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Floor Debate
January 19, 2012

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PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the tenth day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Senator Sullivan. Would you all please rise.

SENATOR SULLIVAN: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Sullivan. I now call to order the tenth day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Please record, Mr. Clerk.

CLERK: I have a quorum present, Mr. President.

PRESIDENT SHEEHY: Corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

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CLERK: Mr. President, I have a Reference report referring LB996 through LB1039 as well as two constitutional amendments. Your Committee on Banking, Commerce and Insurance chaired by Senator Pahls reports LB714, LB852, and LB853 to General File. Hearing notices from Retirement Systems Committee and from the Natural Resources Committee signed by their respective Chairs. That's all that I have, Mr. President. (Legislative Journal pages 271-273.) [LB714 LB852 LB853]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Visitors introduced.) Senator Ashford, you're recognized for a motion.

SENATOR ASHFORD: Mr. Lieutenant Governor, I would move that a committee of five be appointed to escort the Chief Justice of the Supreme Court to the Legislative Chamber for the purpose of delivering the State of the Judiciary Address.

PRESIDENT SHEEHY: You have all heard the motion. All those in favor say aye. Opposed, nay. The motion passes. I would appoint the following committee: Senator Ashford, Senator Wightman, Senator Coash, Senator McGill, and Senator Lathrop. Would the Escort Committee retire to the rear of the Chamber to escort the Chief Justice. The Chair recognizes the Sergeant at Arms. (Gavel)

SERGEANT AT ARMS: Mr. President, your Committee now escorting Chief Justice Mike Heavican and members of the Nebraska Supreme Court.

PRESIDENT SHEEHY: Ladies and gentlemen, members of the Nebraska Legislature, the Chief Justice of the state of Nebraska, Mike Heavican.

CHIEF JUSTICE HEAVICAN: Thank you very much. I appreciate that warm greeting. Mr. President, Mr. Speaker, members of the Legislature, and fellow Justices of the Nebraska Supreme Court. I would like to thank the members of this body, and

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specifically thank the Speaker for inviting me to address you again this year. It is always a great honor for me to report on the court's past year and discuss the court's future. But first I would like to introduce my fellow Justices of the Supreme Court. To my immediate left is Justice Kenneth Stephan of Lincoln. I'm sorry, he's second from the left there. And to Justice Stephan's left is Justice Lindsey Miller-Lerman of Omaha. And seated now to my immediate left is Justice John Wright of Scottsbluff and to my immediate right is Justice John Gerrard of Norfolk. To the right of Justice Gerrard is Justice Michael McCormack of Omaha. Justice William Connolly of Hastings is unable to be with us this morning. Today I will speak to you about the elderly and our children in our courts, technology and the future of our courts, and the court's budget, emphasizing our commitments to cooperation, accessibility, affordability, and accountability. I will speak to you first about the elderly in our courts. Last year this Legislature responded to a report from a committee which studied the status of adult guardianships and conservatorships in the Nebraska court system. The Committee's recommendations were incorporated into LB157, sponsored by Senator Colby Coash, which was passed unanimously as the Guardianship Reform Act of 2011. Your actions were both timely and farsighted. While the total population of the state is expected to grow 11 percent by 2030, the number of Nebraskans between the ages of 70 and 79 is expected to grow by more than 80 percent during that same time period. We expect the number of guardianships and conservatorships to likewise grow dramatically in the next two decades. The statutory changes in LB157 went into effect on January 1 of this year. Among other provisions, the new law requires background checks for guardians and conservators, and mandates bonds for conservators when the assets of a ward are greater than \$10,000. The courts have finalized the changes called for by the statute. All of the necessary forms, as well as informational guides and links to statutes and court rules, have been made available on the judicial branch Web site at www.supremecourt.ne.gov. In addition, training is being offered for court staff, judges, financial institutions, guardians, and conservators. We are aided in this process by the Nebraska State Bar Association and individual lawyers and volunteers throughout the state. These efforts have resulted in Nebraska's recognition as a national leader in this

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area. Other states have contacted us to review our reforms. The National Center for State Courts has established a link on its elder law Web site for information about the changes in the guardianship and conservatorship procedures here in Nebraska. None of us is naïve to believe that elderly persons will no longer be subject to abuse. But the statutory changes made by this Legislature, which are being implemented by the judicial branch, will provide for better checks and balances. We appreciate the willingness of this body to provide increased protection to the vulnerable elderly of our state. The Nebraska Supreme Court will continue to make every effort to ensure that these legislatively mandated changes to guardianships and conservatorships will be effectively administered. Likewise, the courts have a number of innovative projects concerning children in the courts. Although time does not allow me to speak about all of these projects, I will address several of them. I first note that the Court read with interest the LR37 report issued by your Health and Human Services Committee under the leadership of Senator Kathy Campbell. We are humbled by the report's vote of confidence in the courts. We acknowledge with gratitude the Committee's charge to the courts and will use all available resources to continue to explore and implement innovative programs for Nebraska's children. Consistent with LR37, the courts have participated in interbranch cooperation on several levels. On a statewide level, with the help of the Casey Family Programs Foundation, a working group has been convened comprised of representatives from all three branches of state government. The purpose of this group is to identify solutions to the ongoing issues relating to children in the state foster care system. Nebraska Court of Appeals Chief Judge Everett Inbody, State Court Administrator Janice Walker, and I are regularly joined by Senators Kathy Campbell and Brad Ashford in meetings with Department of Education Commissioner Roger Breed and others, including Department of Health and Human Services Chief Executive Officer Kerry Winterer. This group continues to search for practical ways to improve service delivery in child welfare cases in our juvenile and county courts. On the local level, we work to improve the court system for abused and neglected children by utilizing the Court's "Through the Eyes of the Child Initiative." Every judicial district has teams headed by county or juvenile court judges which work to find better, speedier

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ways to deal with families and children in our juvenile courts. Our Through the Eyes of the Child teams are available as local forums to the Department of Health and Human Services for discussion purposes as the Department strives to meet its obligations to children in foster care across the state. I want to cite in particular several local teams. First, I would like to recognize the Dawson County Through the Eyes of the Child team, led by Judge Carlton Clark. The Dawson County team has conscientiously worked to move its child welfare cases forward, continually outperforming the rest of the state. I also acknowledge the efforts and leadership of the Douglas County Separate Juvenile Court Judges who are working with the Douglas County Attorney, the Douglas County Public Defender, the Department of Health and Human Services, guardians ad litem, court-appointed special advocates, and others to expedite permanence for children in that court. I challenge all involved in that difficult process to find answers to the question: "How can we best serve the families and children of Omaha, Nebraska?" No timely discussion of children in the courts would be complete without addressing truancy. Last year I stated that "truancy is a major contributing factor to underperformance and underachievement of our state's young people." With the passage of Senator Ashford's LB800 during last year's legislative session, truancy was brought to the forefront and much progress has been made to address the issue. I would like to thank Nebraska's county attorneys, school administrators, and others who instituted changes on a local level by addressing truancy issues prior to formal court involvement. By focusing our efforts on prevention and on diversion of truants before they enter the court system, all parties benefit. The courts' resources should be reserved for the very most difficult truancy cases. Programs in Douglas, Hall, Saunders, Lancaster, and other counties have been effective in doing just that. I have also previously spoken to you about a project developed and operated by the Court's Office of Probation Administration, led by Ellen Brokofsky. The Nebraska Juvenile Service Delivery Project is run in conjunction with the Department of Health and Human Services. This project allows children, found to have violated the law, to receive necessary rehabilitative services without those children being made wards of the state. The pilot project, currently operating in Douglas County, has shown great promise.

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While under probation supervision, 635 juveniles were able to access rehabilitative services without, as I stated, becoming state wards. And 83 percent of the juveniles participating in the project were served while remaining in their own homes. We think this program is both efficient and effective. We hope the program will be fully funded and expanded to at least one county in rural Nebraska. In particular, we thank Senator Bob Krist for his ongoing support in seeking full funding for this program. The court's probation officers not only provide programs for children, they also provide Nebraska's only comprehensive system of community-based corrections for adults. The Community Corrections Council was statutorily abolished during the last legislative session. However, the commitment to continue to provide meaningful sentencing alternatives through community supervision initiatives remain strong under the Court's Office of Probation Administration. Significant strides have been made over the past six years to offer specialized probation programs and to offer participation in problem-solving courts as viable alternatives to imprisonment. These community-based programs are both effective and far less costly than incarceration. As an example, Probation's nationally recognized Specialized Substance Abuse Supervision Program is intended for individuals charged with a drug offense and who are at high risk of reoffending. Each participant has a story to tell about the personal impact of the program. It is not unusual for successful participants to say this program has saved their families and saved their lives. Likewise, Nebraska's 25 problem-solving courts perform a similar service. They have just undergone an extensive evaluation by the University of Nebraska Public Policy Center. Preliminary results indicate that these courts can also make dramatic changes in the lives of drug-addicted, nonviolent offenders by providing challenging rehabilitative programs rather than costly incarceration. I turn now to technology in the courts. As I spoke to you last year, the court system was looking forward to integrating both the Douglas County District Court and the Douglas County Separate Juvenile Court into the Court's statewide case management computer system. That mission has been accomplished. We are now one of only a few court systems in the nation that have a statewide comprehensive computer case management system. This system allows for electronic filing of cases, electronic payment of fines, and electronic viewing of court

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records 24 hours a day, as well as improved collection of statistical data. We are making great progress in the area of electronic filing of cases. An example of the efficiency and cost savings that eFiling brings to the Court system is shown by last December's new county court civil filings: In December 2011, 63 percent of the total civil filings in the state's county courts was done electronically, saving several thousand hours of staff time. Our ever-increasing use of technology in the courts has also helped to improve overall productivity in the area of payment collections. In 2011, our electronic payment system for traffic fines collected over \$6.3 million--an increase of over 25 percent from the previous year. Through our partnership with Nebraska.gov, our courts also allow on-line payments of other court fines and costs, including civil judgments, criminal fees and fines, restitution, and probation fees. All combined, collections through the court's ePayment systems totaled nearly \$9.5 million in 2011. The judicial branch continues to look to the future and plan for greater efficiencies. I am pleased to report to you that the Nebraska Supreme Court's Reengineering Committee has now established an ongoing relationship with the National Center for State Courts. The National Center will assist our judicial branch with the establishment of pilot projects pertaining to centralized fine collection, remote review of guardianship/conservatorship accountings, technology enhancement, and the sharing of court services across county lines. These projects, designed to enhance efficiency and better utilize staff resources statewide, will begin in 2012. For example, court employees in Colfax County will be able to process electronic filings for court employees in Douglas County, or a court employee in Knox County will be able to review a guardian's annual accounting filed in Adams County. Our probation staff in one county can transcribe presentence investigation reports for our staff in another county. Additionally, Judge Anne Paine of McCook will conduct a pilot project in the 17 counties that comprise the 11th judicial district. One employee will oversee collection of fines and costs for all county courts in the district. It is hoped that these projects can serve as models for rural courts and allow us to preserve jobs in communities with fewer needs, while easing the burden of courts which have greater demands on staff time. I also wish to note that the Nebraska Association of County Officials has included working with the Court's Reengineering Committee in its

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recommendations for county government in the future. I am pleased by NACO's recommendation that its 2020 Committee cooperate with the Court's Reengineering Committee to develop procedures and technology that are efficient and economical. We are indebted to county governments across the state who partner with us in all 93 counties and provide facilities and operating expenses for the trial courts and probation. The court's personnel expenses, of course, however, are paid for by the state's budget. I appreciate this Legislature's recognition of the unique role of the judicial branch and the assistance we received from you during the last two budget cycles. Although our budget was reduced several times, through cost-saving measures and the efforts of our court and probation staff, we have been able to maintain access to justice for all Nebraskans. With your help, we have not had to close courts or jeopardize court and probation services--actions which many other state courts were forced to take in order to survive budget reductions. I am very proud of the sacrifices our court and probation employees have made by stepping up to the challenge of doing more with less. These employees are continually learning new skills and adapting to new methods to meet our constitutional responsibilities. As the judicial branch looks ahead to its role in providing services to Nebraska's citizens, we also wish to look back at two important anniversaries that took place in 2011. First, we celebrated the 20th anniversary of the Nebraska Court of Appeals, which has greatly improved the delivery of justice in Nebraska. Prior to the establishment of the Court of Appeals, some cases languished for years before being decided. The appellate court docket is now current and the Court of Appeals, as well as the Supreme Court, continues to innovate and find ways to expeditiously handle our appellate cases. Last year also marked the 20th anniversary of the Dispute Resolution Act, which formally established the use of mediation in Nebraska courts. The Office of Dispute Resolution of the Nebraska Supreme Court partners with Nebraska's nonprofit mediation centers in Fremont, Kearney, Scottsbluff, Beatrice, Lincoln, and Omaha to provide mediation and dispute resolution for Nebraska's courts and citizens. Mediation is a major component in the Parenting Act passed by this Legislature in 2007. Neither of these anniversaries would have been possible without the foresight of former Supreme Court Chief Justice William C. Hastings, who passed

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away in 2010. Chief Justice Hastings was the driving force behind the creation of these two entities. The Supreme Court recently honored him in a memorial service held this past December. I would like to conclude by noting again that our courts perform the constitutionally mandated role of providing access to justice for all Nebraska citizens. I want to reiterate that the judicial branch is committed to efficiently fulfilling that critical role. We continue to be committed to cooperation, to making the judicial branch and its services accessible and affordable, and to being held accountable. Thank you for this opportunity to speak with you today. And thank you for the good work that you do for the courts and for the citizens of Nebraska. Thank you very much.

PRESIDENT SHEEHY: Thank you, Chief Justice Heavican. Would the committee escort the Chief Justice and other members of the Nebraska Supreme Court from the Chamber. Mr. Clerk, we will proceed to introduction of new bills.

CLERK: Mr. President, new bills. (Read LB1098-1130 by title for the first time.) And Mr. President, that's all I have at this time. (Legislative Journal pages 279-285.) [LB1098 LB1099 LB1100 LB1101 LB1102 LB1103 LB1104 LB1105 LB1106 LB1107 LB1108 LB1109 LB1110 LB1111 LB1112 LB1113 LB1114 LB1115 LB1116 LB1117 LB1118 LB1119 LB1120 LB1121 LB1122 LB1123 LB1124 LB1125 LB1126 LB1127 LB1128 LB1129 LB1130]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Doctor of the day introduced.) Mr. Clerk, we will now move to the first item under Select File, LB705. [LB705]

CLERK: Mr. President, Senator Nordquist, thank you. I have no amendments pending to LB705, Senator. [LB705]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB705]

SENATOR NORDQUIST: Mr. President, I move LB705 to E&R for engrossing. [LB705]

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PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.
Opposed, nay. LB705 advances. [LB705]

CLERK: LB706, Senator, I have no amendments to the bill. [LB706]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB706]

SENATOR NORDQUIST: Mr. President, I move LB706 to E&R for engrossing. [LB706]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.
Opposed, nay. LB706 advances. [LB706]

CLERK: LB707, Senator. Once again, no amendments to the bill. [LB707]

PRESIDENT SHEEHY Senator Nordquist, you're recognized for a motion. [LB707]

SENATOR NORDQUIST Mr. President, I move LB707 to E&R for engrossing. [LB707]

PRESIDENT SHEEHY You have heard the motion. All those in favor say aye. Opposed,
nay. LB707 advances. [LB707]

CLERK LB708, Senator, I have no amendments to the bill. [LB708]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB708]

SENATOR NORDQUIST: Mr. President, I move LB708 to E&R for engrossing. [LB708]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.
Opposed, nay. LB708 advances. [LB708]

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CLERK: LB709, Senator. Once again, no amendments to the bill. [LB709]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB709]

SENATOR NORDQUIST: Mr. President, I move LB709 to E&R for engrossing. [LB709]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.
Opposed, nay. LB709 advances. [LB709]

CLERK: LB710, Senator. No amendments to the bill. [LB710]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB710]

SENATOR NORDQUIST: Mr. President, I move LB710 to E&R for engrossing. [LB710]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.
Opposed, nay. LB710 advances. [LB710]

PRESIDENT SHEEHY: Mr. Clerk, we will now move to the first item under General File,
LB418. [LB418]

CLERK: Mr. President, LB418, a bill originally introduced by Senator Nelson. (Read
title.) The bill has been discussed, Mr. President, as late as yesterday. At that time there
had been a motion filed to adopt AM1705. That motion lost. Pursuant to that action,
Senator Mello filed a motion to reconsider. That motion to reconsider AM1705 is
currently pending, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Nelson, would you like to give us
a brief summary of LB418. Senator Fischer, would you like to give us a brief summary

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of the amendment, AM643, from Transportation and Telecommunications. [LB418]

SENATOR FISCHER: Thank you, Mr. President and members. The committee amendment, if you remember, just clarifies the introducer's intent on the bill and that was to put the requirements for political calls to the Accountability and Disclosure Commission from the Public Service Commission. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Mello, would you like to give us a brief summary of your motion to reconsider. [LB418]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. My motion to reconsider AM1705 is based on the underlying premise that we as a Legislature were informed in the committee testimony and floor testimony on LB418 that it would be easier for political consumers and political candidates in campaigns to go through one state agency to deal with utilizing automated dialing...automated calling devices such a/k/a robocalls to be able to utilize that through one state agency. AM1705 moves the two minor provisions that involve political activity from accountability disclosure, the issue regarding the script as well as the time of the call, moves that over to the Public Service Commission, thus making all activity regarding automated calls and dialing fall within the Public Service Commission. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Are there members requesting to speak on the motion to reconsider? Senator Mello. [LB418]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I believe...I just spoke with Senator Nelson. I think he is working an amendment to try to provide another perspective on this issue. But as I urge you to reconsider this motion, if the underlying issue was always the intent to streamline this issue and to put it under one agency, the testimony that was given in the committee in a neutral capacity by

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Frank Daley, the Executive Director of the Nebraska Accountability and Disclosure Commission, points out some very glaring concerns that we should be cognizant of. And that glaring concern was for us to move anything else more into the Accountability and Disclosure Commission for the pure purpose that it could rule the entire regulation of robocalls to be unconstitutional because we'll be singling them out as political speech in comparison to what our current law states that anyone who utilizes an automated dialer, business, personal, professional, political, all follows the same process through the Public Service Commission. So essentially what Senator Nelson's underlying bill is, LB418, is it creates two classes, two classes of usage in regards to these automated services which opens us up for what Frank Daley says would be unconstitutional infringement on free political speech. So pure and simple, my amendment tries to rectify what Senator Nelson mentioned in the committee testimony and in the floor testimony of what his underlying purpose was. Let us have consumers, political consumers, candidates, committees, go through one entity to utilize this service which is done through AM1705 and it goes to the Public Service Commission. Now as I was explaining a little yesterday with some of the question and answering that Senator Nelson and I had, the difference between his focus of wanting to put it in the Accountability and Disclosure Commission in comparison to keeping most of it, and/or adopting my amendment and putting all of it into the Public Service Commission, are those independent entities ability to provide regulatory oversight. The Public Service Commission provides the regulatory oversight over our telecommunications industry. Our Accountability and Disclosure Commission provides oversight over our political and campaign activity. This issue determined by the Legislature, in conjunction with the Governor, felt that the way to do this appropriately was to regulate it through a telecommunications process that affects all users who utilize these services, and not to single out anyone who utilizes it for political purposes. Doing that, as I mentioned earlier, I think makes it unconstitutional. But the regulatory oversight component is critical. The Nebraska Accountability and Disclosure Commission does not have the ability to go after a business or company who provides these services. It's not laid out in statute, and it's not laid out in LB418. The Nebraska Public Service Commission, on the

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other hand, laid out in the existing statute which we would be changing, as well as outlined in their general broad authority of regulating the telecommunications industry, says that they can subpoena and investigate companies who provide these services if they do not follow our laws. That, colleagues, is another glaring example of what we're seeking to change with LB418. We're moving that regulatory oversight of the businesses that ultimately provide these services. Yes, the candidate or the campaign committee who wants to purchase these services from a company, they're also held liable. But the reality is, you might not be able to find out who those people are under LB418. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: Because there's no way to identify the committee and/or the company who is doing the work. The Public Service Commission, on the other hand, under our current process, can identify the companies, can identify the entity that's ultimately providing these telecommunication services over our broadband or our telephone lines. That's their job, that's their responsibility. They have the capabilities to do that. If we move this to Accountability and Disclosure Commission, we then will need to look at, one, a fiscal note that increases the cost of having to oversee this process, and two, ensuring they have the same capabilities that the Public Service Commission has, which would then be giving the Accountability and Disclosure Commission the ability to investigate individual companies who may provide these services. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Howard. [LB418]

SENATOR HOWARD: Thank you, Mr. President. A very similar bill to LB418 was introduced in Congress by Representative Lee Terry and was so hated by constituents that he was forced to reverse course and withdraw the legislation. People clearly hate political calls on their land phones and even more so on their cell phones. Many people

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have terminated their land phone service and the next likely target is individual cell phones. Most cell phone users plan how much they're going to be paying for these cell phones by the minutes that they use. Phone owners are very calculating as they do not want to exceed the cost of the minutes. With open access to your cell phone, you could easily and unintentionally find yourself exceeding this allotted amount of minutes and going over your plan. Most people try to time this by what they can afford and what they will themselves use. Additionally, many users do not want their cell phone numbers out in the general universe for obvious reasons. Simply put, people pay for these plans, people expect to use these plans themselves, and people do not want general information regarding their cell phone numbers out available to anyone that chooses to use that number. I'm going to offer the remainder of my time to Senator Mello if he would care to use. [LB418]

PRESIDENT SHEEHY: Senator Mello, you're yielded 3 minutes 20 seconds. [LB418]

SENATOR MELLO: Thank you, Mr. President and thank you, Senator Howard. And Senator Howard's point is not lost on this body or shouldn't be lost on this body. Senator Lathrop briefly discussed this issue the other day as well. In regards to when we choose to eliminate or reduce regulations with no good reason, there's bound to be backlash. And in this particular instance, in LB418, we're seeking to eliminate pretty much all regulations regarding these robocalls. And the issue that Senator Howard just discussed in Congress was somewhat similar reducing the regulations over the use of robocalls of being able to do it on an individual cell phone. Now the reality is, while that is a different issue than LB418, the underlying component in an argument that you will continue to hear is whether or not eliminating consumer protection regulations, when there's no public good that comes from it, or no public policy need for it as Senator Avery has mentioned multiple times on this issue, then why are we doing this? What is the underlying reason of why we're doing it? My colleagues and friends, Senator Nelson and Senator Lautenbaugh have made mention that this is a freedom of speech issue. This is a political freedom of speech debate that if you want to be able to utilize this

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service for political purposes, you should not have to and be involved with anyone in the Public Service Commission. And frankly, the way the bill is drafted and the amendment says, you should barely be involved with our Accountability and Disclosure Commission. I, and some of us on the floor, obviously have a difference of opinion. This is a consumer protection issue. That was how the issue came up originally in conjunction with what happened in a recent election cycle where consumers, i.e. voters were getting 20 to 30 calls a day to harass them to ultimately try to provide what some in the press have said, a way to suppress voters from wanting to turn out or wanting to support candidate A or candidate B. Now, colleagues, we may not have experience in our own individual races. We may not have seen that up close in an individual campaign, but the reality is consumers want protections... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...like we have in state statute that shows if you want to utilize this service, there needs to be transparency involved. Senator Haar mentioned yesterday when they passed LB720, it was a sunshine law. And they did it because they wanted to make sure that the public knew who was doing this, who was behind these calls, and ultimately, who were the companies helping provide these calls in case something went awry. Whether or not a company made a mistake and sent calls in the middle of the night, that there was someone that could be held accountable, not just a political entity but a company ultimately provided that political entity the services to do this. What we're doing and what we're trying to reconsider in my amendment is a way to streamline this to ensure those consumer protections are not disregarded; that those consumer protections are kept in place and they're kept in place in the Public Service Commission. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Thank you, Senator Howard. Senator Dubas. [LB418]

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SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. Good morning, colleagues. I think I just want to make my comments very brief, but just a reminder of why we passed the legislation that we did several years ago, the history behind it, what caused us to take the actions that we did. And it was because of abusive robocalls that were used during an election cycle where a device was used and some convoluted scripts were put together and those calls were placed in the middle of the nights. Those calls came into people's homes at 2 and 3 o'clock in the morning. Nobody was...there was no ability to trace back where those calls came from, who was responsible for those calls. The person that they were aimed at was accused of making those calls or being connected to. You know, he had no idea so there was just that lack of transparency, that lack of the ability to trace things, that lack of the ability for the public to get their questions answered. Rightfully, there were many enraged citizens, who...you know, none of us want to receive a call in the middle of the night. And you know, immediately where your mind goes to when that phone does ring in the middle of the night. It doesn't serve any of us who are in public service to have those types of tactics used for the public. I mean, there's already enough distrust with government officials by the public and that only goes to fuel that. So I think it's important for us to remember why this legislation was put in place; the amount of work that went into the legislation that led to the statutes that we have in place now. I think we talked a little bit yesterday. Senator Lathrop passed out the letter from the Governor that he originally...he vetoed the original bill and through compromise with the executive office as well as other interested senators, we were able to come up with something that we felt was strong constitutionally, that did not impede free speech, especially political free speech, but that put those types of consumer protections in place and accountability. And it seemed logical to have both the PSC and the Accountability and Disclosure agencies involved with this. And again my conversations with PSC has led me to believe that this is not onerous or burdensome process. They work really hard to help those who are using this type of a system to understand what their requirements are. And if they stray from those requirements, they help them understand what they need to do to get back in place. So it's not a gotcha. It's not a...this is a way to really slap some large fines on you and

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make things more difficult for you. It's still relatively in it's infancy but appears to be working the way it was intended. And those who are using these types of systems are sophisticated enough to understand how the systems work. And so there is kind of an internal policing of those who do use these systems to make sure that the opposition is following the laws as well as they are. So, again, I think it's just important for us to understand why we are where we're at today, what led to the passage of the existing statute with the great support that we had to pass these existing...to put those existing statutes into place, came from a lot of work, a lot of compromise. I think we came up with a system that worked really well. So with that, I'd yield the remainder of my time to Senator Mello. [LB418]

PRESIDENT SHEEHY: Senator Mello, you're yielded 1 minute 10 seconds. [LB418]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I'll probably be bringing up from floor testimony to remind some of our colleagues in regards to some of the issues that we've heard of why people should support LB418 from the original debate on LB720. And Senator DiAnna Schimek who represented Legislative District 27 when this bill passed and was the introducer of the bill, said on the floor when they introduced it, quote, unquote, so what we decided to do instead of fashioning the bill as it was last year, strictly under basically the Accountability and Disclosure statutes, we decided that this should be written to put these political robocalls under the A and D statutes as they are in some states. So we had to kind of match them with other robocalls as much as possible. Colleagues, that was in theory the reason of why they did the original LB198...I'm sorry, LB198 that set the stage for LB720. And as you can look through some of the state statutes that govern the automated dialing devices under the Public Service Commission statutes, it requires a permitting process for those who want to utilize these services for any solicitation and/or political cause. That was... [LB418]

PRESIDENT SHEEHY: You're now on your time. [LB418]

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SENATOR MELLO: Thank you, Mr. President and members of the Legislature. That was the purpose of what Senator Schimek mentioned of why they made a mistake when they originally passed this law as they tried to do what Senator Nelson is trying to do in LB418, as they tried to put all of the statutes in the Accountability and Disclosure Commission because they felt...they thought because it dealt with political speech, or political activity, it should go in that one area. However, our Attorney General, our Governor, and numbers of senators at the time felt by doing that we were risking an obviously unconstitutional bill because we were going to be regulating political free speech. That is why the intention laid out in LB720 is, we put majority of the activity in the Public Service Commission. By looking at these statutes, statute 86-253, the Commission...Public Service Commission in enforcement ability, to give a little more background and a little Q and A I'll probably have with Senator Nelson, it says the Commission may conduct investigations and shall enforce the Automatic Dialing-Announcing Devices Act. Upon written complaint and supporting affidavit that applicable law of rule or regulation has been or being violated, the Commission may enter a cease and desist order on the ex parte basis against the party named in the complaint. The order shall have the duration of no more than 20 days and a hearing upon the complaint shall be held no later than 20 days after the order is entered. In addition to any criminal or other penalties, failure to comply with the applicable law, rule or regulation, shall constitute grounds for revocation or suspension of a permit. That specific statute in the Public Service Commission is nowhere to be found in LB418. It's nowhere to be found in the existing Accountability and Disclosure Commission laws or statutes. The reason why is because that statute provides the teeth behind this regulatory enforcement. We had a conversation yesterday, Senator Nelson and myself, in regards to what changes or what abilities the Accountability and Disclosure Commission would ultimately have to enforce LB418. And as you read both the committee amendment and the underlying bill, there's nothing to enforce. Thus, the Accountability and Disclosure Commission would not need to enforce anything, thus would not need any additional powers to enforce because there's no regulations in law.

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We've gutted the law as is and thus, there's nothing needed for them to do. The Public Service Commission on the other hand could order a cease and desist order. They, on the other hand, will have a public hearing to determine whether or not what happened, happened. And if proved that it did happen, they can revoke your permit to do business in the state. Colleagues, that is a significant change in policy that were seen in LB418. And what the result of that big change in policy is, you will have unlimited automatic robocalls from political entities with no regulations over it. No one on the floor has been able to say that there is going to be a regulatory process over automated political robocalls because there is none. The underlying issue is, an independent committee, as Senator Lautenbaugh and others mentioned yesterday, to be created, spent \$250, can go to a company that no one knows who exists, no one can find who that company is, and can send automated calls after the 9:00 p.m. time in state statute, and there is no repercussions unless somehow, someday, someone can find out who those donors were, someone can find out who that committee is, and someone can find out who that company is. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: Because those three entities, the donor, the committee, and the company, none of them have to report or get a permit from the Accountability and Disclosure Commission to operate. They can all operate in darkness. They can send these calls to whomever, whenever they want, with no repercussions. The statute 86-253 lays out crystal clear how this operates under the Public Service Commission and the repercussions if someone chooses to violate the law. Under LB418 anyone can violate the law because there's no way to find out if you're actually even violating it. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Burke Harr. [LB418]

SENATOR HARR: Thank you, Mr. President, fellow members of the Legislature. This

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bill has taken on somewhat of a partisan nature and I think that's a mistake. So let's take a step back, take a little room and breathe, and let's think about this. Let me tell you how I think about a bill when I look...if I'm going to vote for it or against it. The first thing I always ask myself, is this bill constitutional. And while there has been some argument made that it's questionably unconstitutional, the current law as it states, the case law is quite clear. And even a letter from the Governor, statement from the Governor is quite clear that this is constitutional. So this current bill would not be unconstitutional, but so let's move on...and the underlying law is not unconstitutional. So the constitutionality is not an issue. Then I look at what is the public policy reason for this bill. And the reason I've heard is, it's gosh darn too difficult to file with two different agencies. Well, I am for efficiency in government. I'm not sure if this is the worst offender of efficiency in government but we have to start somewhere, so I'm open to this bill. Then the next question becomes, what is--as I work through a bill--is it good public policy. I think efficiency in government is a good public policy. Then you ask yourself, or I ask myself, what is the unintended consequences, if any, that we can foresee, or myself I can foresee. And one of the largest unintended consequences is, is if we make it easier to robocall, we make it easier to robocall. And I'm not sure if that's all good. There's a poll in today's Omaha World-Herald. Now it's a self-report, I mean it's not out, it's people polling in. But they ask, would a lawmaker's decision to vote for reducing state regulation on political robocalls affect whether or not you vote for him or her? Now it says here, yes, absolutely, 83 percent. I'd take it into consideration, 12 percent. Not really, it's one issue, 4.62 percent. Ninety-five percent of the voters, this is something they care about. They don't want to make robocalling changes. That's important to listen to the people, our constituents, the ones who put us in office. Ninety-five percent, that's large. It's not 99 percent but I would hate to be part of the 5 percenters. The other issue I have with this is, as far as the unintended consequences, if we give it to the Public Service Commission or the Accountability and Disclosure, which one has the better ability to regulate. Well, as the two agencies stand at this time, it's quite apparent that the ability to regulate, to create rules and regulations, there's more power, there's more teeth within the Public Service Commission. So it makes sense to keep it there. If we

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move it to the Accountability and Disclosure, there are issues as this is currently written. Under 5,000 we wouldn't have to know who it is. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR HARR: Transcripts, as I read it, transcripts wouldn't have to be sent. If we want to prosecute these people who send lies and half-truths, well, maybe not half-truths, but lies, and outright falsehoods, we need to have a case to build upon. And the Accountability and Disclosure does not have the ability or the tools at this point to allow for said prosecution, especially if we don't have a script. It makes it a lot easier because this is that party affirmatively saying, yes, I did say that. So I would encourage everyone to take a step back, really look at this, take off our blinders. Let's not look at this in a partisan manner but let's look at it in the best public policy realm. Thank you very much, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Harr. Members requesting to speak on the motion to reconsider: Senator Ashford, followed by Senator Mello, and Senator Schumacher. Senator Ashford. [LB418]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. And I certainly am hopeful that we can get a vote and move forward on some resolution of this matter. I know that this is important to many members but there are so many incredibly important matters that we have to deal with that are on our docket. But in listening to the conversations, my sense is that we are doing or trying or attempting to do through the amendments that are up here now by using the Public Service Commission, something that quite frankly the Public Service Commission was never intended to be involved in and that's dealing with political issues. I'm not sure what the resolution is. Senator Nelson has an amendment that I've read which is interesting to me and I think we could think about what Senator Nelson is proposing and utilize his amendment as a vehicle to put the proper rules and regulations into effect. One of the concerns I have about using the

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Public Service Commission is that it's a political body. It's an elected body. Public Service Commission members are elected. I'm not sure that that works. In fact, I'm fairly convinced it doesn't work to put the Public Service Commission into the middle of political speech issues. But let me try to think back and remember back in 2008 when DiAnna Schimek had her bill. I think...yes, we were addressing a particular case involving a senate...at that time, a senate race or I can't recall what the race was, where there were some middle of the night sorts of calls that were made. And there were other discussions at that time about that. And my sense was, and my sense is today, we're not going to be able to stop any of that. The cat is out of the bag, so to say. We are in a new world. We're in a world of political speech that is going to be vitriolic and the more vitriolic the better. It's unfortunate. We've had the discussion here in this body about the impact of that kind of speech on thoughtful discourse. It seems to me that at least when I voted for the bill in 2008, what I was thinking about is Nebraskans, even though we knew and know now that we're--and Senator Lautenbaugh is correct--that these kinds of bills if they go too far can have a chilling effect. Whether they are unconstitutional or not, I don't know. We'd have to examine them. But to me what we were doing in 2008 was what we do a lot in this Legislature, in my view, which is to set a standard of propriety. And that standard of propriety is very important to me on a personal level and has nothing to do with partisan politics at all. And that sense of propriety is that, you know, we want to know who it is that's saying these things. And the effect of that may be nothing. It may not stop anybody from saying whatever they want to say, but it's a standard that we set up as Nebraskans to say, we really don't--you know, we don't like some of this stuff even though we know we can't stop it. And we do that all the time in here. And I think in summary whether it's Senator Mello's bill or Senator Nelson's bill or whatever, though I do think the Accountability and Disclosure Commission probably is the right place to handle this and put the...we should put the...whatever restrictions or conditions in there that we deem appropriate, and we can do that on Select File. It seems to me we ought to get...move this bill forward and we ought to get to Select File and think about the best way to handle it. But in summary... [LB418]

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PRESIDENT SHEEHY: One minute. [LB418]

SENATOR ASHFORD: ...in summary, we can't do much about what's going on here. We can't do much. We listen every day, every minute, we can, every second to what's being said out in the national discourse. And it's a shame, though I do remember reading about the Thomas Jefferson's presidential races and some of the things said about Thomas Jefferson weren't very nice either, but I think what we need to do is move on. And we need to move on and we need to set a standard, reaffirm a standard that we originally passed in 2008 to say in Nebraska we would like to hear thoughtful discourse. It may not get us to thoughtful discourse but at least it's putting us out there on that issue asking that these people do engage in thoughtful discourse. Thank you, Mr. Lieutenant Governor. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Ashford. (Visitors introduced.) Continuing with discussion on the motion to reconsider, members requesting to speak are Senator Mello, followed by Senator Schumacher, and Senator Nordquist. Senator Mello, this is your third time. [LB418]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Senator Ashford provided, I think, a perspective and a glimpse in which I expressed a perspective to Senator Nelson that if there was a way to keep our current system with the regulatory oversight that the Public Service Commission has and be able to transfer that to another entity, whether it's the Accountability Disclosure Commission, where it would be, being constitutional, I would be open for those ideas. I expressed that yesterday and I expressed it to Senator Nelson today. But if you read Governor Heineman's letter when he vetoed LB198, which LB198, the original bill that was passed by the Legislature and vetoed by the Governor, moved these activities to the Accountability and Disclosure Commission. The Governor's letter said, however, in the Van Bergen v. State of Minnesota decision, the 8th Circuit Court of Appeals upheld a state statute that included political calls within the category of automatic dialing device

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or restrictions only because the court found that the political calls were regulated in the same manner as all other automatic device calls. Under LB198, political calls are regulated in a manner that is different than all other automatic device calls. Senator Ashford, unfortunately, just mentioned that we could maybe do this differently because it is different. This is what was the foundation of why we created the framework. We can't regulate them differently than other automated calls otherwise they will be found to be unconstitutional. I can only say so many times, I'm not a constitutional scholar, I'm not an attorney, but utilizing the information that previous Legislatures had debated in regards to freedom of political speech and the constitutionality of these issues, the reason we constructed the whole framework and put a majority of it in the Public Service Commission is because that Commission regulates all other automated device calls. That's the reason why. In moving the political calls away from that, and putting it into the Accountability and Disclosure Commission sets up what Governor Heineman laid out in his veto letter as a likely constitutional challenge. So I respect the fact that we might want to look for other ideas. I'm open for other ideas if it maintains the existing framework and regulatory oversight that we currently have in statute, which reading through what the Public Service Commission can do to regulate automated dialing devices, under LB418 you cannot do that in the Accountability and Disclosure Commission. They do not have that regulatory ability to do that. And by looking at Governor Heineman's veto letter of the original legislation, which LB418 is similarly fashioned after, would show that there is a concern that it would be unconstitutional. One of the reasons, and Senator Ashford just mentioned it, why we should maybe consider putting political calls under the Accountability and Disclosure Commission, Senator Dubas in the Transportation and Telecommunication's hearing on LB418 asked a very similar question. She said, ask Senator Nelson why is the reason we have in both places or is it just something that got overlooked originally. Senator Nelson said, I think, thank you, Senator, apparently it just got overlooked. Well, this may be, I'm guessing, that NADC came along after the Public Service Commission and in drafting the things that they had cognizance of, it was put there and never really got compared to what appears in the Public Service Commission regulations in statutes. [LB418]

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PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: Fast forward to Frank Daley's committee testimony, answering Senator Dubas' question, Frank Daley says, quote, unquote, Senator Dubas' question, the reason it's in the jurisdiction of both agencies was that several years ago there was an attempt to regulate robocalls and place the entire authority with the Accountability Commission and it was the opinion of a number of folks, I believe the Attorney General's Office included, that because it regulated just political speech, that it was potentially unconstitutional. And so the Legislature came back and redid the legislation so that it included the Public Service Commission in all types of speech that was being transmitted via robocalls and not sectioning out political speech. So that was the rationale for that. That's all I have to say. Quote, unquote. Colleagues, that is to answer Senator Ashford's questions he just posed, that is the reason it's in the Public Service Commission. We can't separate it from other political speech without risking the possibility that this entire framework becomes unconstitutional. [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Schumacher. [LB418]

SENATOR SCHUMACHER: Thank you, Mr. President. Yesterday I raised an issue which I was hoping somebody would tap me on the shoulder and say, that's no problem that you raised. But the question that we're looking at today is, does the Public Service Commission have a hand in this type of election mechanism? Apart from the politics, the left, the right, the blue, the red, the whatevers, here's the situation in real life. We have outfits with unlimited money. There are huge telecommunications infrastructures in place where not people but computers can dial huge amounts of telephone calls at the

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same time. Those facilities are probably sitting out on the coast and they're armed for bear and they don't care if they're calling New York or Oshkosh, Nebraska. And when that phone barrage is launched, and maybe the other side is launching a barrage at the same time, it can fire out one whole lot of calls. And we have a little cable company, maybe with a service to a small town or an old landline company or a sparsely provision cell tower or an Internet provider to handling voice over IP traffic through a device like Ooma telephone systems, and it gets those calls. Those things, I don't think, have unlimited ability. They're normally provision for the normal kind of rate of calls of a small town or the community they serve. And that computer that's doing the talking and the dialing back in Virginia or New Jersey or wherever, doesn't know that it's overloading those things. People want to receive phone calls regardless of that. People may need to make a E911 call that has to go out to some central office. I'm beginning to think that rather having to report the message that might be broadcast to the Public Service Commission, which troubles me somewhat that you have to report your messages, that these outfits need to register ahead of time and say, look, we're going to barrage this phone prefix with so many thousands or so many hundred calls in 32 seconds on this night, so that a database begins to be built by Public Service Commission to see if this is a problem. What provisioning do we need? In fact, that may be necessary to protect this kind of free speech because if you get in a traffic jam and no calls get through, neither side's propaganda gets through at 11:30 p.m. So the Public Service Commission role in this may be in areas like Nebraska where we have limited facilities that have to be produced at high cost to the consumer should be part of it. We maybe should expand their role and expand their kind of equipment or the kind of request and kind of information that needs to be reported ahead of time to ensure that we maintain good telecommunication service in our rural areas, and not prioritize as this master computer would back east the calls that are coming from computers simply for the case of campaign electioneering. We may need a traffic cop and that traffic cop in our community in Nebraska is the Public Service Commission. We may need that data and I almost think we need an amendment to require that the rate of calls and number of calls to a prefix or a particular telephone switch be part of this registration process so we

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build some data. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Are there additional members requesting to speak on the motion to reconsider? Seeing none, Senator Mello, you're recognized to close. [LB418]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I appreciate the dialogue from senators who expressed some feedback today, Senator Ashford, Senator Schumacher. And I think if you read AM1705, you'll find that it seeks to accomplish what the underlying issue Senator Nelson mentioned when he introduced the bill, which was to ensure that we cause as little confusion as possible with our current regulatory process. And when that regulatory process was created, as I stated from the committee testimony of which Frank Daley mentioned the reason they put a majority of it in the Public Service Commission, was to ensure that all calls using automated dialing devices were treated equally. There was not a separation of political speech verse any other kind of speech. And that is part of the underlying issue that we see with LB418. That by removing that underlying aspect, we move political speech into a different category which questions the validity of the underlying legislation of whether or not we should be able to regulate any political free speech, so to speak, when it's segregated away from all other speech. I believe AM1705 accomplishes what according to the committee testimony and to the introduction of this bill sets out to do. It seeks to streamline it. It seeks to keep it in one agency. There's been no argument made of why an agency, the Accountability and Disclosure Commission, who has no regulatory oversight or ability over the telecommunication industry which automated dialing devices are part of, of how they would provide any oversight over that. There's been no amendments. There's been nothing that's been provided that shifts the abilities of the Public Service Commission's oversight over to Accountability and Disclosure. The issues that have been raised of, well, then maybe you just need to provide a script for these calls, these political calls maybe we just need to provide a script. That is only a small component of what occurs with this process because this process affects all

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entities who wish to use robocalls, whether you're a business, whether you're a political campaign, whether you're a nonprofit group, everyone follows the same process. And as I mentioned yesterday, and a few other senators have mentioned today, this ultimately comes down to trying to ensure that we have a good consumer protection regulatory framework in place. The Accountability and Disclosure Commission is not a consumer protection agency. They're not looking out for the consumer's best interest. The Public Service Commission provides consumer protection agency focus, priorities, and regulations in oversight. Let's not miss those two trains passing in the night because they're not the same kind of entities. They do not have the same kind of responsibilities, and yes, LB418 tries to segregate political robocalls away from every other automated robocall. But the reality is this, we've not had complaints with our current process put in place by a 45-0 vote by this Legislature signed by the Governor. We have not heard people come to complain to the Public Service Commission or Accountability and Disclosure of saying that I can't navigate this existing process. So the question that Senator Harr mentioned earlier is, is this really a solution in search of a problem, which I believe it is. There's one underlying issue that's been troubling in talking with a few senators is somehow when talking about robocalls or political robocalls, people view this as partisan. I sit on a committee with Senator Nelson, Appropriations Committee. We agree some days, we disagree on others. This has nothing to do with political activity or partisan activity. This deals on whether or not... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...you fundamentally disagree or agree with whether or not our regulatory framework that protects consumers against these robocalls is working, and whether or not it's necessary. That is the underlying issue because LB418, while it may be a short, simple, small bill, opens up a Pandora's box when it comes to classifying different kinds of speech utilizing these automated dialing devices. And so those who may want to clamor to a partisan argument, I urge you to read the bill. Read AM1705

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and find me where this is partisan; find me where this is two sides opposing. No. There are people who either want and support the existing regulatory framework who provides ample transparency to the public, provides ample protections... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. You have heard...Senator Mello. [LB418]

SENATOR MELLO: I'd like to have a call of the house and a roll call vote. [LB418]

PRESIDENT SHEEHY: There has been a request for the call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB418]

CLERK: 27 ayes, 0 nays, Mr. President, to place the house under call. [LB418]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Ashford, Senator Heidemann, the house is under call. Senator Krist, would you check in. Senator Heidemann, the house is under call. Senator Mello, all members are present or accounted for. Members, you have heard the closing on the motion to reconsider. There has been a request for roll call vote. Mr. Clerk. [LB418]

CLERK: (Roll call vote taken, Legislative Journal page 286.) 14 ayes, 27 nays, Mr. President, on the motion to reconsider. [LB418]

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PRESIDENT SHEEHY: The motion to reconsider is not adopted. The call is raised. Mr. Clerk, we will resume to new bills for introduction or items for the record. [LB418]

CLERK: Mr. President, before we proceed to the next motion, new bills. (Read LB1131-1171 by title for the first time.) That's all that I have at this time, Mr. President. (Legislative Journal pages 287-293.) [LB1131 LB1132 LB1133 LB1134 LB1135 LB1136 LB1137 LB1138 LB1139 LB1140 LB1141 LB1142 LB1143 LB1144 LB1145 LB1146 LB1147 LB1148 LB1149 LB1150 LB1151 LB1152 LB1153 LB1154 LB1155 LB1156 LB1157 LB1158 LB1159 LB1160 LB1161 LB1162 LB1163 LB1164 LB1165 LB1166 LB1167 LB1168 LB1169 LB1170 LB1171]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to the amendment on your desk.

CLERK: Mr. President, the next motion with respect to LB418 is a priority motion. Senator Mello would move to bracket the bill until April 12, 2012. [LB418]

PRESIDENT SHEEHY: Senator Mello, you're recognized to open on your motion to bracket. [LB418]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I've moved to bracket this bill in part, I believe, and I thought in conversation with many of you, that AM1705 was a reasonable, thoughtful amendment to help solve what was an underlying issue put forward in both the committee and the floor debate on LB418. And by the vote count, obviously, it wasn't thoughtful enough, which makes me believe that if we're going to make massive wholesale changes to the consumer protection regulatory framework we have now over robocalls in our state, I think that we should bracket this bill and look to explore it more in the interim. It's no...by obviously the debate over the last three days, it's probably no shock to any of you that I don't support the underlying concept of the bill in part because of, I believe, the existing framework that we have

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passed as a Legislature and signed by the Governor is an adequate framework that provides consumers protection and it's constitutional in the eyes of this Legislature and the Governor when it was passed. The bracket motion, pure and simple, is my explanation of why I think this is a bad public policy decision we may be considering. And to reiterate, some of the issues that were raised as I'm getting more specific floor testimony from LB720, LB418 seeks to add an exemption to what was already passed when LB720 was created into law. Senator Schimek on Select File when LB720 was being debated provided a clean-up amendment that exempted a few entities. Senator Schimek mentioned in her floor testimony that quote unquote, this just incorporates into our definition of who may be exempted from these provisions in the robocall bill to political subdivisions so that would include counties, cities, and utility districts for instance. We exempted schools who might be making calls to their patrons or students. We exempted people who are...have a business relationship or personal relationship. This would apply only then to other political subdivisions which I think is a needed amendment that people have made their case to me. There was no discussion on that clean-up amendment because it was...the perception, the unanimous perception of this body by the final vote count that we wanted to ensure that anyone who utilizes these calls for political and/or business reasons, that they were able to fall in the same parameter, I should say, or fall along the same line of not ensuring that no form of speech was being discounted over another. And so, in this debate over the last three days, conversations I've had on the mike with both Senator Nelson as well as others have had, there has been no public policy decision or public policy good or argument made of why we should exempt robocalls from these regulations. I will repeat that there has been no policy or public policy goal or objective or good provided by the bill introducer of why we should do this. Streamlining it doesn't really affect anything because LB418 simply says to streamline it for political purposes you just don't have to do anything. I guess if you want to say that's in the name of streamlining or efficiency, one could make that argument or claim, but the reality is if you don't have to do anything that's...that just says in other words, essentially eliminates all the regulations. And it eliminates the consumer protections that we have put in place for the public to be able

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to see who was doing these calls and who were helping people do these calls. I urge the body to consider bracketing this bill. Granted, I have not used the word "filibuster" on this mike because my hope was that AM1705 was a legitimate, thoughtful policy that tried to accomplish what Senator Nelson wanted to accomplish both in his committee testimony and on his floor testimony which is to put regulations all in one agency. Both Governor Heineman and this Legislature said you had to put all political speech with all other speech, it would have to be seen by the Public Service Commission unless we wanted to risk a court challenge and make it unconstitutional. LB418, in my view, the way it's drafted, will make it unconstitutional because we segregate political speech away from all other speech and we know the moment you do that, you're opening yourself up for a court challenge. There's a reason we haven't seen a court challenge under our existing LB720 law that regulates robocalls because all robocalls are regulated the same way, not just those who want to use it for business purposes and not just those who want to use it for political purposes. Colleagues, I urge you to consider bracketing this bill if we want to have a discussion, a thoughtful discussion, and research this issue in the future, let's do it in the future. This bill right now I believe is unconstitutional because it violates the main premise that this body voted on and agreed upon in 2008. In conjunction with the Governor, it violates that premise, and it violates the premise that the Attorney General's Opinion in 2007 said and stated, that set the guidelines and the foundation for what is now where LB720 framework. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. You've heard the opening on the motion to bracket. Members, this is last call if you have bills for introduction. You need to get them to the Clerk's desk as soon as possible. We are planning to adjourn soon. Members, requesting to speak on the motion to bracket: Senator Nelson, followed by Senator Lathrop. Senator Nelson. [LB418]

SENATOR NELSON: Thank you, Mr. President, members of the body. I rise at this time in opposition to the motion to bracket that's presented by Senator Mello, and let me tell

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you why. We've heard a great deal about a letter from the Governor with regard to the bill that he vetoed and his reasons therefore. The Governor can have any reasons that he wants to veto a bill if he doesn't like it and in his letter as I read it, he cited one case there. One case from the 8th Circuit Court of Appeals just saying that they would approve this only because of the fact that there was uniform regulation of this along with bills involving...or matters involving commerce and things doesn't make it so. And you can look at the transcript of LB720 when they finally got a bill together that they thought would pass muster with the Governor and not be vetoed and that's the way that LB720 was put in place. But that doesn't make it necessarily right. That doesn't mean that LB418 is unconstitutional. What I want to present at this time in opposition to the motion to bracket is that I subscribe to what Senator Ashford said that we ought to move on. I have an amendment on file already. I think it's AM1717 in which I'm going to add some enforcement procedures for the NADA. And I'd like to point out that in contrast to what we've heard today and previously that there are already enforcement actions that are in place on the NADC, and let me just remind you of what they can do. Under 49-14126, if someone violates the provisions of the Nebraska Political Accountability and Disclosure Act, then they may...the NADC may issue an order requiring the violator to do more of the following: cease and desist, same thing that the Public Service Commission to do. File any report, statement or other information as required. Same thing. Pay a civil penalty. And there are other things that I'm not going to recount. But there are enforcement actions here that can be done by the NADC. Now we still get back to the problem whether you're under the PSC or the NDAC, there are renegades out there that are going to find a way to do robocalls in the middle of the night. There is simply nothing that we can do about that. There is essentially no way if they choose not to reveal who they are on the message to track them down unless there's some information coming forward from a complaint that can help the PSC or the NADC identify who they are. So that's basically what Senator Ashford...we have to live with this. We don't like it, but for heavens sakes, let's not bracket LB418 just because of the fact that people don't like robocalls. We are here to protect political speech, political discourse, and make certain that political candidates can get their message out. We may not like the message

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sometime but we want to do the best that we can to regulate at least and enforce fairness in this point. So my amendment...and I'm just telling you what AM1717 does, instead of filing or registering a device with the NADC... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR NELSON: ...you would just simply register an intent with the NADC that you intend to use the machine for the purpose of sending out a message, a political message, and that you would also file on a form prescribed by the NADC a detailed explanation of the intended use of the message, not the message itself, not the script. We don't need to regulate that. It doesn't have to be regulated. We just simply need to know who is making the call and that would also be included, the phone number of the people using the automatic telephone device, also their address, so we do have some way. And we are talking about the legitimate people here that want to send out messages. We can't do anything about the renegades, apparently, unless we find a way. The place is not for the PSC. These are political expenditures and I have to be... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR NELSON: ...explicit in that. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Mr. Clerk, you have new bills for introduction and items for the record. [LB418]

CLERK: I do, Mr. President. One final bill, Senator Pirsch, LB1172. (Read LB1172 by title for the first time.) In addition, hearing notices from Health and Human Services signed by Senator Campbell. Enrollment and Review reports LB190 and LB66A to Select File. New resolutions: Senator Schilz, LR378; Senator McCoy, LR379; Senator McCoy, LR380; Senator Fulton, LR381. With respect to LR381, communication from

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Speaker referring LR381 to Reference for purposes of scheduling a public hearing. Revenue Committee would like to announce Senator Louden has been selected as Vice Chair. Name adds: Senator Schumacher to LB1115; Senator Nordquist to LB1068. Reference will meet upon adjournment. (Legislative Journal pages 294-298.) [LB1172 LB190 LB66A LR378 LR379 LR380 LR381 LB1115 LB1068]

And a priority motion. Senator Flood would move to adjourn the body until Friday morning, January 20, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Friday, January 20, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.