affairs Committee
January 30, 2014

did, me, 10 percent of that goes to north Omaha and south Omaha to the tune of hundreds of thousands of dollars over the period that that turnback money would be coming. Nobody talks to you about how I get specific economic development where it's needed, do they? No, they don't. They don't want to acknowledge it. I talked about how offended I was with the way MECA operated. And at that time, Mr. Sokol was on the board. Maybe Senator Ashford to him to, but he wrote a letter to me apologizing for anything he may have said or done that offended me. And he didn't know what it might have been, but he was asking my forgiveness. He didn't say forgiveness; he did use the word apologize. They wanted that turnback money, and I stopped it. So Mr. Dixon may not know, and he may think he's dealing with somebody who is naive but not the case. I'm going to go through some of the things that he said that he dealt with. Senator Scheer kept saying, if I understood him, wouldn't this be like any other business or corporation that had entered an agreement to carry out these functions. No, no private corporation would consent to the mayor and the city council naming every board member. That makes it different right there. All of these other entities would exist because they had filed corporation papers with the Secretary of State. They'd be licensed to operate within the state. This is nothing like any other business operation you will find, and it disturbs me that members on this committee will dummy up and pretend all of sudden they don't understand things. When Mr. Dixon talked about a public/private venture, that makes it different also. When the city enters a contract with a construction company to build roads, to resurface roads, to do anything, they together do not comprise a joint entity. There is a contractor and a "contractee." And all of the rights and privileges and obligations are contained within the four corners of that contract. Anything that is not in that contract is not a part of the contract. They did write an agreement that was so thick I didn't even read it all. I don't need to because I'm not going to be tricked and fooled by a lot of verbiage. I look at what the operations are. In philosophy they say, you know the nature of a thing from its operations. This board is known by its operations. I don't care whether they're bringing somebody here to swim or play golf or anything else. That is irrelevant to what is being discussed here. What is the nature of the organization? What are its prerogatives? From whence does it get its very

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Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

nature? Its nature springs from being a part of the city operation. Every board member is appointed by the mayor and the city council. Each is allowed to appoint so many board members. Nobody else gets on the board. Nobody can get on the board any other way. The things that they do are in the nature of governmental functions. They know it; you all know it. But they are able to bedazzle you. What I do when people come before the Judiciary Committee is to ask why isn't somebody here who is responsible? He's an employee. I tell them, I don't want the employee. I want the one who speaks authoritatively for the organization. He cannot speak authoritatively for MECA. He says what they told him to say. If you ask a question beyond what they anticipated would be asked, he just says, well, I don't know. I'll talk to the lawyers. Bring the lawyer. This is serious. Put it on the floor. Give Senator Ashford an opportunity to express why he cosponsored the bill. I don't care about a letter from the Chamber of Commerce. Who are they? They're the ones saying, cut all the income taxes. But they listen to certain people on this committee, and they feel that they've got cupcakes. They would never bring testimony like what they gave here today to Judiciary Committee. And if I had been allowed to sit as an honorary member--which you never do--you'd have gotten a different story. But at any rate, and I'm saying this for the record so that it can be transcribed, and a copy can be taken back to his bosses, and he can show what they put him in the middle of. Did it ever occur to anybody on this committee to ask why didn't a board member come here to testify? If there are legal questions involved in all of this beyond the knowledge of the testifier, send a lawyer. But they chose not to. There are wise, canny people who carry the title attorney or lawyer. You all are going to sit there and let somebody tell you that because they chose a certain organizational structure, they are outside the power of the Legislature. For your information, there are members of organized crime which set up dummy corporations, and they comply with the law. They get incorporation papers. They get a board of directors, and they do things that an ordinary, within-the-law corporation would do. But it's a front. And if you don't believe this happens, talk to the U.S. Attorney. They have ways of avoiding paying taxes. The structure means nothing. This does not apply, Senator Scheer, to any 501(c)(3). There is a definition. Any entity "jointly formed or constituted between a

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Government, Military and Veterans Affairs Committee
January 30, 2014

political subdivision and another entity." Here is the political subdivision. You create another entity by joining this other entity to the public political subdivision. And why did I use the term entity over and over, because that is what we're talking about. The word entity is broad. It doesn't say a company, a corporation that deals in certain activities. Whatever the activities are, if it is for the purpose of planting trees throughout the city, if they become a joint entity with the city or an adjunct to the city or a part of the city or carrying out the work of the city, that's why it says, "formed or constituted between..." They together comprise an entity. A contract with another company does not unite that company with the city so that between them they form an entity. They still are separate, discreet, distinct, not merged, not carrying out anything that is outside of what that piece of paper is. That's what creates the relationship between a party to a contract and the contractor with whom the contract is completed. This definition embraces MECA, and they know it. If this doesn't cover MECA, why are they here. They didn't think there could be a definition because they probably read the original drafting. I told Mr. Daley I'll talk to him and I'll explain further to him during our conversation. I know what language means when I bring, and I'll explain it. But if there's a better way to say it, I'm in favor of that. People couldn't come up with a definition of the kind that I gave. It's too clear. There are not a lot of words, but it says what it is. And if some company has a contract with the city, and they say, well, we think because we have a big contract with you, we're going to have to have all of the meetings that we have public. We're going to have to make all of the internal workings of our company subject to the open records law if it does not refer to competition or trade secrets, and we don't want that. Then, you come to the language here. And you say, there is no entity formed by our contract. You are over here. We are over here. MECA knows that they are interlaced and interlocked just like my fingers are now. They know it. If everything was as clear cut as Mr. Dixon, the employee who was sent here carrying out his duties, wanted to lead you to believe, why did all of those who know and make the decisions stay away from this committee; because they don't respect you. They don't respect the Legislature. And this is a bill that should go to the floor of the Legislature, and I should have to justify and explain everything that I'm saying, not just in this room where these few people are who don't

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

know the history of all this. You didn't even know the role I played in the turnback money. Mr. Dixon is not going to tell you. He praised Senator Ashford, but he didn't tell you that if Senator Chambers had not allowed us to get this, Senator Ashford could not get the bill. There would be no turnback money. He didn't tell you that, did he? Why not, because you don't know what happened. And you might have thought that I wouldn't bring it up. Here's what Mr. Dixon has been compelled to do. Before I tell you that, I've dubbed myself the Defender of the Downtrodden. He may not like this, but I categorize him as among the downtrodden by being sent out to do the work of somebody else. A colonel has been in the military. I don't know that he's in combat or anything, and I'm not going to even go into that. But he knows that people can be sent to do things that somebody else may not want to do. Some people know what a stalking horse is and others don't. A stalking horse is not like a predator. The stalking horse goes out there to draw the fire. Here's what Mr. Dixon would have to say if I was going to put it in a nutshell. If it looks like a duck, if it quacks like a duck, if it walks like a duck, if it lays a duck egg, it's a chicken. That's what they sent him here to tell you all. And he's counting on this bill being bottled up. If this committee bottles up the bill, which you have the power to do, this is one I'm going to make a motion to pull from the committee. And I'm going to have this discussion on the floor. They're not going to say the Chamber of Commerce doesn't want the discussion. The board doesn't want the discussion. We're going to have it one way or the other. And I think the issue is so important that it should be sent to the floor. I'm not getting anything from MECA out of this, but I will tell you some things that they might not want revealed. But since Mr. Dixon is here I don't want it to seem like I'm putting him on the spot. So let's not talk about MECA. I want to give you an example, and then I'll end my closing unless you have questions. Let's say that there was a city beside the sea; well, not the sea, beside a river. And it was a very muddy river. Some people called it the Big Muddy. And that city, as years went by, grew and prospered. And as it grew and prospered, certain businesses and entities of various kinds and descriptions came into existence. And there was a city of the kind I'm describing which formed an entity with another operation, and that operation said, we want to put a facade up so that nobody will know what we really are when they look at

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

that facade. And what that operation did behind that facade, they arranged various events so that the country people from all around would come and enjoy themselves. And that entity accumulated money. But they were not like the Lord or like justice which has a blindfold and is no respecter of persons. They did treat some people differently. So they would have things which came to be known in future days as parties where people would go, and they had a lot of fun. And it cost money, and it cost money because services are being performed. And the ones performing the services want to be paid. Now, the individuals who are a part of this entity did not want to go into their moneybags and get that money, so they charged it against the entity because the entity had plenty of money. So the entity paid for the parties. And some of the people who came to the parties came from great distances. And because there were highwayman along the routes, they didn't want to travel at night. So they had to be put up for the night. They could either go to the existing inns, i-n-n-s, or this large inn that existed, and anybody who stayed there had to pay. But these special people who were given special consideration would stay there, and they didn't have to pay. Now, that raised questions in people's minds. I'm giving you all just a fairy tale, but this is not a tale told by an idiot signifying nothing. This committee was told a tale as though it comprises idiots and don't understand anything. I've listed to some of you talk on the floor and ask questions. You're smarter than what your questions indicated today. And you know why I'm so upset, because you were sold a bill of goods and the right questions were not asked. Where is the chairman? The chairman knows I wrote a letter to him about them having the contract, this multimillion dollar contract, and he did not respond. But he thought he might have to today. Okay, there might be questions. I got carried away. (Laughter) [LB778]

SENATOR AVERY: Questions? Senator Wallman. [LB778]

SENATOR WALLMAN: Thank you, Chairman Avery. Senator Chambers, Senator Chambers, I'm glad my bill was in Judiciary. You weren't there. (Laughter) ATF come and testified against my bill, so maybe you would have liked. But do you have the

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

ability, if you're a city councilman or mayor, to audit the books of MECA? [LB778]

SENATOR CHAMBERS: To audit the books? I don't know what their arrangements are on that. And that's why I say I will not speak beyond what I know. But I thought they'd send somebody here, and those questions would be put to that person. [LB778]

SENATOR WALLMAN: Yeah, I forgot to ask that earlier. [LB778]

SENATOR CHAMBERS: That's all right. I'm not chastising you at all. But it seems to me that if they want to make a point, they'll do as I did. They'll try to give you as much information as they can anticipating what you might want to hear and then answer questions. I think that those questions are appropriate, and somebody should have been sent here who could answer those questions. Remember, this bill does not aim at the city not doing what it should do. All the city came for, wants to say they support the bill and its purposes. The one under the gun--and they feel like they are; they've placed themselves there--MECA, and they sent nobody who could answer the questions. [LB778]

SENATOR WALLMAN: Thank you. [LB778]

SENATOR AVERY: Any more questions? Senator Bloomfield. [LB778]

SENATOR BLOOMFIELD: Thank you. I was also at your committee while you were down here. [LB778]

SENATOR CHAMBERS: You were at the Judiciary Committee? [LB778]

SENATOR BLOOMFIELD: I was. I introduced a nice little easy gun bill. (Laughter) And I'm blessed that you were here. But it's noncontroversial. You'll love it. (Laughter) I was wondering if this city by the river that you were discussing could ever conceivably be

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

mentioned in a professional football game. [LB778]

SENATOR CHAMBERS: Many times. [LB778]

SENATOR BLOOMFIELD: Okay, thank you. [LB778]

SENATOR CHAMBERS: Members of the committee, here is what I owe you, I feel like I do, a hearing that presents the information. I was told that MECA was going to oppose the bill. To me, when MECA opposes it that means a board member or some board members, those who make decisions, those who can answer all of your questions and not send a stalking horse who has to maintain a brave face and a stiff upper lip and be unable, maybe not because of lack of knowledge but unable to answer certain questions that might not make MECA look like what they want to look like. At these hearings, we are hoping that all of the information is presented, the committee reviews it, evaluates it, and makes a decision. My view is that you don't have enough information to hold this bill, and the only ones who ask you to hold it are those with the information, and they didn't bring it. But that's all that I have. But one other thing, the mayor of Grand Island was walking down the hall. He said, I like that bill. I said, which bill? I thought he meant the cougar bill. I have mountain lions on the brain. He said, that bill dealing with MECA. I said, why do you like it? He said, we have an operation like that out in Grand Island also. These cities are finding out they got into something which we'll say, like Frankenstein, not Frankenstein but Adam, the one who became known as the monster. He said to this doctor when he was trying to get even with the doctor, you are my creator, but I am your master. That's what MECA is telling the city of Omaha. That's what that operation is telling the city of Grand Island. And MECA thought that's what they could tell this Legislature, and maybe they did. But we're going to have this discussion on the floor of the Legislature. And I want Mr. Dixon to be able to go back and tell those who sent him here that they should have given him some asbestos trousers and given him a better idea of what might be awaiting him. The hot seat can mean different things. And that's all that I will say. [LB778]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR AVERY: Any more questions? [LB778]

SENATOR CHAMBERS: You've been very generous to me and kind, and I appreciate it. Thank you. And if you ever come before the Judiciary Committee, all bets are off. (Laughter) [LB778]

SENATOR AVERY: All bets are off. Thank you, Senator Chambers. That ends the hearing on LB778. We'll now move to LB747. I will vacate the Chair during this discussion. Good afternoon, Mr. Vice Chair and members of the committee. My name is Bill Avery, A-v-e-r-y, I am here to represent...to present to you a bill, LB747. It deals with electioneering communications and it is similar to bills I have introduced previously. I had one in 2011 and one in 2012 and here I am again. This bill is aimed at groups that distribute political materials and identify a specific candidate in those materials. Generally, these materials are distributed to voters shortly before an election. These groups have argued that since materials do not advocate voting for or against a candidate, this is not campaigning within the definition of current law in the Accountability and Disclosure Act. And therefore, the spending for these materials does not need to be reported. I should emphasize here that this is a reporting bill. It does not limit speech in any way. It simply requires that the people who spend the money are accountable and disclose. The bill does not attempt to ban any type of political materials but only requires the groups to share with the public--through the Accountability and Disclosure Commission--who they are, how much they have spent, and which candidate was identified in those materials. I have worked with many groups who expressed concerns about the bill in the past and we have addressed those issues. Those of you who may be familiar with previous iterations of this bill will recognize those changes. I've worked very, very closely with a number of groups. In particular, the Catholic Conference and Mr. Cunningham and others involved in this issue. I have taken the suggestions of many of those groups and we have incorporated them into the bill, including concerns about how...whether or not voter guides would be included or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

covered by these terms and communications with their membership organizations. Like my previous two bills, LB747 requires any person, corporation, labor organization, or business association which makes an electioneering communication in the amount of \$250 or more to file a report of the electioneering communication with the Accountability and Disclosure Commission. These reporting requirements are similar to those who make an independent expenditure, including the name of the candidate identified in the electioneering communication. Electioneering communication is defined to mean any communication that does these three things: refers to a clearly identified candidate, is publicly distributed in the 30 days prior to an election, and is directed to the electorate of the office sought by the clearly identified candidate. That's what we mean by electioneering communication. This is what it does not mean. And don't let any testimony that comes up here after me misinterpret this. This is what it does not mean: It does not mean a contribution or expenditure, it does not mean a communication by media, it does not mean a candidate debate, it does not mean a communication while the Legislature is in session about a specific bill, it does not cover a voter guide or a communication by a membership organization to the organization's members. And we've dealt with those issues in this version. Those issues came up in past iterations of this bill. This bill clarifies that a communication by a membership organization includes when a member has submitted an e-mail or written letter indicating an intent to be a member or a member has paid dues to that organization. That became an issue when we debated this on General File back, I believe, in 2011. The definition of a voter guide has also been clarified to mean a document of the responses of candidates to a survey or a questionnaire if all known candidates seeking election to the same office are given an opportunity to respond. All responses received by the deadline are included in the document. And the document does not express support or opposition to any candidate. Again, voter guides and communications by a membership organization to its members are not included in the definition of electioneering communications and they do not need to be reported as such under this bill. The recent Supreme Court cases that have looked at electioneering communications have consistently upheld that reporting requirements for these types of expenditures are, indeed, constitutional. So if you hear

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

that argument, that this is not constitutional--and you might--that is not true. This is not unconstitutional to require reporting. For example, in 2010, the U.S. Supreme Court ruled in Citizens United v. the Federal Election Commission, that corporations and labor organizations are allowed to make independent expenditures and fund electioneering communications. The ruling did not, however, affect the reporting requirements for independent expenditures or election communication. This is a reporting bill. It is not a limitation on the expenditure. It is not a limitation on freedom of speech. I'd be happy to indicate or to answer questions you might have. [LB778]
[LB747]

SENATOR MURANTE: Thank you, Senator Avery. Senator Bloomfield has a question or two. [LB747]

SENATOR BLOOMFIELD: Thank you. Just one little, simple thing, Senator Avery, that jumps out at me. Is there any way we could look at this instead of \$250 or more, simply say over \$250? It's a common number to be bantered about. I think we said over \$250. We're dealing with one penny. [LB747]

SENATOR AVERY: Did you get that question from Senator Murante? [LB747]

SENATOR BLOOMFIELD: Did I get it from who? Did I get it from who? [LB747]

SENATOR AVERY: Senator Murante and I have been having that discussion. [LB747]

SENATOR BLOOMFIELD: I think it needs to be had. [LB747]

SENATOR AVERY: Yeah. Well, I'm willing to talk to you about that. [LB747]

SENATOR BLOOMFIELD: And no, I did not get it from Senator Murante. But I would have suggested it, had I. [LB747]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR AVERY: I'm willing to discuss...I think you might have a bill on this, right?
[LB747]

SENATOR MURANTE: Working on it. [LB747]

SENATOR AVERY: Working on it. [LB747]

SENATOR MURANTE: Yeah. Senator Scheer. Oh, I'm sorry. [LB747]

SENATOR AVERY: But I'm willing to include you and his request in the same. [LB747]

SENATOR MURANTE: Senator Scheer. [LB747]

SENATOR SCHEER: Senator, what is the difference between what you're proposing and what is already in place to the extent that, as I understand it, if you are a committee either opposed to an issue, opposed to a candidate, would be like any other candidate that is running for an office, if you expend over \$5,000 you're required to file? So are we taking sort of that same threshold that that was meant to cover and reducing it down to \$250? [LB747]

SENATOR AVERY: I think what we're doing here is we're trying to flush out groups that are filing with the Secretary of State's Office as a corporation and not filing with the Accountability and Disclosure Commission as an independent committee. And I think that there are a number of groups that seek to define themselves as nonpolitical or at least as a corporation filing with the Secretary of State, not having to disclose the kind of information that I am asking for here. That's really what we're trying to do. [LB747]

SENATOR SCHEER: Are you asking for more information than a committee would have to file through the Accountability? [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR AVERY: No. No. [LB747]

SENATOR SCHEER: Thank you. [LB747]

SENATOR MURANTE: Senator Avery, a question I have for you is in regard to the voter guide situation and the requirement that you have in your bill that a voter guide must have been sent to all candidates seeking election to the same office. They have to have an opportunity to respond. [LB747]

SENATOR AVERY: Uh-huh. [LB747]

SENATOR MURANTE: And my question to you is, suppose there is...well, it's not a hypothetical. There are going to be groups who want to send out voter guides in this upcoming primary election. And I believe, at the moment anyway...let's take for example, the race for Governor where we have six candidates for one party and one candidate in the other. Suppose those groups say that the candidate running for Governor as a democrat is advancing anyway. Let's not spend the time and money going and asking this candidate what he feels on a whole myriad of issues because it doesn't matter and we're going to deal with that in October anyway. And they just want to zero in on these candidates that are actually in a competitive race. It seems to me that people who decided to make that determination would not...they would be...they would not constitute a voter guide as the law currently is written. Do you...what is the public purpose for--as you would say--what is the public purpose for making that distinction? [LB747]

SENATOR AVERY: Transparency. And requiring...if you genuinely have in mind a voter guide that would provide, simply, information to voters, then to leave out a candidate--no matter how you might think the chances might be that person would not advance or win--that would not meet the definition of a voter's guide and would, in fact,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

meet the definition of electioneering communication because you're deliberately and arbitrarily eliminating a candidate on grounds that don't have anything to do with their...the legitimacy of their candidacy. The reason for this definition of voter guide was to allow groups that have memberships...they want to be able to communicate with their membership and they want that communication to contain political information, is to define then, what kind of voter guide would you have to have in order to meet that definition. If you meet the criteria, then that would not be considered a political communication or electioneering communication. If not, you'd have to, then, report on that as an electioneering communication. That is in the interest of transparency. [LB747]

SENATOR MURANTE: I think if that language stays the same, there are going to be groups that everyone in this room could agree, are not attempting to influence the outcome of an election. I can think of voterinformation.org is a good outlet. It's just a resource of a Web site that asks candidates a bunch of questions but has the policy that if, in a primary election, your race is not decided on the...there's nothing being decided and you're going on anyway, they just don't ask you any questions. They don't...it's a volunteer organization and they don't want to spend the time to track down candidates where it doesn't matter. [LB747]

SENATOR AVERY: I'm familiar with that group. And it's my understanding that they communicate with candidates by way of e-mail. [LB747]

SENATOR MURANTE: They do. [LB747]

SENATOR AVERY: And you are given an opportunity. And I have never known them to fail to communicate with candidates. In fact, quite the contrary. They almost beg you to fill out their questionnaire. [LB747]

SENATOR MURANTE: Right. They do. They do. But they do... [LB747]

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR AVERY: But not everybody does. [LB747]

SENATOR MURANTE: I have, at least, experienced in the past...if you look on their site, where they will say there is a...embraces with automatic advancements and things like that. They don't worry about it in the primary because they're going to deal with it in the general election. But... [LB747]

SENATOR AVERY: They'd have to give all candidates an equal opportunity to be in their (inaudible). [LB747]

SENATOR MURANTE: Okay. Senator Bloomfield. [LB747]

SENATOR BLOOMFIELD: Thank you. Senator Avery, if Senator Scheer is up for election this next cycle--I live about 20 miles from him--if I wanted to take \$500 out of my pocket and buy an ad in the Norfolk paper saying that he's either a saint or a scoundrel, would I have to report that if it was private? [LB747]

SENATOR AVERY: If it...if you were a private individual? [LB747]

SENATOR BLOOMFIELD: Yes. [LB747]

SENATOR AVERY: Yes. This covers activity of that sort if it meets the definition of electioneering communication. [LB747]

SENATOR KARPISEK: Which way would you do it? [LB747]

SENATOR BLOOMFIELD: That's for me to know and for Senator Scheer to find out. [LB747]

SENATOR MURANTE: All right. Seeing no additional questions, thank you, Senator

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

Avery. [LB747]

SENATOR AVERY: Yes, I will stay. [LB747]

SENATOR MURANTE: All right. You're not going to go anywhere? Are there proponents wishing to testify on this bill? [LB747]

GAVIN GEIS: Senator Murante, members of the Government Committee, my name is Gavin Geis, G-a-v-i-n G-e-i-s, and I am the executive director for Common Cause Nebraska. We just want to take a moment and talk a little bit about the broad purpose for this bill. We see it more as a clarification of current law than really creation of something new. There's already a large amount of organizations that hold to some of these disclosure limits. And as it stands, a lot of those campaigns when it comes to \$250, that \$250 isn't anything new. A lot of people have to disclose at that amount. In our minds and where we've seen affect the large number of people is, that the argument can be made right now as the law stands, that you can campaign, you can put out information about a candidate, you can mention them specifically, and then you can say that it's part of information. There's ambiguity about what electioneering is. And that's just how the law is right now. It's not very clear. And Senator Avery has gone through and he's, like he said, worked with a lot of groups to more clearly define what we mean when we say electioneering in the law. It's not just information. It's when you're talking about a specific candidate and either supporting or attacking but you're talking about candidates. So there's two parts I want to mention. First of all, this is just a disclosure bill. We're not stopping anyone from talking. Everyone can say the exact same things they were saying before. They just have to be open with it. They have to tell people about it. The second, and I think this is a point that needs to be made, is that we're talking about elections. And voter information, candidate information, that's vital when we're talking about who you're voting for. There's really only two avenues you can take when you're talking about campaign finance and elections. You can say we either shut down certain sorts of donations or you say we talk about all of the donations. We

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

disclose that so people can make their minds up, clearly, with all the information in front of them. This falls, clearly, into that second category where we open up the information and have an informed electorate instead of simply allowing people to make claims that they're informing the public while attacking a candidate. And I think that that's somewhat corrosive to our systems and our elections. If you can blindly, without identifying yourself, attack a candidate and they don't know who it was and the public doesn't know who it was and where the money comes from, I don't think that's good for elections. It's not healthy. And I don't think it's good for candidates or campaigns either. A clear system, one that's not filled with chaos, is just better overall and it makes for better government. That's all I got. Thank you. [LB747]

SENATOR MURANTE: Thank you. Senator Bloomfield has a question. [LB747]

SENATOR BLOOMFIELD: Mr. Geis. [LB747]

GAVIN GEIS: Yep. [LB747]

SENATOR BLOOMFIELD: Going back to the same question I asked Senator Avery. [LB747]

GAVIN GEIS: Uh-huh. [LB747]

SENATOR BLOOMFIELD: If I were to take that same \$500 and put an ad in the same paper that said there is an individual serving in the Nebraska Legislature from this area... [LB747]

GAVIN GEIS: Uh-huh. [LB747]

SENATOR BLOOMFIELD: ...and not name the area, that is either a saint or a scoundrel, I could spend all the money I wanted to. Is that correct? [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

GAVIN GEIS: As the bill stands, I mean, that's the exception that's built into the law. Like I said, Senator Avery had to work with a lot of people to make this workable. We don't necessarily oppose or support a lot of the exceptions but we know that electioneering needs to be defined. We have to talk about it because, right now, it's extremely unclear. At least that makes it clear that that's not an election communication. Whether or not you agree with that, we can talk about. But that's how it stands. [LB747]

SENATOR BLOOMFIELD: Thank you. [LB747]

SENATOR MURANTE: I think the definitional question is kind of an interesting one because really what it seems to me like what we're talking about is, right now we have regulations for independent committees and all sorts of candidate committees... [LB747]

GAVIN GEIS: Uh-huh. [LB747]

SENATOR MURANTE: ...for speech, which I think the standard is "attempts to influence the outcome of an election." So my question to you would be...it seems to me we've got two different, sort of, types of communication entirely. [LB747]

GAVIN GEIS: Uh-huh. [LB747]

SENATOR MURANTE: You have one which would say...I see a representative for Nebraska Right to Life in the background. So we'll take her organization, for example. If she sends out a letter saying vote for John Murante or she sends out a letter saying John Murante is pro-life, it seems to me that those are two different messages. [LB747]

GAVIN GEIS: They are but we believe they have the same effect. [LB747]

SENATOR MURANTE: Okay. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

GAVIN GEIS: Then, what you're trying to do is influence the outcome of an election. You're trying to...if your organization stands for pro-life and you send out something saying this candidate is pro-life... [LB747]

SENATOR MURANTE: Uh-huh. [LB747]

GAVIN GEIS: ...your intention is to help that candidate get elected. So at the end of the day, it's kind of a wash. Yes, it's information but so is every communication in an election cycle. Everything is information. [LB747]

SENATOR MURANTE: Right. [LB747]

GAVIN GEIS: We have to define what electioneering is. And right now, it's very vague. [LB747]

SENATOR MURANTE: Okay. Okay, thank you. [LB747]

GAVIN GEIS: Yeah. [LB747]

SENATOR MURANTE: Thank you very much. [LB747]

GAVIN GEIS: Thank you. [LB747]

SENATOR MURANTE: Additional proponent testimony? Welcome. [LB747]

FRANK DALEY: Thank you. Good afternoon, Vice Chair Murante and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission and I'm here to express the commission's support of LB747.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

Senator Avery described what the definition of an electioneering communication is. But often there's some confusion over what's the difference between an electioneering communication and what's the difference between what's regulated now. And let me take a moment to explain that. Currently under Nebraska law, different types of groups or individuals are required to report expenditures. That is, money spent for the purpose of supporting or opposing the nomination or election of a candidate. I will tell you that 10 and 15 years ago some of the things that are now being called electioneering communications, the Accountability and Disclosure Commission and, generally, the public at large would have considered those types of communications to be expenditures. However, a series of court decisions has essentially taken a group of what, in the past, were considered expenditures out of that definition. So what we have left is, we have a situation in which if you name a candidate and identify him as a candidate and are saying vote for or vote against or note that he's up for election, then it's an expenditure. On the other hand, if immediately before the election you send out something to the electorate--that is, the folks that are going to vote--some sort of message and you're telling the viewer or the reader or the listener that this is an individual, he holds a public office, here are some things about his record in public office. And typically, these types of communications will tend to show the candidate in either an extremely flattering light or an extremely negative light. And this is kind of a narrow thing which, if that occurs in the 30 days immediately preceding the election, it's considered an electioneering communication. And so, under this bill, if it were an amount of \$250 or more, it would be reportable in some way. Now Senator Bloomfield raised a question, what if...how does this bill affect the situation if you were to take \$500 out of your own pocket and put an ad in the paper either supporting or opposing Senator Scheer? I will tell you that this bill doesn't affect it at all because you would already be required, under current law, to report that as an independent expenditure. So there would be no effect at all. On the other hand, if you were in the 30 days before the election, not saying vote for Senator Scheer or oppose Senator Scheer, but you were bringing up something about his record that you know would have some sort of real effect on the electorate and it occurred in the 30 days prior to the election, that would be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

an electioneering communication. And that would be the type of thing that would be reportable under this bill. You're not saying he's a candidate, you're not saying there's an election coming up, but you put it in the Norfolk paper where the voters would see that. And it's right before the election and would clearly be intended to have an effect on the election. That would be the type of thing that's covered by this bill. So, hopefully, that's helpful. This is not a bill which is aimed at any particular group because electioneering communications come from all across the nation, from groups that are conservative, groups that are liberal, groups that have different points of view on specific topics. And so what this bill has done is, it has tried to craft the bill very, very narrowly so that it only captures those communications which occur right before the election which affect the election and carves out some exceptions so that some of the common things that are done which are not intended to affect the election but merely provide information, are excluded. I think at its heart, the idea here is that if you are in our state trying to affect the elections, at the very least you ought to report--as everyone else does that's trying to affect the election--what it is you're spending. So thank you very much to Senator Avery for introducing this bill. And thank you for the opportunity to testify before you today. [LB747]

SENATOR MURANTE: Thank you. Senator Scheer has a question. [LB747]

SENATOR SCHEER: Welcome back, again. [LB747]

FRANK DALEY: Thank you. [LB747]

SENATOR SCHEER: My question would be, how do we determine what is an attempt to affect a race? It seems to me that's subjective. For example, if I'm running against somebody in Valentine, they can put an ad in that candidate A loves to eat beef or is carnivorous. Candidate B is a vegetarian. Now, certainly, that may make a difference in Valentine. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

FRANK DALEY: Uh-huh. [LB747]

SENATOR SCHEER: But those same comments, perhaps someplace else, would have a moot effect. So it seems to me we're getting in really some sort of subjective area what can be considered electioneering and what's not. And I'm, you know... [LB747]

FRANK DALEY: Sure. [LB747]

SENATOR SCHEER: ...there's just sort of a fine line. So at who or where is that determination made? [LB747]

FRANK DALEY: Well, it's actually fairly easy because it's not subjective at all. The subjective part came in determining what the purpose of this bill was. But the bill actually makes quite clear the standards for determining if it's an electioneering expense. So does the information refer to a clearly identified candidate? Does it say Senator Scheer--not, necessarily, even candidate Scheer--but Senator Scheer? Is it publicly distributed in the 30 days prior to the election to the people that are the voters of the area? And is it directed to the folks that are going to be voting? In other words, in the district where the voting will take place. Those are objective standards. And so if the communication meets those objective standards, then it's reportable unless it falls within one of the exceptions which is set forth in the bill. [LB747]

SENATOR SCHEER: Okay. But, well, twofold...okay, using that same example where you're providing information. You're not saying one is better than the other, you're just providing factual information. [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR SCHEER: So I don't know that, in and of itself, that you can say that's trying to direct an elective result. And if it's within the confines of that election...so if--again, I'm

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

just devil's advocate here--we're looking, again, at the district in Valentine. If as long as I distribute it or print that in the Tilden newspaper, it wasn't exclusive to that area. So you know, again, is that electioneering? [LB747]

FRANK DALEY: Again, if it fits within the definition, it is. [LB747]

SENATOR SCHEER: But does it? I'm asking you, does that because from my perspective, those are just two factual items. [LB747]

FRANK DALEY: Uh-huh. Sure. [LB747]

SENATOR SCHEER: And taking apart the one from the area. So okay, we...I mean, people are not...I mean, I'm just talking about somebody that may be trying to circumvent it because if it's so easily circumvented, you know, it doesn't make sense to me to sort of do it. [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR SCHEER: And so if...really amounts to is, if you can have factual information that you're providing, you provide it someplace else within the state of Nebraska in some lower-cost area, if that then supersedes the... [LB747]

FRANK DALEY: But the bill doesn't say it has to be exclusively distributed in that area. Let's just say we're talking about a specific legislative district. [LB747]

SENATOR SCHEER: Uh-huh. [LB747]

FRANK DALEY: I don't believe under the terms of the bill, if you distribute that information within the legislative district and then distribute it somewhere else, that that takes it out of the electioneering communication definition. On the other hand, if you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

distribute it outside of the legislative district but not within, then it takes it outside of the bill and outside of the definition. The point... [LB747]

SENATOR SCHEER: I could put a big ad in the Tilden paper and then the Valentine paper runs an article about the ad... [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR SCHEER: ...then it certainly does the same effect only it just cost me less because the ad in Tilden was cheaper than the ad in Valentine, I mean, to a certain extent. [LB747]

FRANK DALEY: So have you thought a lot about this? [LB747]

SENATOR SCHEER: No, I haven't. That's about three minutes' worth of my work, son. And maybe I'm in the wrong occupation here but it just seems that it's very...it might be somewhat simple to circumvent the intent of the law. And I'm not saying it doesn't serve a purpose. I'm just not sure that it, to me, is real enforceable. [LB747]

SENATOR MURANTE: Thank you, Senator Scheer. Senator Bloomfield. [LB747]

SENATOR BLOOMFIELD: Senator Scheer just brought up another thought in my mind that I will expound on a little bit but I have a separate question. I'm going to go back to what Senator Scheer mentioned there. So I can go to the Wayne paper, which is outside of his district, and say anything I want to and spend any amount of money? I can buy a full-page ad in the Wayne paper saying that Senator Scheer is a saint or a scoundrel and that's fine? [LB747]

FRANK DALEY: That's correct because it's outside of his district. As long... [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR BLOOMFIELD: What if I do it in the Omaha World-Herald? [LB747]

FRANK DALEY: I'm sorry? [LB747]

SENATOR BLOOMFIELD: What if I do it in the Omaha World-Herald? [LB747]

FRANK DALEY: The Omaha World-Herald is distributed within his district. [LB747]

SENATOR BLOOMFIELD: Well, then it's an offense. So I need to find out whether or not anybody from Wayne might be taking a paper to Norfolk? [LB747]

FRANK DALEY: Well, no. I mean, you know, obviously, when you are advertising in the "Wayne Independent," you are advertising to the folks in Wayne County and the surrounding community and so forth and so on. And that's directed at that electorate. There may be occasional people in Norfolk that will see that because they have subscriptions because they're from Wayne. But generally speaking, the electorate at large in Norfolk are not going to see that. [LB747]

SENATOR BLOOMFIELD: It was the thing you talked about. [LB747]

FRANK DALEY: Possibly. Possibly. [LB747]

SENATOR BLOOMFIELD: Okay. [LB747]

FRANK DALEY: But having the discussion is a lot different than directing information at the voters. [LB747]

SENATOR BLOOMFIELD: And the other question that I had was, Senator Karpisek and I both decided that Senator Scheer was one or the other. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

FRANK DALEY: Uh-huh. [LB747]

SENATOR BLOOMFIELD: If we pooled \$240 apiece, could we buy \$480 worth of robocalls and direct them into Norfolk? [LB747]

FRANK DALEY: If you did it jointly, you could do that. It would be reportable. But let's go back. Let's go back to what you talked about. You have one ad in the Wayne Herald that says...or the Wayne... [LB747]

SENATOR BLOOMFIELD: The Wayne Herald. You got that one right. [LB747]

FRANK DALEY: ...okay, the Wayne Herald that says Senator Scheer is a terrible person, he's a terrible senator or he's a wonderful person and he's a wonderful senator. And you stop there. Under current law, because it's outside of his district, that's not reportable. But people in Norfolk may talk about it because they may hear about it. Under current law, if you said Senator Scheer is a terrible person or a wonderful person, a great senator or a terrible senator, vote for him or don't vote for him, under current law that would be reportable. Now is there a real significant difference right before the election on something like that? [LB747]

SENATOR BLOOMFIELD: No, there isn't. No, there is not. [LB747]

FRANK DALEY: And the answer is, really not. But this law is narrowly tailored so that if it's in the Norfolk area and it doesn't say vote for, vote against, talk about an election, just talks about him, then it's reportable if it's within 30 days of the election. But if it's outside of the district, it's not. So there's still more flexibility if you want to provide information. But it's during a narrow period of time with a narrow message that's reportable because, frankly, most of the types of ads that this is going to attach are the ones that are truly intended to affect elections. That's why they're timed the way they are. That's why they're directed the way that they are. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR BLOOMFIELD: Then I go back to the question of putting it in the Omaha World-Herald... [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR BLOOMFIELD: ...just because it's distributed in Norfolk, then it's... [LB747]

FRANK DALEY: I would take the position, yes, because it circulates there and it's distributed to the voters. The Wayne Herald, people may have mail-in subscriptions but you can't go to the kiosk and buy the Wayne Herald in Madison County, I'm pretty certain. [LB747]

SENATOR BLOOMFIELD: You might be able to in a spot or two. [LB747]

SENATOR MURANTE: So I have two...is that going to... [LB747]

SENATOR BLOOMFIELD: Yeah. [LB747]

SENATOR MURANTE: Thank you, Senator Bloomfield. I have two questions for you on... [LB747]

SENATOR BLOOMFIELD: Senator Scheer has more (inaudible). [LB747]

SENATOR SCHEER: Go ahead. [LB747]

SENATOR MURANTE: Okay. Two technical questions for you. [LB747]

FRANK DALEY: Uh-huh. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR MURANTE: The first is the 30-day rule. [LB747]

FRANK DALEY: Yes. [LB747]

SENATOR MURANTE: And maybe this is a question for Senator Avery and perhaps he can answer in his closing. But as you well know, we don't really have election day anymore in Nebraska. At this point, by the time you get to election day, at least 25 percent, maybe as much as a third of people have already voted. We have election month in Nebraska. [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR MURANTE: So the 30-day rule...early voting has already started. Early voting starts 35 days before the election. I'm wondering what the rationale was to make it 30 in light of the fact that by 30 days before the election, you probably are already at 15 percent to 20 percent. [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR MURANTE: The thirty-fifth day before the election is the second...the day in which people vote second most in the election cycle. So it's...I'm wondering how we landed on 30. [LB747]

FRANK DALEY: Okay. The way that we landed on 30 was that the original federal legislation, I believe, talked about 60 days before the primary and 90 days before the general. The Supreme Court said, no, that's too much time. That encompasses too much that probably is not intended to affect the elections. And so it came down with 30 days before the primary and 60 days before the general and that was considered constitutional. I think Senator Avery's thought, though I don't want to speak for him is, let's make it even narrower so that we're clearly within the constitutional permissibility.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

[LB747]

SENATOR MURANTE: He's a strict constitutionalist, Senator Avery. [LB747]

FRANK DALEY: Yes. I'll grant him that. [LB747]

SENATOR MURANTE: All right. My second question for you...that makes sense. I feel sorry for the early voters who have to suffer through five days of not dealing with this regulation. But the second deals with the issue of polling... [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR MURANTE: ...especially polling by private organizations like newspapers that aren't...that don't even intend to use the results to influence the outcome of election. But it seems to me that if I call and ask, who are you voting for, candidate A or candidate B, I'm referring to a clearly identified candidate. It's publicly distributed and it is directed to the electorate so it would probably count under this bill. [LB747]

FRANK DALEY: I'm suspect not. [LB747]

SENATOR MURANTE: Okay. [LB747]

FRANK DALEY: And here's the reason. I mean, you're aware of the concept of a push poll? [LB747]

SENATOR MURANTE: Quite aware, yes. [LB747]

FRANK DALEY: Okay. [LB747]

SENATOR MURANTE: I've suffered through them before, yeah. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

FRANK DALEY: A poll is intended to gather information from the object of the poll. So you receive a telephone call from a legitimate poller, and their point is to try and gather information from you, typically not to send any sort of message at all or tell you anything about the candidate. On the other hand, the push poll really is something whereby, in the guise of a poll, it's intended to convey a message. So are you acquainted with Senator Murante? Yes, I am. Do you know anything about that? [LB747]

SENATOR MURANTE: Uh-huh. [LB747]

FRANK DALEY: Do have a favorable or unfavorable view? Favorable. Well, would it change your view if you knew that Senator Murante did X, Y, Z? [LB747]

SENATOR MURANTE: Uh-huh. [LB747]

FRANK DALEY: That sort of thing. I mean, that's obviously intended to send a message. And I actually think that that's probably an expenditure or an electioneering communication. And shouldn't something like that be reportable? [LB747]

SENATOR MURANTE: But the...under this bill, what we're dealing with right now is not election... [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR MURANTE: We already have laws that deal with communication which is attempting to influence the outcome of an election. [LB747]

FRANK DALEY: Right. Uh-huh. Uh-huh. [LB747]

SENATOR MURANTE: What we're talking about here is just any sort of talk about a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

candidate within a period... [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR MURANTE: ...close to an election cycle. So you...I still don't see why a poll wouldn't fall under this statute as it's currently... [LB747]

FRANK DALEY: If there were some concern that a poll would constitute an electioneering communication, I think the simple solution is to define poll and then make that one of the exceptions to the term "electioneering communication." [LB747]

SENATOR MURANTE: Okay. Senator Scheer, did you say? [LB747]

SENATOR SCHEER: Yeah, one quick one. Under the legislation, 30 days before, it then has to be reportable. I'm assuming to your office? [LB747]

FRANK DALEY: Correct. [LB747]

SENATOR SCHEER: And how long, if I mail something today, how many days do I have to notify you that I did that? [LB747]

FRANK DALEY: It would...depending upon the nature of your entity...but let's say you're a corporation. Let's say there are two corporations. Corporation number one, today sends out a communication that says vote for Senator Scheer. And corporation B today sends out a communication which just talks about Senator Scheer's record. And let's say we're within 30 days of the election. In both cases, they would file the same report and they would be due February 10 because if you're a corporation, it's due within ten days after the end of the calendar month in which the transaction occurs. [LB747]

SENATOR SCHEER: So then this information is available, for the most part, way past

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

the election so... [LB747]

FRANK DALEY: In some cases, it will be available after the election. That's correct.
[LB747]

SENATOR SCHEER: So for one to be able to protect themselves or even know who it is that they are competing against, this still doesn't solve that problem. [LB747]

FRANK DALEY: It does not. It merely requires that those that are participating in the election, at least at some point, disclose how much they've spent. Obviously... [LB747]

SENATOR SCHEER: But unfortunately, it could be after the elective results are in.
[LB747]

FRANK DALEY: Absolutely. Absolutely. And I mean, obviously, there are a whole range of things that if the Accountability and Disclosure Commission were king, that it would change the law in a variety of different ways. But this is a very simple fix to at least plug one hole that currently exists in our campaign finance disclosure system. [LB747]

SENATOR SCHEER: Okay. Thank you. [LB747]

SENATOR MURANTE: Senator Karpisek. [LB747]

SENATOR KARPISEK: Senator Murante, thank you. [LB747]

SENATOR MURANTE: You're so welcome. [LB747]

SENATOR KARPISEK: Sorry to keep you on the hot seat, Mr. Daley. But I guess I'm going to, first, give you a little bit of my opinion that everything is electioneering because, otherwise, why would they do it? I don't think anybody just wants to go out and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

spend money to say that somebody is good or bad just for their fun. Well, maybe if they're bad. My question goes to...I know my office has talked to you about--not within the 30 days--but I've been getting a huge amount of mail from an anti-death penalty group and doing all sorts of...again, if it's not electioneering, I don't know what it is. But there's no return address. We don't know who it is. They're just putting it out there. Would this bill help that any because all they've done is make me very mad and held up the post office... [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR KARPISEK: ...which is good. Is there anything in here that would help that? [LB747]

FRANK DALEY: And the answer is, potentially. And here's how it would work. If, during the summer, they were sending out to the people of the 32nd District information about the death penalty and mentioning you by name--maybe not as the subject of the death penalty--but at any rate... [LB747]

SENATOR KARPISEK: They'd better bring a sandwich. [LB747]

FRANK DALEY: Exactly. But at any rate, but talking about your record on the death penalty. This bill would have no effect on that. On the other hand, if that information came to the people of the 32nd District in the 30 days immediately preceding the election, at the very least, they would be required to be disclosing who they are and how much they spent and identify the candidate that was named in their brochures. Now obviously, there might still be a detection problem as to where this all comes from. But at least there would be a requirement that they would have to report something whereas, currently, there really isn't. [LB747]

SENATOR KARPISEK: I wish I was going to be here next year, I'd try to bring

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Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

some...maybe I'll try to amend something. But it seems to me ridiculous that somebody can just send out whatever they want to say about someone and not have to say who they are. That really frustrates me but... [LB747]

FRANK DALEY: And here's the point of some of this. You know, if you look at any commercial ad these days, it doesn't say buy a Ford or drive a Ford. It creates an image and hopes that, based upon that commercial, you'll either be favorable or you're unfavorably disposed toward that particular product. Campaign material does the same thing. A lot of campaign material doesn't say vote for or vote against but they reference the fact that he's a candidate in a certain election. A lot of these electioneering ads, they don't say vote for or vote against but they're trying to create an image of the candidate that conforms with whether or not the sender wants people to vote for or vote against that candidate. And that's the purpose of plugging this gap. [LB747]

SENATOR KARPISEK: Well, and then in this case, it's not even a vote for or against me because I'm term limited out. [LB747]

FRANK DALEY: Uh-huh. [LB747]

SENATOR KARPISEK: But they keep coming anyway and I've saved them all. And if I find out who they are, they're going to get them back in a different way than I got them. Thank you, Senator Murante. [LB747]

SENATOR MURANTE: Thank you for that colorful description. Senator Bloomfield. [LB747]

SENATOR BLOOMFIELD: I've been getting these same things since close of session last year telling people in my...I don't think they went to anybody but me but they put out the idea that everybody in my church suddenly knows that I'm pro death penalty. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

FRANK DALEY: Uh-huh. [LB747]

SENATOR BLOOMFIELD: And I'd like to know where they came from. I also have a stack of them down in my office, Senator, if you need to add them to yours for delivery. But...I had another question there. I should have gone straight to it. [LB747]

SENATOR KARPISEK: I got you excited. [LB747]

SENATOR BLOOMFIELD: Yeah, you did. I'll have to catch...oh, it came back. [LB747]

SENATOR MURANTE: Thank God. [LB747]

SENATOR BLOOMFIELD: Thanks, judge. Is there anything magic about \$250, say, versus \$500? Two hundred fifty dollars doesn't buy a lot in advertising anymore. [LB747]

FRANK DALEY: No. [LB747]

SENATOR BLOOMFIELD: Okay, thank you. [LB747]

FRANK DALEY: The reason it has \$250 or more is because that's the same standard, whether it's an expenditure or an electioneering expense. The only thing, there's nothing magic about the number but, if I could suggest, let's keep it the same no matter what number you pick. If corporations have to report \$250 or more to report expenditures, they have to...then let's leave it at \$250 or more if they have to report electioneering expenses. But as long as the number is the same, I'm not sure I care what the number is. [LB747]

SENATOR BLOOMFIELD: Okay. Thank you. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR MURANTE: Any additional questions? Frank, thank you for coming down.
[LB747]

FRANK DALEY: Thank you very much for the opportunity to testify. [LB747]

SENATOR MURANTE: Sure. Are there additional proponents wishing to speak? Is there any opposition testimony? Welcome. [LB747]

JULIE SCHMIT-ALBIN: Senator Murante and members of the committee, my name is Julie Schmit-Albin. I'm executive director of Nebraska Right to Life, the state affiliate to the National Right to Life Committee in Washington, D.C., and I appear in opposition to LB747. As I told Senator Avery, it's very aptly numbered, LB747. He said, you know, it kind of swoops in. I have visited with Senator Avery in the past regarding this type of legislation and our concerns. And while I do acknowledge that he has made some attempts for accommodations with other groups, this legislation, in our view, still casts a wide net in terms of limiting the speech of citizen groups with the general public. Some of the groups that have sprung up to do 501(c)(4) issue advocacy have done just that. They've sprung up to do political activity being one of their main purposes for their existence. But that's not the case with us. We have been in existence for 41 years under the umbrella of National Right to Life and its 50 state affiliates. And each one of our state affiliates have had a 501(c)(4) for 40 years, 41 years. So most of those affiliates also have two other entities as we do. We have a 501(c)(3) for educational purposes that does all of our education such as the Walk for Life that we just did Saturday and then our Political Action Committee, our PAC. So we are reporting our political activity under our PAC. So we have two separate IRS statuses and a PAC that we raise money for individually and we report individually on. So since our inception, we have communicated with the general public. We feel it is the right of citizens to communicate with the general public about elected officials and their positions. We don't think that that should be...that we should have to be forced into reporting, fined, you know, meeting

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

certain limits of \$250 and then it kicks in that we have to report how we communicated with the general public about an elected official's position on our issue. Those communications can and have occurred within 30 days prior to a primary or general election and they can and have mentioned the candidate for office and their specific position on our issue or what we're concerned about at the time. For instance, close to election time, our 501(c)(4) has lit dropped cars in church parking lots and distributed pieces that reference a candidate's position on our issue without advocating the election or defeat of said candidate. Of course, in our PAC pieces, we advocate the election or defeat of a candidate. But in a 501(c)(4) communication--and National Right To Life does this as well--right before election, we're simply talking about, hey, did you know that senator so-and-so has this position on this issue? There seems to be an attempt to accommodate groups that only communicate specifically with their members or through a newsletter or the media and newspaper type of communication. And our...as I said, our 501(c)(4), information can end up being distributed door to door right prior to an election, in church parking lots right prior to an election, generally, in the realm of the general public. So we're not talking about just communicating with our members. And I know Senator Avery has worked to carve that out. But we have a broader appeal there in terms of who we're trying to communicate with. The hour is late and I don't want to get into any specifics on details about turning over our donor information if you don't abide by this or that of the law. I will say that James Bopp is our National Right to Life legal counsel. And he is the...was the lead attorney on dismantling most of the McCain-Feingold federal campaign reform law. He is the architect behind Citizens United. He has challenged similar type laws in other states. And I showed him LB606 two years ago and he said, this is just the type of thing that he would come in and challenge because it's very much his opinion that, again, citizens have a right to communicate with the general public about an election official's position on issues. We're already reporting through our PAC. So we're talking about 501(c)(4) citizens, citizens just talking about their elected officials. And we should haven't have to be beholden to 30 days before an election and jumping through all these hoops. So that's our position. I'd be happy to answer any questions. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR MURANTE: Thank you very much. Are there any questions? Senator Karpisek. [LB747]

SENATOR KARPISEK: Thank you, Senator Murante. Thank you, Ms. Schmit-Albin. The \$250, does that seem to be a problem to knowing when it kicks in or not? [LB747]

JULIE SCHMIT-ALBIN: Well, it's not so much the \$250. It's more the fact that we communicate with the general public and we don't want to be told, as citizens, that we don't have a right to tell the general public that senator so-and-so...but I guess that's... [LB747]

SENATOR KARPISEK: Okay. But I think in your testimony you said something about the \$250... [LB747]

JULIE SCHMIT-ALBIN: Well, it's just that, you know, that's where the limitation comes in. [LB747]

SENATOR KARPISEK: ...because I'd be happy to put in an amendment to make it \$1 to make it easier for you to track. [LB747]

JULIE SCHMIT-ALBIN: Uh-huh. Uh-huh. Well, I guess my point, Senator, is that it'd be great if these shadow groups were PACs. I think that's what we're all getting at. I don't like the instance where in Mayor Stothert's campaign, this shadow group came in, attacked her on pro-life issues, called her not pro-life. And nobody knows who they were, where they came from, and then they went away. And I think Senator Avery said that his initial bills were directed at pieces from a specific group. We operate as a PAC, you know, we're within the laws of PAC. And then we try to do what we do as citizen advocates under our 501(c)(4), which National Right to Life does as well. So it's not really about so much...the point of the \$250 is where it kicks in. We're going to be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

spending more than \$250 if we're communicating with everybody in a certain legislative district generally, you know, going door to door, doing church lit drops that senator so-and-so voted against this bill. [LB747]

SENATOR KARPISEK: Okay. So that doesn't matter so much because I would have done that for you to make it easier. [LB747]

JULIE SCHMIT-ALBIN: Uh-huh. [LB747]

SENATOR KARPISEK: When you do lit drops at parking lots, do you put on it who you are? [LB747]

JULIE SCHMIT-ALBIN: Yes, Senator. I have examples here. [LB747]

SENATOR KARPISEK: I've seen plenty. [LB747]

JULIE SCHMIT-ALBIN: With our PAC and also on our 501(c)(4)s, we always identify. [LB747]

SENATOR KARPISEK: So could it be something to say that you have to identify who you are? And I shouldn't make any deals without Senator Avery. But, to me, I think that's the problem. In my opinion, anyway. You don't even know who they are. [LB747]

JULIE SCHMIT-ALBIN: Right. [LB747]

SENATOR KARPISEK: At least if I know that Right to Life is putting something out about me and if it's wrong, I know who to go after. [LB747]

JULIE SCHMIT-ALBIN: Sure, right. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR KARPISEK: But if it's just...because sometimes these things aren't correct... [LB747]

JULIE SCHMIT-ALBIN: Right. [LB747]

SENATOR KARPISEK: ...like you said with Mayor Stothert. That is just not fair. And I guess somehow, instead of being opposed, I wish we could get you to be neutral because I think they are also hurting you... [LB747]

JULIE SCHMIT-ALBIN: Uh-huh. [LB747]

SENATOR KARPISEK: ...your organization. [LB747]

JULIE SCHMIT-ALBIN: Right because it cast a wide net. And I don't see the targets of Senator Avery's bill even here. So apparently, either they're not going to be involved in political activity in the future in our state or they're just going to challenge this or something. [LB747]

SENATOR KARPISEK: Well, because they don't have to admit that they exist. You know, they don't exist. They just pop up and they're gone and nobody knows who they were, even though most of us know usually who they are. [LB747]

JULIE SCHMIT-ALBIN: Right. [LB747]

SENATOR KARPISEK: My point is, you know, we can agree or disagree with you putting them out. I think there's little issues there but that's neither here nor there. I just think that if we know who it is, if people know who it is, to me, it takes a lot of the stuff away. [LB747]

JULIE SCHMIT-ALBIN: I agree. I think there's a constitutional concern for our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

constitutional...our legal counsel at National Right to Life in terms of there's a separation. This is political activity, PAC activity, but citizen groups under 501(c)(4) are different. We have a right, as citizens, in our country to communicate to the general public that senator so-and-so is this way on an issue. And that's where his advocacy comes in, in the courts. [LB747]

SENATOR KARPISEK: Well, and I think as soon as you go from being a citizen to getting into a group, you kind of lose some of that; my opinion. I know you disagree but we're not going there. So thank you for straightening out a couple of things for me. [LB747]

JULIE SCHMIT-ALBIN: Thank you. [LB747]

SENATOR KARPISEK: Thank you. [LB747]

SENATOR MURANTE: Are there any additional questions? [LB747]

JULIE SCHMIT-ALBIN: Thank you. [LB747]

SENATOR MURANTE: Seeing none, thanks for coming down. Is there additional opposition testimony? Does anyone wish to testify in neutral? Senator Avery, would you like to close? [LB747]

SENATOR AVERY: Thank you, Mr. Vice Chair. Actually, I was hoping I wouldn't have to close but there is too much misinformation that's been talked about. Let me say it again. This bill does not limit speech. It does not. It only requires reporting. It's not saying you can't engage in electioneering communication. It says, all we are asking is that you report the amount spent above \$250...\$250 and above. And we are not asking you to do much more than that. It's a reporting bill. That ought to be the objective of every organization, including the Right to Life organization, that they would provide as much

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

information to the public as needed so the public would know who is communicating these messages. That's not asking for much. It's not putting a limit on what they can spend. It's not saying that they have to, in any way, limit or only say some things but not others. It's not telling you what the content of that communication needs to be. And it, certainly, is not limiting your right to communicate in that manner. The Supreme Court has already ruled on this. And they have consistently upheld the right to these groups to exist. But they have upheld the reporting requirements that exist wherever they do exist in some states. But this is not, at all, designed to limit speech and it certainly does not do that. And it is a reporting only. I want to thank Mr. Daley for bringing his considerable knowledge and experience in these issues to this committee to inform the debate. One other thing that I would like to comment on is that we were talking about hypotheticals, what about this and what if this and what if that? Laws are usually not written to regulate rare behavior or absurd behavior. They are...situations, some of which we were speculating about, that are unlikely to happen in real life cannot be...all of them cannot be covered in law. And I would ask you to take a realistic view of this. Are we overreaching as Ms. Schmit-Albin suggested this was too broad, casting it too wide? No, it is not. It's not overreaching at all. It is a simple bill that defines what electioneering communication is and seeks to have the groups that engage in that to report. That is all. It is not more than that. So I'm convinced that if we get this out on the floor, that we'll have another day of very spirited debate because there will be groups that will try to influence senators to exempt me, exempt us, exempt us. Why? Why? Why do you want to be exempted from revealing what you're up to? I don't understand that. Will groups attempt to get around it? Sure, they always do. And when groups that don't want the light of day shining on their behavior and don't want the public to know what they're up to or who they are, when legislation like this comes, they're going to fight it. And they're going to try to find ways around it. And I know that. And when they do, it's our obligation to close the loopholes. I urge you to advance this to the floor. We actually got it through the first round of debate in 2010--or '11, 2011--and it was on Select File that these objections started coming forward. And we worked very hard to meet those questions with the understanding...I talked with Ms. Schmit-Albin and she made it clear to me that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

they were going to be a hard sell. And they continue to be. Thank you. [LB747]

SENATOR MURANTE: Thank you, Senator. Senator Bloomfield has a question.
[LB747]

SENATOR BLOOMFIELD: You said the Supreme Court has already upheld that we
could have these... [LB747]

SENATOR AVERY: Yes. [LB747]

SENATOR BLOOMFIELD: ...rules. Do they say we have to have them? [LB747]

SENATOR AVERY: No. The Supreme Court does not specify that you have to write
laws to regulate behavior... [LB747]

SENATOR BLOOMFIELD: So we are fine, legally, if we do nothing. [LB747]

SENATOR AVERY: What they're saying is, if you have laws like this, they are
constitutional. [LB747]

SENATOR BLOOMFIELD: But if you don't have laws like this, that's also constitutional.
[LB747]

SENATOR AVERY: No. Our job here is to devise laws that are in the public interest.
[LB747]

SENATOR BLOOMFIELD: Our job here is not to devise too many laws that interfere
with the public. [LB747]

SENATOR AVERY: Well, there...people who don't want to report are going to say this is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

interfering with their freedom. I've heard it already. I don't think that's the case. [LB747]

SENATOR BLOOMFIELD: Thank you. [LB747]

SENATOR AVERY: We have an obligation. We've been talking about transparency in this committee a lot. We've been talking about it on the floor. Transparency is at the heart of democracy. If we are hiding in the murky shadows of secrecy in what we do and the groups that try to influence the political decisions of the state and what they do, then that is wrong and ought to be stopped. [LB747]

SENATOR BLOOMFIELD: Senator, we just this morning, hit the whole (recorder malfunction)... [LB747]

SENATOR MURANTE: Oh, God. [LB747]

SENATOR BLOOMFIELD: ...by removing his name from the ballot. [LB747]

SENATOR MURANTE: Senator Scheer. [LB747]

SENATOR SCHEER: Senator, I want to give you an opportunity to try to change my mind here. But your last impassioned comment in relationship to operating in the murkiness and so forth, I don't disagree with that. However, having said that, based on your bill, I can do whatever I want the last 30 days, 29 days out, 2 days out, at whatever expense--\$250 or more, I don't care, I can spend \$5,000--but you won't know who did it before you vote. And no one else will. Based on Mr. Daley's comments, it would be after the election that my report...legally report under this bill, would hit public records. What earthly good, realistically, from a political standpoint, from an election standpoint, what good does it do to find out seven days or three days after the rest of the world voted, that Mr. Wallman produced all this information--factual or not--and he provided that information and he tells you how much he spent but it already had the direct effect on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

the election that you're talking about. [LB747]

SENATOR AVERY: Well, it would put the public on alert for the future elections and, in all probability, a group that is engaging in that kind of communication 30 days...within 30 days of the election, they probably have made similar efforts to influence the election prior to that, probably. [LB747]

SENATOR SCHEER: Might have. [LB747]

SENATOR AVERY: Yeah. It's not perfect. We have discussed in this committee, about reporting deadlines and when it becomes available to the voter and can make a difference in the success. We added in those changes. [LB747]

SENATOR MURANTE: Senator Avery, I want to ask you a little bit about what Senator Karpisek had asked you about. And I appreciate that we all get these letters. We've all got them. But if there is a citizen of Nebraska who is at home watching the state Legislature and there are things that we say on the floor that this citizen finds annoying and he decides to write these things down, put our pictures on a mailer, and mail it to all 49 of us, you asked the question...and for some reason, this person wants to remain anonymous, you asked the question why do they want to hide in the murky shadows. I guess, to me, what business is it of ours to even ask that person's motivation? If he wants to send us a letter on this subject...I happen to agree with the person but if they want to send us a letter, what business is it of ours to even ask the question what's motivating you to send it? [LB747]

SENATOR AVERY: Well, you're not talking about an election. [LB747]

SENATOR MURANTE: Right. [LB747]

SENATOR AVERY: An electioneering communication is tied to candidates and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

elections. And this bill, specifically, excludes from electioneering communication, communications of the sort you're talking about that try to influence us on a bill. [LB747]

SENATOR MURANTE: Well, as long as we don't expand it to include Senator Karpisek's ideas, I guess we'll be okay. All right, anything... [LB747]

SENATOR BLOOMFIELD: Let me throw one more quick one in here. We can do whatever we want to without reporting via Internet where we don't spend \$250 and there's no issue. So I could send out a million e-mails. That doesn't cost me anything, say, in... [LB747]

SENATOR AVERY: The way it reads now, once you hit \$250 in expenditures, you have to report if it meets the other definitional terms. [LB747]

SENATOR BLOOMFIELD: But I can send out mass e-mails of a nonlimited number, beings they don't cost anything, and it's not a problem? [LB747]

SENATOR AVERY: I suppose one could argue that they're not completely cost free but it may not rise to the level of \$250. [LB747]

SENATOR BLOOMFIELD: Thank you. [LB747]

SENATOR AVERY: But you do have to subscribe to service of a provider. [LB747]

SENATOR MURANTE: (Exhibit 1) Any additional questions? Then before we close the hearing, I have a letter of opposition from Americans for Prosperity, which I'm sure will shock you, Senator Avery. [LB747]

SENATOR AVERY: Yes, I am shocked. I've read that letter. [LB747]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
January 30, 2014

SENATOR MURANTE: And that closes the hearing on LB747. [LB747]

SENATOR AVERY: And the hearings for today. [LB747]

SENATOR MURANTE: And the hearings for today. [LB747]

SENATOR AVERY: Yes. [LB747]