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Judiciary Committee August 2, 2024  
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**WAYNE:** My name is Justin Wayne. I am the chairman of Judiciary. I represent Legislative District 13, which is Omaha-- north Omaha and northeast Douglas County. We'll be starting off today by having introductions from committee, starting to my right.

**IBACH:** That's you.

**BOSN:** I'm Senator Carolyn Bosn; I'm from District 25, which is southeast Lincoln, Lancaster County.

**IBACH:** Teresa Ibach, District 44. Southwest Nebraska, 8 counties.

**ANGENITA PIERRE-LOUIS:** Angenita Pierre-Louis, committee clerk.

**DEBOER:** Good afternoon, everyone. My name is Wendy DeBoer, I represent District 10 in northwest Omaha.

**HOLDCROFT:** Rick Holdcroft, District 36. West and south Sarpy County.

**DEKAY:** Barry DeKay, representing District 40, which consists of Holt, Knox, Cedar, Antelope, northern part of Pierce, and most of Dixon County.

**WAYNE:** Thank you. We do not have a page today, so, myself, or Angenita will grab them, when you co-- you sure? Just bring it up to us and we'll figure out who takes it. If you need copies, we're not going to give them to you today, because we don't-- we'll figure it out. We have blue testifiers sheets to the right over here off of the column. If you plan on testifying, please fill out a blue testifier sheet. Please make sure your name is spelled eligible-- I mean, legible, so we can make sure we have accurate records. If you do not want to testify, but want your presence to be heard, you can fill out a gold testifier sheet, and that'll be recorded for the record. It is our policy that all letters must be turned in by 8:00 AM in the morning. If you don't have one-- turned in, or you-- turn one in, that's in lieu of personal testimony. Again, we'll take your handouts, we'll make sure they all get to the committee, and we'll have them for the record. Testimony will begin with the introductory-- introducer opening statement, followed by supporters of the bill, then in opposition, followed by those speaking in neutral capacity. Then, the introducer will have the ability to make a closing statement. We ask that you keep your testimony-- start your testimony by saying your

first-- and spelling your first and last name. We will be using the three-minute light system today. When you begin your testimony, your light will be green. With one minute left, it will be yellow. And then, when it becomes red, we will ask you to wrap it up. I'd like to remind everyone, including senators, to please sa-- silence or turn off your phones, or put them on vibrate. With that-- you ready? Or you need a break?

**McKINNEY:** I'm good.

**WAYNE:** We'll start that-- we'll start off LB25 with Senator McKinney.

**McKINNEY:** Well, thank you, Chair Wayne and members of the Judiciary Committee. My name is Terrell McKinney; T-e-r-r-e-l-l M-c-K-i-n-n-e-y, State Senator for District 11 in North Omaha. Introducing LB25, which intends to lower property taxes by reducing costs associated with incarceration. This legislative bill represents a transformative approach to criminal justice, emphasizing enhanced parole opportunities, citizen reform, and community-based alternatives to incarceration, all of which, which require no umfr-- upfront cost to the state. By implementing this bill, we save taxpayer dollars, reduce the prison population, and create a more effective justice system. Nebraska's current approach to incarceration is financially uns-- unsustainable. Millions of dollars are spent each year on our prison system, with a large portion of this burden falling on property tax payers. Housing an incarcerated individual costs Nebraska nearly \$40,000 each year. With an overcrowde-- crowded prison system, these costs will continue to rise, placing strain on our budget, and forcing higher property taxes to cover the deficit. Enhancing parole opportunities is one of the most effective ways to reduce the prison population and associated costs. By expanding parole eligibility and ensuring that parole decisions are made fairly and efficiently, we can safely transition more individuals into society. Allowing individuals to discharge for parole early provides a positive incentive for incarcerated individuals, encouraging good behavior, promoting rehabilitation, and fostering personal responsibility. This can lead to a decrease in correctional and incarceration costs, allowing state resources to be all-- reallocated to assist with property tax relief, and other important i-- initiatives. Additionally, we could decrease recidivism through enhanced re-entry support, improve stability and community ties for individuals, and provide in a-- a positive re-- and provide positive reinforcement. LB25 also encourages judges to, to the

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fullest extent permitted by law, whenever appropriated considering the facts of the case, to utilize alternative sentences other than imprisonment, including probation, community service, and house arrest. It also states that, if the court or magistrate orders a person to complete community service under this section of the, of the bill, the court or magistrate shall provide the person with documentation of the fines or costs, the number of hours that will be needed to complete, complete it, and a list of organizations in the community where the person may complete the-- such community service. Furthermore, to dec-- to increase the length-- due to the increasing length of stays of our prisons, we should also allow individuals a real opportunity for second chances. There are many men and women currently incarcerated who are deserving of a second chance. This is a vital opportunity to demonstrate that we are a state focused on rehabilitation, rather than extreme punitive-- punitiveness. It's not a get out of jail free card; these individuals will have to do what is necessary to be eligible for a second chance. Ultimately, the Board of Pardons will have the final decision, which is constitutional, after individuals have been vetted by the Parole Board. And, if you have questions on that, the Parole Board, under the Constitution, can advise the Board of Pardons. Each item in LB25 is necessary to address the money pit that is our prison system, and implement changes to assist in reducing costs. This, in turn, directly impacts the resources available for property tax relief for our state, and for our taxpayers. In conclusion, LB25 presents an opportunity for Nebraska to lead the way in criminal justice, while providing immediate financial relief to property tax payers who are going to have to pay for a \$350 million prison-- and that's not accounting for operations-- while also keeping the Nebraska State Penitentiary open, since nobody wants to demolish it. Through the implementation of enhanced parole opportunities, sentencing reform and community-based alternatives to incarceration, we can reduce our prison population and associated costs without upfront, upfront state funding. This approach is fiscally responsible, and benefits all Nebraskans. I brought this bill because we were sent back here, because property taxes, for whatever reason, are-- needed to be reduced, and-- which requires a special session. So, if we're having a conversation about property taxes and doing things that will benefit the taxpayers, I personally believe we need to have a conversation about our criminal justice system, which, I stated prior, is a money pit. We have no positive results thus far since I've been in the Legislature. Although we passed many bills,

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unless there are some new projections, the new penitentiary that many people in this Legislature decided to support will be overcrowded day one. So, I do believe that we need to find alternatives. We need to give people opportunities for being discharged from parole early, and we also need to allow for second chances, if we're having a real discussion about alleviating the cost of property taxpayers in Nebraska. Now, if we're not having a real discussion, there will be people that come up and say, this is a crazy bill, and we shouldn't do it, and all those type of things. But tho-- those are also the same people who want their property taxes reduced. So, we'll see how this goes, but I do think this is a realistic bill that could help with property tax relief in our state. So, with that, I'll take any questions.

**WAYNE:** Any questions from the committee [INAUDIBLE]? Seeing none, thank you. We'll start with proponents. Proponents. Welcome back to your Judiciary.

**JASON WITMER:** Hey. I hope you're enjoying your summer. Sorry, I didn't mean to start it like that. My name is Jason Witmer; J-a-s-o-n W-i-t-m-e-r. I am policy fellow at the ACLU Nebraska, and in support of LB25. As anyone on the Judiciary Committee can attest, the Nebraska prison is overcrowded. It's an overcrowding crisis that is extreme and ongoing. There is a plan for a construction of a new prison, yet, a nonpartisan experts-- several of them-- agree that we cannot build our way out of this crisis, as the new prison will soon be overcrowded without systemic reform. We discuss rehabilitation of non-violent offenders, but we haven't addressed why non-di-- non-violent individuals are in our prison system in the first place. We discuss "respending" re-entry efforts and services, but excluded those convicted of violent crimes from these conversations. However, we know that even those convicted of crimes of violence will eventually be released. Fear-based views of crime and punishment have driven Nebraskans to be over-prosecuted and over-incarcerated. And, I would add, over-taxed, as we are the ones paying for this. LB25 takes a different approach in-- by investing in the people of Nebraska. Long-term incarceration destabilizes individually, socially, psychologically, economically-- which, of course, is not good for the communities that they return to, as well as the individual. Incarceration, as was said, would-- it'd cost up to 40-- \$41,000 average dollars a year, per person. And the question should be, why are we still investing in the illusion of safety when Nebraskans are--

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they could save tens of thousands of dollars by people being released on early parole. And just not to get too much into the, the research-- just to say, it's just-- there's a ton of research that shows that community, community supervision is most likely to lead towards success. Not longer incarceration, not being kept in a cage. So, with that said, I would ask you to consider LB25. It does not only invest in individuals incarcerated in the communities, but it also invests in all of Nebraskans, because the savings that we could have from not incarcerating people for long periods of times, and working with them in the community can, as said, be, be put into this property tax cut that we have going on, and potentially reduce the shifting of taxes upon the hardworking Nebraskans. So with that said, I would urge you to support LB25, and invest in a safer, more just Nebraska.

**WAYNE:** Any questions from the committee?

**JASON WITMER:** Thank you.

**WAYNE:** Seeing none, thank you for being here. Next proponent. Proponent. Any opponents? First opponent. Anybody testifying in a neutral capacity? The neutral capacity. Seeing none, Senator McKinney, you're welcome to close.

**McKINNEY:** Thank you, Chair Wayne, and members of the Judiciary Committee. Considering there is no opponents that are county attorneys or police, I think this is an amazing bill that we should consider and pass, at least to the floor to have proper debate on this topic. I think allowing, allowing for judges to seek alternatives outside of imprisonment, giving indi-- individuals an opportunity to be discharged from parole early, and giving individuals who have showcased that they have done the proper steps to deserve a second chance should be under consideration. So, considering there's no opposition, I think this is a great idea. If there's-- was-- if there was real opposition, they would have came up here and said they were in opposition. So, with that, I'll open myself up to any questions.

**WAYNE:** Any questions? Senator Holdcroft?

**HOLDCROFT:** Thank you, Chairman Wayne. Under the second, second chance piece in-- and I, I think we should consider a second chance, but-- essentially, there are two sentences, correct? I mean, if you're younger than 26, then there's a 25 year-sentence, and if it's more

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than 26, it's a 30-year sentence. Isn't that violation of separate of powers? Aren't we dictating, then, to the courts, of what sentences have to be? Would we run into the same issue we ran into with LB50, where we can't apply these sentences retroactively?

**McKINNEY:** I don't, I don't think that it is a separations of powers issue. I think with dividing between being under 26 and being 26 or over-- with me, and what this bill is, following the science-- the science says that an individual incarcerated at 19 is not the same person that's incarcerated at 26. And I think we have to follow the science on this. And, in following the science, I'm saying if I'm-- if somebody is convicted at 19, they serve 25 years, we should at least give them an opportunity to show that I am not that 19 year old no more. Now if somebody is 26 or over, yeah, there's an argument that person is a fully-developed adult. So, they'll serve 30 years, and have an opportunity to come back to the Board of Pardons and the Board of Parole to say, "I've done the necessary steps during my 30 years incarcerated to show that I deserve a second chance." I think 30 years is enough time to determine if somebody is a changed person, and I-- I think it's extreme, but I think it's, it's enough time.

**HOLDCROFT:** But typically-- you know, first-degree murder, some of these others are-- they're going to be life sentences. I mean, that's more than, more than 30 years. Typically, if you're just over 26--

**McKINNEY:** I mean--

**HOLDCROFT:** --and so-- I mean, why, why, why that? I mean, are we, are we-- why do we have judges, then, to make these sentences? Because at the-- at 30 years, they're going to be looking to get out.

**McKINNEY:** Well, there was a time during our state's history where people would serve 30 years for something similar as, like, first-degree murder and be released. There was a changing in philosophy between Governors and Legislatures that shifted that. But what I would say to that is, I don't know if there is a time period that we could even set and determine that would change the feelings that people feel when they lose a family member, or a friend, or anything like that. So, if somebody is willing to change, they're willing to change. My best friend was killed. The person that killed him still never been incarcerated, never been convicted, but-- he's still out there. And then, I have family members who were killed, and

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the person that killed them is incarcerated, but those feelings are going to live with my family for the rest of our lives. I don't think there's a determining factor of 'serve this amount of time and you're all forgiven.' I don't think you're never forgiven; I don't think anybody that is incarcerated for murder, or anything severe is ever necessarily forgiven, but they're given an opportunity to showcase that they have changed as a person. And that's what we should want. It's-- because justice is defined-- I could ask everybody on the committee, "What is justice?" and I guarantee I'll get a different answer. And even in a community-- so, justice for some people is 'this person had to sit down for 30 years;' 'this person had to sit down for 25 years.' And maybe justice was the person is serving the rest of their life in prison. For everybody, it's different. I just don't think, as a state, we should be taking a one-size-fits-all approach to it, considering everything that we consider. When you look at the data, individuals that are released from prison, from prison after-- for-- at the age of 40 have a lower recidivism rate. So, we're following that data. It clearly shows that-- let's say that person was 26, and served 30 s-- and served 30 years. The probability that that person that was sentenced at 36, that their-- that served 30 years-- of ending up in the same situation is lower than a person we're incarcerating for 3 to 5 years. We cannot ignore the data, and we also can't ignore the data because, as I stated, our criminal justice system is a money pit. We're not getting results. We got people-- all those-- technically admissions are down, the length of stays are up. We have to do something, because we're just going to keep building prisons. We have to find a solution to the problem. It-- yes, it's not a one-size-fits-all approach, but we can't sit here and say, "Lock everybody up. Taxpayers keep, keep paying, keep spending millions and millions of dollars, because we're going to be tough on crime" when no, no statistic that I've seen in my whole life have shown being tough on crime has ever worked.

**HOLDCROFT:** Thank you.

**McKINNEY:** Thank you.

**WAYNE:** Senator Blood.

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**BLOOD:** Thank you. Chair. So, I'm going to ask you several questions. So, this bill was in response to our directive to share our voices and our ideas on how we can maybe lower property taxes, correct?

**McKINNEY:** Yes.

**BLOOD:** OK. So knowing that, and hearing the floor speech this morning, where we were basically told that our bills weren't as important as the Governor's tax bill, and that we may not have the opportunity to debate our bills, do you feel duped?

**McKINNEY:** I don't feel duped, because I never expected any of this to actually be taken serious. And I say--

**BLOOD:** But, it is serious.

**McKINNEY:** And-- no, I do. But the reason I brought the bill-- and, I've told the Governor, like, if you want me to take this serious, we have to consider reducing our prison population, and my, my other bill today to legalize marijuana. If property taxes are so important that we have to be back for a special session that I'm going to, potentially-- well, I think I could drop her off-- miss the first day of my daughter's going to high school--

**BLOOD:** I'm sorry.

**McKINNEY:** --then I'm throwing everything that we should consider on the table, and no bill that's introduced should not be allowed to be heard on the floor. If it gets voted out of this committee, government, or any other committee, we as a body, I believe, have an obligation to the taxpayers to listen to every bill, and consider every bill. Because the call is super broad; it didn't say, "We're calling y'all back, and every bill that y'all introduce has to be limited to the Revenue Committee or the Appropriations Committee." It didn't say that. So I think every bill should be heard.

**BLOOD:** And so, you'll be advocating for us to make sure that every bill is heard, then, is what I hear you saying.

**McKINNEY:** Definitely.

**BLOOD:** All right. Thank you.



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**McKINNEY:** No problem.

**WAYNE:** Senator DeKay.

**DEKAY:** Thank you, Chairman Wayne. And we should be talking about this as a tax bill. You mentioned some personal experiences with your family, and just again, you know, off the track of the tax a little bit. But, if you're talking about early release and, in some cases, in cases of rape or more heinous crimes, what about the-- how, how do we justify to the families early release when a possible victim is still dealing with emotional stress and behavioral health problems that they're dealing with at the same time, and this person that committed those acts is now walking the streets, and they're still dealing with it?

**McKINNEY:** I think-- first, we have to come under-- understanding that 90 plus percent of our prison population will return back to society. And do we want to incentivize them becoming better people? Or, do we want to have a system where the person is basically doing nothing while they're incarcerated to improve themselves, and still coming back to society having that rape charge or that sexual assault charge, but not doing anything while incarcerated to improve themselves, to be a better person and not end up back there? I think that's what we have to consider. Yes, I could-- yes, I understand that rape is bad; sexual assault is bad, and I would never stand up here and advocate for any of it. But, do we want a system where those people are being, being "reabilit"-- rehabilitated? Or, do we want a system where they can basically say, "I'm not going to do any programing because it doesn't matter" and be released back to society, get a \$100 check, and rape another kid because we didn't, as a state, provide or incentivize the opportunity for them to be better? That's the question I think we got to ask each other.

**DEKAY:** Thank you.

**McKINNEY:** No problem.

**WAYNE:** Any other questions? Seeing none, thank you for being here.

**McKINNEY:** Thank you.

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**WAYNE:** Letters for the record? We have 5 letters; 3 proponents, and 2 opponents. And with that, that'll close the hearing on LB25, and we will open the hearing on LB57.

**DEBOER:** All right. LB57 is next. LB57, and our own Senator Wayne. Welcome, Senator Wayne, to your Judiciary Committee.

**McKINNEY:** Thank you, Chair DeBoer. My name is Justin Wayne; J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. Last night, I sent a, a case that was decided by the Supreme Court after we adjourned, regarding sovereign immunity. Now, while this applies to the state, if you read the case law, the language mirrors the political subdivisions. So, it directly applies to the political subdivisions, also. And I want to highlight why this case is important for those who may not have read it, but-- last year, on the floor, Senator Bosn and others said that, if we were to change this current law, it is a far departure from the status quo. If you read this opinion, that is blatantly false. Both the majority and the minority say that there is split decisions going back as far as 1977 on the issue of sovereign immunity, and I could point to page 449 where it talks about Koepf v. County of York in 1977, all the way to Moser in 2020. And in fact, at one point in the majority, they title (C) as "reconciling case law". This is not a departure. In fact, there was a long division around the issue of sovereign immunity, especially in the cases that involved sexual assault of children. So, I'm glad the Supreme Court took time to clarify for this communit-- this committee the true history of this. And you don't have to take it from me; this was their official opinion published by the Supreme Court. But in this particular case, Joshua v. State-- the facts in this are horrendous. But the reason I pointed out this case, not just because of the facts, but there was a bench trial in which the judge said people who actually committed these assaults, by default judgment, they're guilty-- or they are guilty in, in default judgment of \$2.1 million. That person ended up serving a sentence of 20 years, which is 10 years, and was released in 2014. I say that to only say, for the purposes of this committee, that made him judgment-proof. So who do you think picked up that tab? The state. Nevertheless, they also said that there was not enough evidence for the state to be found liable. See, there was this thought that, once we pass this bill, there are going to be floods of new cases and all of these determinations that the state may go broke, that political subdivisions go broke. Here is a case that shows you that a

judge said there's not enough evidence. So, that theory of this floodgate opening is false. What I also handed out to you is the number of civil cases that were into Nebraska over the last five years. You will see the majority of those civil cases are bench trials. Bench trials usually represent breach of contracts and custody disputes; you don't have jury trials in custody disputes. But even if you were to take those numbers as face value, and to say all of them involved political subdivisions and tort claims, which we know is not true, less than 10 percent of them actually went to trial. Less than 10 percent actually went to trial. That's not my numbers; that's the court administrator's numbers. So the idea, again, that floodgates are going to open up, and everybody is going to start suing political subdivisions is not true. Because there was already a split in case law, that it took the Supreme Court till this year to clarify and say this is actually overruled. So, there were many plaintiff counsels who still thought it was good law, but yet the floodgates didn't open. So, the idea that the city of Omaha, Douglas County, or Lancaster is somehow going to go broke overnight tests two things: one, it's not true. But if it is true, we have a serious problem if there's that many sexual assault cases in which the counties or cities are liable. It isn't good enough for there to be knowledge, if you read this case, after the fact; it isn't good enough that you may have been put on notice. They have to prove that notice was provided, and, in addition, the state, or in this case, the political subdivision, failed to act; failed to take their duty of reasonably investigating and protecting this child. And I think part of the problem is not everybody on this committee is a practitioner. So you think that if a lawsuit is filed, you somehow win. Underneath the Political Subdivision Torts Claim Act, before you can even get into court, you have to file a notice within 2 years. That notice says what the claim is. The city or state, in this case, political subdivision, has to respond within 6 months, before you can even file suit. That doesn't happen if Senator Holdcroft and I get into a car wreck and he hits me; I could sue him tomorrow. But one of the protections we have underneath the Tort Claims Act is I have to give-- if he was a state, or a political subdivision in this case-- notice to build his entire case against me before I can even sue. That is a safeguard we have baked in to statute. And unlike if Senator Holdcroft hits me, I have to sue within 2 years. Now, if it's a child, it could be when they turn 21, but for an adult within 2 years. If Senator Holdcroft is not the pub-- political subdivision, I have 4 years. You know what happens in 4 more years? I can keep going to the

doctor and keep building my damage case to get a higher amount. I can't do that against political subdivisions; I'm barred after 2 years. So, the idea that there is this runaway jury doesn't even apply because it's a judge. The idea that we are going to open the floodgates, evidence shows that that's not happening right now, today, and will not change, because the Supreme Court says people still believed that's the law, up until this year of May. But what's most disturbing about this ruling, and when you read the facts of these case-- based off of this ruling, the parents and the child can't even present their case that the state-- or, I keep saying the state-- political subdivision was at fault. So my question to this committee is, "At a bare minimum, does that child get a day in court? At a bare minimum, can a judge least look at the evidence to see whether the state is liable or not?" Right now, the answer is no, based off of the May 2024 ruling. Prior to May, the Supreme Court admits there is split case law. I have a daughter, and I have a kid. And if the state-- political subdivision, school, county fails to protect my kid, you're telling me I can't even get an attempt to get into court? And we're OK with that? I don't believe any of us are. And it comes down to what a colleague of mine suggested, and asked the question multiple times-- Who elected you: the government, or the people? I'm here to protect the people. And in par-- this particular case, innocent children, where a political subdivision failed to do its duty. That's part one of this bill. Part two of this bill is 100 percent property tax relief. And that's punitive damages. Say what you want, but our Constitution is clear: if it is a fine, it has to go to the local school. And I believe if you look at all the literature, punitive damage, by the very nature of the name, is punitive; is a penalty, and it should go to the schools. Now there's this theory that you open up punitive damages, and there's going to be a floodgate, and people are going to go broke. Where has that happened in a state where punitive damages exist today? There are only 4 states that don't have punitive damages, and we are one of them. So why isn't Texas going broke? New York? Why isn't every, every company there, fleeing their state to come to Nebraska, where we don't have punitive damages? Because they understand how it really works. In order to even get to punitive damages, there has to be a finding that you were first liable. What does that mean? That means there has to be a finding-- and I handed out some jury instructions of Illinois. There has to be a finding that you already did something wrong, and you were either negligent or intentional by that action. That's step one that a jury has to decide.

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So think about that: we are defending bad actors, because they've already been found guilty that they did something wrong. The second part of a punitive damages case is, "Is their conduct so outrageous, so egregious that a jury-- people like us-- make the decision that we have to deter that conduct from happening somewhere else?" This isn't a-- Senator DeKay just hits me in the back of the car, and I'm, I'm driving and he fails to stop. It has to be more egregious than just an accident; it has to be more egregious than I had a bad day, and made a mistake. It's the company who, every day, is doing something wrong, and there's emails out there saying that they are intentionally doing something wrong, and it's so egregious, we have to make sure Company B doesn't do it. So we're going to tax everyday people on pop and candy, but we're not going to tax the company who has been doing something wrong so egregious that a jury of us, our peers, are saying they need to pay a penalty. Think about that. We're taxing little mom and pop just because we want property tax relief; but the company who was found, already, in step one, to have done something wrong and is liable, they don't need to get the extra penalty. But we're going to penalize mom and pop for wanting to buy Gatorade. What are we doing? I believe we should put the penalties where it belongs. The guilty party who was doing so "outrageous"-- egregious work that they should be penalized. The third part of my bill goes back to, actually, the Constitution. We authorize the Attorney General-- and when they come up and testify, ask them directly, "Why are they suing?" "Under what statute?" and, "Is it a fine or a penalty?" Ask them directly, because they're not entering into settlements for actual damages. Because if it was actual damages, it would go to the individuals who were harmed. They're entering into settlements as a penalty for that company to do-- who is doing bad behavior, or breaking the law as far as a deceptive practice. A penalty, a fine-- that should go to the local school districts. And I would challenge anyone to say it's not. I do think we should carve out exceptions, because when you're in a class-action lawsuit, there may be a broad parameter that, "Hey, we're going to put this into a tobacco settlement fund, and it should go to tobacco programs to quit kids from smoking." Make an exception. But if we're filing lawsuits against, I don't know, hypothetical beard company, because I can't use THC, because there's actually ongoing litigation, and they settle with that company, that is a penalty or a fine. They are suing because the lawsuit says you are creating deceptive trade practices, you are breaking the law. I don't know about you, but when anybody else breaks a law on a speeding ticket,

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you get a fine or a penalty. But for some reason, the Attorney General gets a lump settlement that they can do whatever they want with, when our Constitution clearly says it should go to local schools. If we're going to have a real conversation about property tax, then I don't know how punitive damages can't be a part of that conversation. If we're going to have a real conversation about property tax, I don't know how we're suing companies under deceptive trade acts, and it's not a part of property taxes, not a fine or a penalty. Because I don't know what the settlement is. Because there's actual damages, special damages like medical bills, then there's a penalty. Tell me what category it fits into. Because we're not giving the people who were supposedly harmed the money. Then it has to be a penalty. And I made it clear from day one, if we come back to special session, if the original LB25 is not on the table-- I can't protect the taxpayers of Nebraska if we're not protecting the children of Nebraska. And that's my statement, and I'll answer any questions.

**DEBOER:** Thank you, Senator Wayne. Are there any questions for Senator Wayne? Senator Blood has a question.

**BLOOD:** Thank you, Senator DeBoer. Thank you for bringing this forward, Senator Wayne, again. So, knowing what we know from today's announcement, do you feel that you'll be able to get any traction with your bill?

**WAYNE:** Yes.

**BLOOD:** Because?

**WAYNE:** I presented this exact same bill in Revenue today. I made it clear that I can't have a conversation, and I-- let's just call politics what it is. I've been the 33rd vote on a lot of things, and if we can't help innocent children who are in a system and failed by that system, then I don't need to tax mom and pops on Gatorade.

**BLOOD:** But you will tax them on Gatorade if your bill comes through?

**WAYNE:** Not sure. Gonna-- and, and I'm being honest.

**BLOOD:** Oh, come on.

**WAYNE:** I told them, I am not committed. I have not said "if this passes, I'm committed". Oh, not at all. Not at all. Because there's

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certain things I don't agree with on-- I mean, Gatorade is one of them I'm struggling with. There's some other taxes that I've see out there, that I made clear it doesn't make sense to me. But to me-- you can't even have a conversation with me about it, if we can't protect children.

**BLOOD:** So it is your hope that every bill that comes out of committee will have a full and fair hearing?

**WAYNE:** Yes. And I think, to Senator McKinney's point in the last hearing-- if it's property tax, and we're putting everything on the table, then everything should be debated by the full. I don't view this as a regular committee session. And I-- and you know, I, I view chair rules and committee rules as a little different. I don't think it's something you hold people's bills back; I think you make it the best, and they got to make their case on the floor. Other chairs feel like it's to stop bills, and I know I get a lot of grief for not stopping bills; I put out some bills last year that I'm pretty sure Spike will stick his head, say should have never came out. But I view my roles differently. But we are in a special session, and we're talking about property tax relief, then there needs to be a full debate on property tax relief.

**BLOOD:** And so, if I hear you correctly, you took the call seriously, as many of us did, and brought forward your part of the puzzle, in hopes that we get full and fair debate.

**WAYNE:** 100 percent.

**BLOOD:** Thank you.

**DEBOER:** Thank you, Senator Blood. Senator McKinney?

**McKINNEY:** Thank you, Vice Chair DeBoer. Senator Wayne, I'm an-- I'm an-- I'm anticipating that there will be a few or a bunch of political subdivision representatives that will come up today and say that they're opposed of LB57 because it will do a number of things. One, bankrupt them or whatever. And my question is, if those political subdivisions are going to be bankrupted because we pass LB57, because they've been allowing people who should not be employed to be employed, how can they also come up in other committees and say we need to be protected from the property tax relief plan?

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**WAYNE:** That, that, that's where I'm at. I mean, look, at the end of the day-- either they're admitting that there's a problem, right? Like, at the end of the day, if you're going to go bankrupt, that's a problem. Or-- actually, no other "or." I'm thinking about what's the other "or." No. If, if, if you go bankrupt as a county or-- OK. I was here when we passed a, a specialized sales tax for Gage County. That was a "horistic"-- horrific thing that happened in Beatrice. They were held liable by a federal court, and they didn't go bankrupt; they set up a plan, and we even helped them out in the end. But that county knew it wasn't a good thing. We have limit to this-- this isn't open season. We have limited to death and sexual assault. If those two things are happening that much in your county, we have a bigger problem, and nobody can tell me different. Now, if they want to improve the bill because they feel some kind of language is different, that's great. But I have to remind this committee-- and it's clear in this, in this May 3, 2024 decision, there was a split docket. If it was already that bad, there still would have been lawsuits already filed. Because attorneys would have pushed the envelope. But clearly it wasn't.

**McKINNEY:** Thank you. Or, at least those political subdivisions that will come up are basically admitting that they have hired or are employing people who should not be employed.

**WAYNE:** Correct. Correct. Look, look, if you do a background check, and you do everything right, and you send it out, yes. Will you be named in a lawsuit? Probably. But you'll get out on summary judgment. That is part of our system. For those who don't know, you plead the case. Then there's discovery, where you send discovery back and forth. And discovery means I'm getting information from you, you're getting information from me. Oftentimes it's written, sometimes there's a deposition. That, in and of itself, takes months, because most of the time, we file a motion that compels, it goes back and forth. And then, before every trial, there is a "depositive"-- I don't know a trial that I've been in that didn't have one-- it is a motion for summary judgment. And what that is, the judge gets to look at all the facts and says, is there enough to go forward? Is there enough that, even if I look, and I think the case law is looked in the most favorable light of the plaintiff, the persons bringing the case-- is there enough to go forward? That's another check. Not just the 6 months, not just the notice, not the 2 years that would estab-- statute of limitations; there's a procedural safeguard of a summary judgment. Then, as in this



case, you present your trial, you file a motion, or making a motion for a directed verdict, which the judge sits back and say, "Did the case that was just presented have enough evidence to even go forward after they presented it?" That's another check. Then you finally go to the judge for, for a fact-finding, or a tier [SIC] of fact to, to decide whether they had enough or not. So, there are at least 4 safeguards that make sure there's not a runaway jury, or a runawa-- in this case, runaway judge who's just out to get something. And, and I just-- I think last year, after talking to people, people just assume I can just file a lawsuit, and tomorrow I'm in trial. That, that's not how it happens. In Douglas County, right now, we are a year to a year-and-a-half out on a trial. There's a lot of things that happen before then. I am booking trials right now for next March.

**McKINNEY:** So what you're saying, for example-- the schools would have to deliberately and extremely drop the ball before something could happen.

**WAYNE:** 100 percent. 100 percent. I can give you examples right now-- I actually printed them out, and I said, no, I'm not going to do that. There are public schools right now who are filing motions to dismiss based off of this. And last year, it was argued about Title XX claims, and-- it's clear you had it underneath Title XX, and ti-- and Title IX, you have to have a system-wide culture, basically. And there are case law that says one instant isn't enough. So, if you're unfortunately the first person, that happens to your child, it doesn't matter. It takes more than one. Now they're making the argument in these cases, based off of Title XX, and you want to base it off of sex, that if somebody rapes another kid, you have to prove that it was somehow based off of their gender; that they discriminated because they didn't have sex with-- or, rape another male, they raped a female. You have to prove that it was-- that sex is actually a component of it. So they're filing motions to dismiss on that. I have-- I, I can give you plenty of motion to dismiss that I've already looked at.

**McKINNEY:** So, what you-- so, what you're saying is, when they come up here and say that we're going to be extremely harmed by the passage of this bill, it's also an admission of guilt, of not doing their jobs, of taking care of our kids, for example.

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**WAYNE:** 100 percent. 100 percent. And, the other thing is, is why are they not broke now underneath the body of case law? There would be cases already out there.

**McKINNEY:** Thank you.

**DEBOER:** Thank you, Senator McKinney. Other questions for Senator Wayne? Senator Wayne, I have one for you. Under the UDTPA, what, what are the funds-- historically, what have they been used for?

**WAYNE:** So, many of them go to the Attorney General's cash settlement fund. I was going to play around with it last year, and I decided not to, because we were doing everything else. But right now, if it's a settlement, it goes to those cash funds. I mean, the, the settlement cash fund-- the Attorney General's cash fund. I believe Conrad brought a bill last year to say that we get to have some say in it, but when you read the Constitution, and based off of the pleadings that I've seen involving these cases, it's clearly a penalty or a fine.

**DEBOER:** OK. Thank you. Other questions? Thank you, Senator Wayne. We'll have our first proponent, please. First proponent. Thank you. Welcome.

**LOREE WOODS:** Thank you. Good afternoon, Vice Chairwoman DeBoer. Appreciate you and the Judiciary Committee. My n-- my name is Loree Woods; it's spelled L-o-r-e-e W-o-o-d-s. I'm here today urging support for LB15 [SIC] on behalf of my special needs daughter, Taylor Woods. Unfortunately, LB15 has become very personal to us and our family, and we're hoping that no other family has to go through what we have. You see, my daughter was left with no recourse after she was sexually assaulted by another student at Lincoln Public Schools, due to negligence. This is my sixth time testifying before your committee on behalf of my daughter; I've testified for the first effort to repeal Moser with Senator Lathrop's LB54 to Senator Wayne's LB25. And we won. Taylor and her friends were safe again. Tears flowed with relief; huge weights were lifted off our shoulders, she was giddy with laughter, her days were filled with, "I'm safe and my friends are safe now, too. Right, mom?" We slammed the door shut on that horrific ordeal, and we're moving forward-- seven and a half years, but it was finally over. Then, an unconscionable thing happened. Sena-- Governor Pillen voted-- vetoed LB25 with no recourse, no re-vote, no override of the veto. Taylor, our family and friends were absolutely crushed. It was

like starting all over. Night terrors, sleepless nights, tears, fears all come flooding back. The question of, "Am I safe?" I'll be keeping Taylor's story going as long as I need to, to make something happen here. Sexually-- she was sexually assaulted during her most formative years of her life. Not only was Taylor a victim of sexual assault, she was also-- but my belief is that Taylor was the first victim of the Moser decision. We had scheduled mediation a few weeks before Moser had come down. Because of Moser, Taylor never got to be accountable. Unfortunately, Taylor was the-- not the last victim. The comments by the opponents stating, time after time, that they will come out of the woodwork, then we need to be doing better job. School districts, facilities and government agencies need to be doing a better job of screening, hiring and trade-- training. Additionally, our tax dollars are already paying for her care, because she's on Nebraska Medicaid. All that Taylor and I are asking is that the Legislature return Nebraska to what it was-- the post-Moser. You have my full testimony in front of you; I just want to tell you a brief thing about Taylor. She was sexually assaulted on October 10, 2016. She suffers from flashbacks, PTSD, and night terrors-- who, what, when, where-- for every situation. We had-- she sees a therapist still twice a, twice a month, sometimes weekly. Recently herself, her-- my girlfriend and I had planned a, a visit to, to Disney World. She was giddy with excitement; it's a trip that we had planned for 2 years. Upon arriving at Disneyland, one of the servers at a restaurant had the same name as her perpetrator. She went into fight-or-flight mode with the-- just seeing his name tag. That evening, and the following 2 days, she was on edge, teary, scared, and insecure. As a mom, I wanted nothing more.

**DEBOER:** Ma'am? Ma'am, I'm sorry the red light is on. Can you just finish up your last thought?

**LOREE WOODS:** Oh, I'm sorry. Yes, my last thought here. Anyway, that was bad. And, and it destroyed the whole thing. It has never been about profit or personal gain for us; it's always been about a young lady being sexually assaulted at the most important maturing time of her life, with no recourse for a victim. My daughter was 19 years old; she had plans to move forward. Those plans are now limited to living in our basement, arrangements, no independence, and 24/7 care. Thank you. I'd be happy to take any questions that you might have.

**DEBOER:** Are there questions? Senator McKinney.

**McKINNEY:** Thank you, Vice Chair DeBoer. I have a couple questions. My first question is, what do you say to the individuals that are here, that are going to come up and say that the passage of LB57 would bankrupt them, or put extreme financial strain on their political subdivisions if passed?

**LOREE WOODS:** Again, I'd say that-- then we're not doing a good enough job here. The teacher that left my daughter unattended had not read the IEP for this child. He was as-- he wa-- had every thing that sexually-- and it said in his IEP that he should have a one-on-one. He did not have a one-on-one; they left-- a, a teacher or a para was gone that day, without a vacation day, without filling that need. Instead of dividing the groups into 2, she left the 4 students-- one, the perpetrator, and took a group of students to meet the other one, the other group. Another person came along, told them to get on the elevator. My daughter was the only one that had access to the elevator. The perpetrator took her to the 13th floor and sexually assaulted her. She was gone for 50 minutes. There was no phone call to the police, there was no lock down on campus, nothing. And they tried to cover it up. I'm-- it, it just kills me that this has happened to her. And, it's a constant flashback, and if you think that-- I would never put-- any of the people behind me, I would never want this to happen to their child. It has been a living nightmare. She's 27 now, but she still lives-- she had plans of moving out, getting a job, because this was her college degree-- was where she was going to the voice program, get a job, move out with her friends, and be independent. She lives in our basement; she doesn't want to move out with friends now. She, she's very active, but at night and in the mornings are when the flashbacks come, the horrendous nightmares come. She sleeps with me in my bed at night if she's that upset. She has special needs. She didn't understand a sexual relationship, she doesn't understand adult relations. But this was allowed to happen to her with no recourse. There was nothing that-- can do to fix this, unless we can get this passed for somebody else. It does not benefit us at all. This is about the safety for kids to come, because she didn't ha-- she doesn't have that luxury.

**McKINNEY:** What do you say to those individuals, politically or otherwise, that say we should be back for a special session to reduce property tax relief, we should still be tough on crime, we shouldn't pass legislation that increases more opportunity for people to utilize

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recreational drugs or, or, or otherwise that are opposed to this bill, or are not proponents of this bill?

**LOREE WOODS:** I say, let's take care of our kids first. The kids are our future. Our kids are the ones that are going to be moving forward. This kid did not get help. He was allowed to stay in the system. He was allowed to graduate the same night she was. And he was creepy the entire time. Take care of our kids first. They're going to be our future, and they're going to take care of everything else for us. But right now, if we're not taking care of our kids, and we're-- again, like I said, it was never about a profit for us. It was about taking care of her future needs, because we're not going to be here forever. Somebody else is going to take on the burden of taking care of her now, not the happy-go-lucky Taylor that she was before age 19.

**McKINNEY:** So what you're saying is, taking care of our kids isn't just based in fully funding education?

**LOREE WOODS:** Yeah. Exactly. It's taking care of our kids across the board, to make sure that this doesn't happen again. To educate those kids-- I asked them to get their parents' help when I was finally allowed to come to the district office. That was one thing that I-- they didn't have policies in place, I asked them to get this kid help. That never happened. It just--

**McKINNEY:** And, and what you're also saying is, it's not also just based in protecting student athletes from utilizing substances that we deem as bad, or we shouldn't use, because it's going to destroy the sport, even though the NCAA doesn't test it-- to test for it anymore-- those individuals should also be up here being proponents of this legislation to protect all kids in our state.

**LOREE WOODS:** To protect all kids in our state.

**McKINNEY:** Thank you.

**LOREE WOODS:** Thank you. Thank you, everyone.

**DEBOER:** Thank you, Se-- Thank you, Senator McKinney. It looks like Senator Blood still has a question for you.

**LOREE WOODS:** Yes, please. I'm so sorry.

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**BLOOD:** No, do not be sorry, first of all. And thank you for coming to testify. I know that every time that you share this, it is very painful, and I, I do appreciate the fact that you came. So I'm trying to do-- put in a nutshell, like I could hear the senator doing over there. So, tell me if I'm, if I'm hearing you correctly. If I hear you correctly, you feel that this bill helps make your family and your daughter whole.

**LOREE WOODS:** This bill would close the door for us. We have not have the opportunity to close the door. You know, I, I, I know enough about it to probably be dangerous, but I know that it would be a, it would be a stepping stone to be able to go higher, go-- more age for vulnerable people. But I also know that for Taylor-- when, when we won and she got the green votes out there, you-- I mean, just the tears that came-- I mean, it was a huge weight lifted off her shoulders that she won. She finally got her day, her justice that she'd been waiting for. So yes, this would definitely help for her, because we went right back to where we were at.

**BLOOD:** And so, what I hear you saying too-- there's like a weird echo. Do you hear that? Or is it just me? Maybe it's just me. So, there is also something that I hear you saying that I want to make sure that we have clear in the record. So many people, when they were victims say, "Well, you just-- you need to get over it."

**LOREE WOODS:** Yeah.

**BLOOD:** But what I hear you saying is that it's not that simple, that many things, just like any other type of PTSD, any type of trauma, can, can be felt for that victim's entire life. Would that be accurate?

**LOREE WOODS:** Oh, absolutely. And, when I told another mother what had happened to Taylor, she burst into tears. She's my age, able body, but it had happened to her. And she said, "Oh my God." She said she lived with this for the rest of her life. You don't get over some kind of trauma like this, you just don't. And so to get these-- get education out there, and get these people help that need the help. And, if it costs a little bit extra, then it's worth it, because if you can stop that cycle-- the people that we talked to, too, said this kid knew what he was doing. He, he had, he had groomed her from getting closer

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to her on the bus, and, and befriending her to make this happen. So-- we need to stop that.

**BLOOD:** Thank you.

**DEBOER:** Thank you, Senator Blood. Other questions? Thank you for being here. We'll take our next proponent. Welcome.

**SAM COLWELL:** Thank you. Good afternoon, members of the Judiciary Committee. My name is Sam Colwell; S-a-m C-o-l-w-e-l-l. I'm an attorney at Rembolt Ludtke, and I'm here on behalf of the Nebraska Association of Trial Attorneys. I'll be brief, because Senator Wayne took just about everything I was going to say. And also, Loree and, and Taylor's story is so heartbreaking, and perfectly encapsulates, unfortunately, the reality for so many Nebraskan families, particularly those Nebraskans who need the most protection, and who deserve accountability from their government the most. The only thing that, that I'll add to, to Senator Wayne's testimony is, under the Political Subdivision Tort Claims Act, you actually only have a year to file a-- to file the tort claim, so it even further insulates the, the government from recourse in that regard. So, I'm happy to answer any questions; I know there'll be additional proponents from NATA behind me as well.

**DEBOER:** Are there questions for this testifier? I don't see any today. Thank you for being here.

**SAM COLWELL:** Thank you.

**DEBOER:** Next proponent.

**McKINNEY:** Don't bypass the page. I'm over here.

**DEBOER:** Let the record reflect that Senator Wayne has indicated he is a page. Welcome.

**CAMERON GUENZEL:** Thank you. Members of committee, my name is Cameron Guenzel. I am testifying on behalf of the Nebraska Association of Trial Attorneys. Cameron Guenzel; C-a-m-e-r-o-n, last name G-u-e-n-z-e-l. I want to address only one narrow issue with regard to the state and political subdivision tort claims in this bill. In previous years, opponents of bills like these have argued that state law claims are unnecessary, because injured parties can file 1983

claims. They argue that, other than a heightened standard of deliberate indifference, there's no, there's no difference, and these claims provide an adequate remedy. Well, I recently litigated a 1983 claim against Lincoln Public Schools, and I can tell you this is demonstrably false. But you don't take my word for it, because I brought copies of a brief filed by LPS' attorneys in support of their motion to dismiss. And everything I'm saying today comes from their own briefs. Now, when we talk about 1983 claims, we're really talking about 2 separate claims. So, first, there's a, a Title IX claim, and the second is a substantive due process claim, and I'll talk about both of these in turn. The Title IX claim is, is what we would typically focus on in this sort of situation; that can only be brought when a bunch of elements are met. So, when schools are deliberately indifferent, we've heard that. But then, as Senator Wayne said, it's to sexual hara-- or, it's harassment based on the victim's sex. Then, that harassment has to be so severe and pervasive that it deprives the victims of access to educational opportunities. And I'll, I'll, I'll, I'll touch on each of these. So one of the, the, the elements, which is a really big hurdle, is that the harassment has to be motivated by the, by the vict-- by the victim's gender. So, LPS cited a case in its brief where the victim was stripped naked and videotaped by his bullies. But the court held that that did not give rise to in 198-- to a Title IX claim, because there was "no indication it was undertaken because of the student's gender." In my case, my client was sexually assaulted in the-- several times in the classroom. But LPS argued it should be dismissed, because the assault was not based on his gender. Put differently, when the assailants held my client down and pushed bare genitals against his face in the classroom, that was not motivated by my client's gender, so Title IX didn't apply. Next, the harassment must actually deprive the student of educational resources. So, if a student faces horrific sexual assault, but still manages to make it to class, there's no Title IX claim. So that's the trouble with the Title IX claim. The other one that I talked about is a due process claim; that's even further from a state, state law tort claim, because there, you have to prove-- and, for schools-- that it's the school board's official policy or custom, is the moving force causing the injury. So a teacher, or even an entire school which ignores a known danger is not sufficient. May I have a moment to, to finish my, my bit here?



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**DEBOER:** Let's, let's see if there are any questions. Are there any questions? Senator Bosn?

**BOSN:** I'd like to let you finish.

**CAMERON GUENZEL:** Oh, thank you very much. As frustrating as this is for victims, the reality is that these claims were really not meant to address this type of, this type of injury, not meant to address this type of problem. So that's the, the need that I've testified before, and I do today, for a claim that allows these types. But most importantly for my testimony today, when opponents of the bill line up to say that 1983 provides an adequate remedy, you now know and have the proof from LPS' own attorneys that that's utter nonsense. Thank you.

**DEBOER:** Any other questions? Thank you for being here. Next proponent. Where's our page when we need him? Thank you for being here. Welcome.

**JENNIFER TURCO MEYER:** Thank you. My name is Jennifer Turco Meyer; J-e-n-n-i-f-e-r, Turco, T-u-r-c-o, space Meyer, M-e-y-e-r. I'm here also testifying on behalf of the Nebraska Association of Trial Attorneys, but I'm most excited to be here as a property tax payer, and also a parent of 3 boys in Millard School District. I'm just going to talk to you about punitive damages. And, I think we really have an opportunity, as a state, here, to look at revenue-- with a small population-- revenue that all but 3 states have chosen to take in with punitive damages. I think there's an emotional reaction to punitive damages that is empirically denied, meaning all these other states are doing it, and all of the things that people say are horrible about the idea here in this state do not happen. So, one of the things I was going to just talk about is how cases like this really work. Senator Wayne had already discussed it, but right at the very outset, when we pass a statute like this, that we take that we make model jury instructions, which are jury instructions used all across the state and the state courts to present these cases. Then someone like me would look at them and say, "Do I have the facts to plead this case?" If somebody just is driving too fast for the conditions, and they rear-end someone in the rainstorm, I would not plead a punitive damages cause of action. So there's another safeguard. Then, there's a motion for summary judgment, which Senator Wayne talked about, where the judge looks at all the evidence and decides, "Can this claim go forward?" Then, before you start jury trial, the judge sits down with

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both sides and we hammer out an actual jury instruction set, like the ones you were given, that goes before the jurors in your case. Now, before that happens, though, you present all of your evidence, and at the moment that you close, the judge then decides the evidence you prove actually shows that you're entitled to this a jury instruction. And if you're not, the judge pulls it; you don't even get to present it to the jury. Then, when the jury actually looks at it, they make multiple findings. First, they decide, is it, is it ordinary negligence, and what damages you get from that. Then, they take on a separate task of deciding, "Does this rise to the level of gross negligence?" And if it does, they award a separate amount for punitive damages. Then, we also have judge review after that. And then, we have appellate review after that. So, what's the benefit to punitive damages? Well, the benefit is children. In this state, if we pass this, we'd be funding education. One of our greatest assets are ch-- our children, and what grandparent, parent, educator, taxpayer wouldn't want that? I'm open for questions.

**DEBOER:** Thank you. Are there questions for this testifier? I have a question for you. So, the sort of trouble I always got into on this, using punitive damages to go to the public schools, is that I worried that there wasn't really an inducement to make the statute work. So, if the plaintiff brings the case, and the defendant, let's say, has some fear that there might actually be liability for punitive damages, wouldn't they just settle with the plaintiff for some amount less than the punitive would be, but greater than the actual damages would be, thereby settling-- as a settlement, would-- the punitive damages then wouldn't go to the public schools, the plaintiff would get more money, so they would be induced to do it, and the people who committed whatever act would rather have the lesser amount than the punitive amount. So, who watches out for the taxpayer? How does this work in this system? And, isn't there really just-- I mean, everybody is induced to not let this money go to the public schools, and nobody's watching out for the public schools. So how do we get around that problem? That's the one I've always had. Senator Wayne knows that; we've been doing this dance for six years. Do you got an answer for me?

**JENNIFER TURCO MEYER:** I have a couple of points.

**DEBOER:** OK.

**JENNIFER TURCO MEYER:** The first would be, we're already kind of doing this a little bit in our Nebraska Wage Payment Collection Act cases. I'm not sure if you're familiar with that statute, but it actually allows, when employers have willfully disregarded paying employees, that there is a liquidated damage provision that goes to the, the schools. OK? And again, it doesn't-- I think what I'm just trying to say is we have, like, a process. And then the statute that Senator Wayne has proposed has a process to safeguard the, the jury verdicts and the interests of the state. But the second thing is, honestly, when we settle cases, we're not getting value for millions of punitive damages, OK? So there's a real little risk that we're recovering millions of dollars of punitive damages. And what happens is, we take the, the cases to trial, right? And we try the case. And back in May of 2023, I obtained a jury verdict in Douglas County in a sexual harassment case, where my client was groped, and then not protected when she, when she reported it to the employer. And the jury awarded \$500,000 in pain and suffering, and they awarded \$2.5 million in punitive damages. And-- that's a federal court case, so we could have that conversation. We can't have that conversation in Nebraska right now, because we don't have a mechanism to recover it, and that-- those punitive damages would have went to a school in North Platte-- school district in North Platte.

**DEBOER:** So let me-- but let me ask you this. If you're having that same case in state court, under punitive damages as Senator Wayne has decided, why would you not have settled? Why would you have not-- I mean, you would be remiss not to advise your client to settle outside of the, the system if the other side would have settled for some lesser amount that was still greater than the \$500,000 that you would have recovered for actual damages. If you had settled for, let's say, \$750,000, that's \$250,000 that you're getting for your client that they wouldn't get, because it would go to the Grand Island Public Schools or whatever. Or North Platte, or-- I, I already forgot what you said to me. But whatever you said. So, there's no inducement for the parties to the lawsuit to do-- actually go to trial, and go so far as to get the punitive damages finding. You might even go through the first part, and just not go through the damages part, because you would be induced to settle; both sides would have inducements to settle.

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**JENNIFER TURCO MEYER:** Well, in our case, we didn't have a choice. We had to go to trial, so we didn't have the opportunity to settle it.

**DEBOER:** Because the other side didn't want to settle, or--?

**JENNIFER TURCO MEYER:** Right. Right.

**DEBOER:** Right. OK. But don't you think they might have been more induced to want to settle? I mean, you said they got the, they got the punitive damages.

**JENNIFER TURCO MEYER:** They weren't. Yeah. The-- under federal law, we could get punitive damages the whole time.

**DEBOER:** Yeah. OK. So--

**JENNIFER TURCO MEYER:** --and I think that's a really-- two important things. Punitive damages are rare, OK? We're not talking about every news story we're going to see after we adopt this revenue source. It's not going to solve all of our revenue problems, because we're not seeing them all over the place. But, well, I will say is, because we may not recover every dollar of punitive damages in settlements is not a reason that we shouldn't want to recover jury verdicts for punitive damages, right? If there's a jury verdict for \$2.5 million last year, we wouldn't want to forego bringing that money and revenue and giving it to the schools just because maybe somebody got a \$100,000 worth of value of punitive damages in a private settlement that we're not going to re-- get revenue from.

**DEBOER:** So, you're granting, my inducements would be to settle outside of court, so as both parties would be better off. But, in those situations where they're not going to settle, because the one side says "we didn't do anything wrong," even though they did-- there are going to be some cases, you say, that, notwithstanding the inducements otherwise, would still go to trial. Is that what you're saying?

**JENNIFER TURCO MEYER:** I'm saying that I don't grant the argument, but I do say that some cases will still go to trial, because the parties can't come to a resolution on it. And so, that's what trial is for. But I don't--

**DEBOER:** I think you should have granted the argument, because I think, then, you made the best argument against this I've heard in 6 years.

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So, what you're saying, I think, is that maybe there are inducements-- which there are, and we can see them-- that you would settle, but there are still many cases that would not settle, and therefore we should take the punitive damages there.

**JENNIFER TURCO MEYER:** I don't think they're inducements, because the process of settlement isn't plaintiffs raking in a bunch of money like--

**DEBOER:** I know, but--

**JENNIFER TURCO MEYER:** I know, but I'm saying, like, it's not to the point where we're making calculations about avoiding paying punitive damages.

**DEBOER:** OK. Well, you made a good argument for me. So, we'll just call it there. Thank you.

**JENNIFER TURCO MEYER:** Thank you.

**DEBOER:** Any other questions? Senator McKinney.

**McKINNEY:** Thank you. Chair Debo-- Vice Chair DeBoer. So, are you saying that, overall, your intent, regardless of a settlement or some other judgment, is to protect the families and the kids? So-- and, and why I ask that is-- yes, maybe there might be situations where you do settle, but maybe there's situations where you don't. But without the option, it causes more problems than not.

**JENNIFER TURCO MEYER:** What I'm saying is that, when we have cases that go to trial, and cases that the statute would al-- you know, if you can prove the gross negligence, or the reckless disregard, which is a higher-- much higher level of proof, that we're missing out on the opportunity to not only deter bad behavior in this state, because we're saying, "It's OK, we're not going to punish you;" but we also are missing out on what other states are doing, which is not sending that money to the plaintiffs, but investing it in the state.

**McKINNEY:** Are those other states going through a flood of cases, or have went through a flood of cases, or under the threat of going bankrupt because it's all these cases that involves these type of situations?

**JENNIFER TURCO MEYER:** Well, I don't have, like, historical data. And you have to understand that the punitive landscape scheme-- there's a federal scheme, right? Federal law. But in states-- as far as states go, it widely varies between whether they allow plaintiffs-- whether there's caps, which there are in this statute, whether-- what burden of proof you have. So, it's really hard to, to really do an apples-to-apples. But what I can tell you is, the 47 states that do punitive damages aren't repealing their punitive damages statutes because they're suffering from any of the ill effects that people are, are bringing up, because I believe it's more of an emotional reaction to the idea that the floodgates will open.

**McKINNEY:** So are you saying that there's, potentially, states in the United States of America that allow for punitive damages, that are not in special sessions to figure out property tax relief because they're not going broke, because they have punitive damages on the books?

**JENNIFER TURCO MEYER:** As far as I know, that wasn't the impetus for many states to adopt a punitive damage award. I just mentioned earlier that I think it's a unique opportunity, given that someone like me wants property tax relief, and I appreciate all the senators, trying to work that out, and coming to the special session to do that.

**McKINNEY:** Thank you.

**DEBOER:** Thank you, Senator McKinney. Other questions? Thank you so much for being here. We'll take our next proponent.

**SPIKE EICKHOLT:** Good afternoon, Vice Chair DeBoer, and members of the committee. My name is Spike Eickholt; S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of two entities as their registered lobbyist: the Education Rights Counsel and Voices for Children. And we are testifying in support of part one, as Senator Wayne referred to it, of LB57, the part that addresses tort claim liability reform. You're receiving a copy of my testimony from Education Rights Counsel. I tried to summarize, or I guess I did summarize, sort of the status and the position of Nebraska law, but maybe I'll try to summarize it very generally to kind of conclude-- because I don't want to repeat what other people said. The Legislature passed the Tort Claims Act in the late 1960s. Before then, if you wanted to sue the government for any kind of harm, you couldn't. Government is entitled to immunity, just like you, as Senators, are entitled to immunity; if Senator Bosn says

something I don't like, I just can't sue her. Or, I can, but it'd get dismissed immediately, because she's entitled to immunity as a state senator. The Tort Claims Act were passed to allow for the citizens to be able to pursue government, if the government did something wrong, if they caused them injury, whether it's to their person or property. So, for example, the city snowplow comes through with a guy who's driving and is negligent, he takes off 3 or 4 houses, their front yards, the mailboxes, the sprinkler systems-- you can file a tort claim to get reimbursed for that property loss. If you look on page 7 of the bill-- actually starting on page 6, Section 8 on line 9, Section 13-19-- 13-910. This amends-- this is the Political Subdivision Tort Claims Act. When the Tort Claims Act was passed to allow the people to pursue claims against the government, there were certain things that the people couldn't sue the government on. And that included, on page 7, any claim that arise out of assault-- this is on lines 15-19-- any claim that arises out of following acts: assault, battery, false arrest, or false imprisonment. And the theory was that, if the snowplow driver gets off the snowplow and confronts a homeowner, and punches that person, that's not an accident; the city is not going to pay for that. You can have that person arrested, and you can pursue a judgment against that individual; that's not part of their job duty. What happened in Moser-- and I'm going to run out of time, but what happened in Moser is that our Supreme Court began to interpret that exception to apply for someone other than the government employee. The claim in Moser-- Terry Berry was the guy who was killed by Timothy [SIC] Schroeder, the guy in prison. The Moser was the name of the family that was suing on behalf of Terry Berry, because he was dead. The state argued in that case that the claim that you got arose out of an assault. The Moser family says, "Yeah, but not an assault by the government worker, it was by the inmate; you were negligent by putting him in this cell with him." And the court said, "No, that's a claim that arises out of the assault." That reversed a series of cases that said just the opposite. That, in other words, the government could be liable if they were independently negligent, if they were negligent and some assault happened, just like you heard the woman who talked before about her daughter, Tyler-- Taylor. You had the negligent act; yes, there was a crime. I'm sorry. I'm out of time. I'll answer the questions if anyone has any.

**DEBOER:** Let's see if there's any questions. Senator McKinney.

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**McKINNEY:** Thank you. Vice chair of the board. Would you like to finish a couple of your comments?

**SPIKE EICKHOLT:** I-- if I could. The court reaffirmed Moser in Edwards, which was a claim against Douglas County in which someone called 9-1-1; they didn't dispatch an ambulance for something like an hour while someone lay there dying. And they said, "You were negligent by not responding to the 9-1-1 call." And the court and the Supreme Court says, "Yes, but your claim arises from that person who broke into your home and shot you." And then this last summer, right after you adjourned on May 3, 2024, the court again reaffirmed Moser, and said that even though Health and Human Services staff may have been negligent in the placement of a foster child in a foster home, the sexual abuse of that-- those children suffering physical abuse, that's their claim, it arose from a claim. Even if it was the foster parents, and even if the staff and the employees of the state may have been negligent, you're not going to be able to sue them. And that was Joshua M. v State. So, what Senator Wayne's bill does, it simply undoes those decisions, and says-- and as-- I would submit it's fairly narrow, because it only allows for if the harm is caused by child abuse or sexual assault and resulted in death. And, it only applies to political subdivisions that have a duty to exercise reasonable care for someone who's in their control or care, which would be children, or someone in their custody. So for those reasons, we would urge the committee to advance the bill.

**McKINNEY:** You're a defense attorney. Do you foresee, like, that there's going to be like this flood of cases that ends up in the court?

**SPIKE EICKHOLT:** When, when the state passed the Tort Claims Act, it already anticipated that. You just don't go into court, as Senator Wayne said; you've got to file a claim. And I think it made the trial attorneys-- [INAUDIBLE], I think, for the state, you've got 2 years; for the county, you've got a year, or is it vice versa? That's a hard deadline. You could be a year and a day, or 2 years and a day, whatever it is, and you're done. You cannot bring the claim; you cannot sue. The reason that they have the requirement of the claim is to let the local government sort of settle a case, so you don't get hauled into court. It's to benefit the government, not to give a person, the plaintiff, any kind of edge. You've got caps on recovery; you've got limitations on files. So, it was-- it's already controlled.



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But to answer your question, I don't see that. You still have to have a claim. Disagreeing with something government does is not a claim; hoping to get money is not a claim. You have to have, unfortunately, an actual harm you can demonstrate to make a claim.

**McKINNEY:** Will these political subdivisions potentially end up bankrupt? Or, are they just projecting that there's this boogeyman out there that's non-existent?

**SPIKE EICKHOLT:** Well, Senator Wayne kind of addressed this; that if you're, if you're concerned about being bankrupt because of exposure to sexual assault cases, that's-- you know, I don't know if that's necessarily a bad social policy to pursue. If it's that rampant, right? It's got to be corrected somehow. You just don't win by filing a claim. You just don't win by filing a lawsuit. So I just don't see it happening. And if it does, I think, then, that is something that-- I just don't see it happening.

**McKINNEY:** Thank you.

**DEBOER:** Thank you, Senator McKinney. Are there other questions?  
Senator Bosn.

**BOSN:** I think you misspoke when you said that the court found that they did breach their duty of negligence, because--

**SPIKE EICKHOLT:** In Joshua?

**BOSN:** Yeah.

**SPIKE EICKHOLT:** Yeah, prob-- I maybe did, a bit. But that's-- the court did affirm the Moser case, and didn't--

**BOSN:** That is true. But they specifically found the opposite. So, I don't know if you misspoke, but I-- just so we have a clear record, the court specifically found that the department, "acted reasonably under the circumstances when [it] placed [the siblings] in foster care," acted reasonably "in supervising and monitoring the foster care placement." So it was not that they did breach that duty, it was the--

**SPIKE EICKHOLT:** Right, I may have-- You're right, I did mis-state that. I was in a hurry. I was negligent.

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**DEBOER:** Thank you, Senator Bosn. And any other questions? I have one for you. Back to the UDTPA portion of the bill-- what have those funds been used for historically? Do you have an answer to that question?

**SPIKE EICKHOLT:** The, the attorney general funds?

**DEBOER:** Yeah. The funds that--so, they, they, they get them because of suing under UDTPA.

**SPIKE EICKHOLT:** Right. There's someone from the attorney general's office here, I suspect, so they probably don't like me speaking to it, but I've, but I've heard an earlier testimony in another bill that I testified on in a different committee. The Attorney General can negotiate settlements on behalf of the state when a company, generally-- they're usually a company-- does something wrong to the citizens of the state. For instance, they settled with Google regarding tracking a couple of years ago, and I think Nebraska got \$8 million. Most of those settlements, the state is given just a lump sum, and the Attorney General receives it in their settlement fund. Now, some of the settlements have, sort of as an agreement pursuant to the settlement, that the money can only be dedicated to a certain rehabilitative purpose. Whereas, example, the tobacco settlement fund. That was-- the money would go to the states, but it had to be sort of used for limited purposes, and so on. But there it was, I think last fiscal year, about \$30 million in it. Now, the Legislature did take some of that last year, and transfer it to general funds. The Attorney General also, you remember, I think it was-- I can't remember the bill number, but it was [INAUDIBLE] here, sort of agreed to let \$500,000 come from that fund to cover the rural practice loan program. And I think this year in LB3, there might be-- which is-- during the special session, I should say-- there is, I think, a provision that does provide for some of the transfer of some of that settlement funds as well.

**DEBOER:** Thank you. Other questions? Thank you for being here. Take our next proponent. Are there opponents?

**ROBERT M. BELL:** I was just thinking, I don't know that I've ever given my sheet to a page who didn't agree with my testimony. But actually, on reflection, that probably occurs a lot. So-- Vice Chairwoman DeBoer, and members of the Judiciary Committee, my name is Robert M. Bell; last name is spelled B-e-l-l. I am the executive director and

registered lobbyist for the Nebraska Insurance Federation. I am here today in opposition of LB57, specifically to portions related to punitive damages. I've also been asked to add the American Property Casualty Insurance Association to the record in opposition. As a refresher, the Nebraska Insurance Federation is a state trade association of insurance companies. The Federation currently has over-- has 49 member insurance companies. Members of the Federation include companies who write all lines of insurance, and, according to a recent study completed by the University of Nebraska, the insurance industry accounts for over 33,000 jobs in Nebraska. Nebraska insurers provide high-value, quality insurance products to Nebraskans that provide financial protections to Nebraskans during diffi-- difficult times. As a general rule, the insurance industry is opposed to any statutory expansion of damages that go beyond making an insured or claimant whole. A statutory scheme of punitive damages in Nebraska will lead to higher judgments against policyholders or insurers, and a result of these higher judgments will be increased premiums, which will make insurance coverage less affordable for Nebraska residents and businesses. Notably, higher insurance premiums cause individuals and businesses to scale back the amount of coverage they purchase, which can also be a detriment to injured parties. It appears that some of the provisions of the punitive damages provisions of LB57 are specifically aimed at insurance companies for, for breach of contract. And I just want the committee to know that damages and attorney fees are already available to consumers who do not receive a fair payment for an insurer under current Nebraska law. Also, and furthermore, insurance companies in Nebraska are already subject to punitive action by the Nebraska Department of Insurance. The Nebraska Insurance Code contains both the Unfair Insurance Trade Practices Act and the Unfair Insurance Claims Settlement Act, that subject entities licensed by the department, such as insurance companies and agents, to fines and/or suspension or revocation of such entity's license. For these reasons, the Nebraska Insurance Federation respectfully opposes the punitive damage portions of LB57. I thank you for your time and the opportunity to testify.

**DEBOER:** Thank you very much. Senator McKinney has a question for you.

**McKINNEY:** Thank you, Vice Chair DeBoer. Thank you for your testimony.

**ROBERT M. BELL:** You're welcome.

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**McKINNEY:** I got maybe a couple of questions, but my, my first question is, if you're saying-- part of your argument is that insurance will be unaffordable. My question to you is, currently, is insurance affordable for children and families that have to deal with situations that would fall under the premise of LB57?

**ROBERT M. BELL:** I think that's going to be on a case-by-case basis. Now, I'm only specifically commenting on sections one through seven of the bill. We have no position on the rest of the legislation.

**McKINNEY:** OK. So, if a family that isn't well-off--

**ROBERT M. BELL:** Sure.

**McKINNEY:** --has a kid that was sexually assaulted by somebody that the school should have been in charge of, should have made sure that the kid didn't end up in that situation-- you have a family like that, that, because of that situation, they have to seek out extra medical care, whether it's mental health and those type of things. Is insurance affordable?

**ROBERT M. BELL:** For that, for that family, in that situation, if they have private health insurance, certainly they would-- those would be options available for them under their private health insurance.

**McKINNEY:** But, but since you're in insurance--

**ROBERT M. BELL:** Right.

**McKINNEY:** If, if, if I, if I'm in a family that makes, let's say 30-- not even the median income.

**ROBERT M. BELL:** Sure.

**McKINNEY:** I'll use, I'll use my district. My district makes \$30,000-\$35,000 a year. I have a kid that is sexually assaulted by a school staff, but my kid is required to go through mental health therapy, all type of extra things on top of basic insurance care. Is that affordable?

**ROBERT M. BELL:** Yeah. Right. OK. I, I think that's going to be a financial burden for ever-- whoever has to pay for it. If it's the family, of course, if they have insurance, obviously those are claims

that are going to have to be paid by the health insurer; if it's Medicare or Medicaid, that's being picked up by the government in, in portion of it. But yeah, there are definitely costs, yes.

**McKINNEY:** But there-- there's costs, and there's things that the government will not pay for that a kid might need. So, potentially--

**ROBERT M. BELL:** Sure.

**McKINNEY:** --although you say insurance or whatever it won't be affordable for your clients because this law passes. Currently, the way we do things, there are families that are impacted by school members and school districts that are super negligent, that, no matter what, if they get Medicaid or Medicare or whatever, their insurance is not "affordable"-- affordable, because of the specialized care that a kid might need because of a situation that the schools or a political subdivision should have made sure never happened.

**ROBERT M. BELL:** Yeah. So, if sections 1-7 didn't exist in this piece of legislation, which relates specifically to punitive damages, I would not be in this chair. And, the provisions related to the Political Subdivisions Tort Act, or the State Tort Act [SIC], we have no position on. And, I understand your point; there's, there's definitely going to be costs to that family moving on into the future. If that was a private business that was-- say, it was a private school, as an example, and didn't have the protections of sovereign immunity, or other protections under statute, an insurer very likely would step in and they would defend a school district. And if they were found liable in the future, they would pay. And that's their responsibility, to pay. The insurer would pay.

**McKINNEY:** But the crazy thing is-- maybe I'm wrong, but if I remember right, students and families currently have better protections if they send their kid to a private school versus a public school.

**ROBERT M. BELL:** In that, in that fact pattern, yeah.

**McKINNEY:** Which is, which is "wow." It's crazy. I think it should be uniform. It shouldn't depend on if you're in private or public, but the fact that kid has better protections in private school than public school, I think that's something we should be addressing. But overall, what I'm saying is, just as you make an argument that the school districts will have to pay more, insurance will be higher, premiums

will be higher, those families that are impacted, especially families that come from impoverished or low-income back-- socioeconomic backgrounds, they'll be more impacted than anybody. The schools will survive; those families will be in poverty for generations.

**ROBERT M. BELL:** Yeah, I don't-- I don't-- and I don't represent the schools, so-- or, the-- their financial backers. So, I mean--

**McKINNEY:** But you represent the insurance.

**ROBERT M. BELL:** What we're saying, what we're saying is, on punitive damages-- so, just, in a normal situation, if we-- and, and under the insurance contract, the insurer is not going to pay for punitive damages, right? It's going to defend the defendant to the best of its ability, and if there's a finding of "punishment" damages, that's going to, that's going to go to the, to the defendant, right? Because most contracts will, will keep that out.

**McKINNEY:** So if you're not going to pay it, why are you in opposition?

**ROBERT M. BELL:** We believe that there's creep on, on judgments, when punitive damage-- from our experiences in other states, which are many, that have punitive damages. We see creep in judgments, there's extra defense costs. And, to that-- I mean, we're actually trying to keep premiums affordable for families.

**McKINNEY:** Are there other states that are not going bankrupt or forecast to be going broke by 2028, that have punitive damages, that aren't in a situation where they need a special session?

**ROBERT M. BELL:** Yeah, I would-- yeah, I'm assuming you're correct. I'm not all that aware of everything that's going on, on all the states. But yeah.

**McKINNEY:** Thank you.

**ROBERT M. BELL:** You're welcome.

**DEBOER:** Thank you. Senator McKinney, are there other questions? So can I ask you one? I want to clarify. In other states where there are punif-- punitive damages, is that a separate-- do you write a separate

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policy of insurance to, like, an umbrella policy or something, to cover any kind of punitive damages or is the whole--

**ROBERT M. BELL:** I actually don't know. I, I, I'm-- I can g-- I can get back to you with s-- some information on that. I'm not exactly sure what they do in those particular situations. So, I mean, you got to have the pockets, right? So I'm thinking of, there-- you know, occasionally you see these very large judgments come down against a trucking organization as an example. A lot of the big corporations with big pockets are self-insuring anyway, certain portions of that risk, and their insurance that they buy is different than everybody else, including small businesses. So, they may have special agreements that they can write outside of the normal kind of insurance world, if that makes sense. Like towers of reinsurance, things like that.

**DEBOER:** So how would you-- how would it-- so, let's say the world changes, we have punitive damages in Nebraska. How do you insure folks in Nebraska? Do you just exclude punitives for what you insure?

**ROBERT M. BELL:** We-- my-- yeah, we, we would exclude. My understanding is that we would exclude punitive damages. So, in this case where Senator DeKay hits Senator Wayne from behind in his farm truck, and then there's an award of punitive damages for whatever reason; maybe Senator DeKay was angry at Senator Wayne, and it was an intentional, or something like that, and causes millions of-- you know, we got damages, and then we have punitive damages. He's going to have to pay for that out of his own pocket. So, if you're a small business or an individual, this can be particularly difficult, right? On-- or, it's-- whether or not you're gonna be able to pay is going to depend on what kind of assets you have.

**DEBOER:** So, are there, are there policies that states sell for, or sort of anticipating punitives? I mean, policies--

**ROBERT M. BELL:** I don't know, honestly., so--

**DEBOER:** OK.

**ROBERT M. BELL:** I need to check on that. So, I don't know if an umbrella policy might cover that; there may be-- I, I don't know. Let me, let me ask some questions and get back to you.

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**DEBOER:** I'd be curious how other states handle it, because obviously, we know there are other states that have punitive damages, and people buy insurance in those other states. So I wonder how it's dealt with.

**ROBERT M. BELL:** There are. Yeah, right. My understanding is, that is excluded in that, but we're still-- the-- there's still a duty to defend, right? So, in, in that situations, you're probably talking about "compensapor"-- compensatory damages anyway. And so, the insurer is paying for that, that counsel there, in, in defending that lawsuit. But I'll get back to you on that one.

**DEBOER:** All right. Thank you.

**ROBERT M. BELL:** You're welcome.

**DEBOER:** Any other questions? I don't see any. Thank you so much for being here.

**ROBERT M. BELL:** All right. Have a good afternoon.

**DEBOER:** You, too. We'll have a next opponent that-- Senator Wayne, let the record reflect, you make a terrible page. Welcome.

**BOB LANNIN:** Good afternoon. My name is Bob Lannin, I'm an attorney in private practice here in Lincoln, with the Baylor Evnen Wolfe & Tannehill law firm. I'm here only to testify as to the punitive damage aspects of this bill; I'm taking no position whatsoever on the very difficult questions presented by the political subdivisions issue. I'm sorry. B-o-b L-a-n-n-i-n. As far as the punitive damages go, I'm sure you've heard all this before-- that the Nebraska Supreme Court has held way back into the 1880s that punitive, vindictive, or exemplary damages contravene the Nebraska Constitution. So, we're going to open a, a hornet's nest of litigation over this bill in terms of punitive damages. I know there's an Attorney General's opinion by Attorney General Hilger from last year when this bill was introduced, and I just have a concern that we're going to have a real problem down the road, if we pass this. As Senator Wayne said, though, we do have a constitutional provision that says fines, penalties, etc. go to the public schools. And I think that is a, a valid thing. And, I've been privileged to practice law for 40 years, which is maybe a good or a bad thing, I don't know. But, I've had the opportunity to try over 50 jury trials and countless other bench trials; I have only seen one case in which an attorney put in a claim for a penalty under the



constitutional provision for funds to the public schools. The case was not in any way impacted by that claim, because it, it was simply settled as, as Senator Wayne suggested, as 93 percent of all civil cases do, before there was any allocation there. I hate to try to go there, but Senator Wynne's bill does have a provision involving the Attorney General and the county attorney, and I think that should address your concern about what really happens. But, I think there probably should be a little more statutory guidance on what the role is there because, if we're going to be consistent with the Constitution, all of those funds that are categorized as punitive damages, or penalty whatever, would have to go to the public schools. So, if there were more clarity in the law, in terms of the role of the governmental entity, I think we could make some headway in terms of how to proceed. I clerked in the Attorney General's office more than 40 years ago; I know they are good public servants, and-- right now, without further guidance, I think you're going to burden them with a role that they're not really going to understand going forward, so-- my light is on. I'm happy to answer any questions.

**DEBOER:** All right. Thank you. Senator McKinney has a question for you.

**McKINNEY:** Thank you, Vice Chair DeBoer. Thank you for your testimony. What evidence do you have that there's going to be this hornet's nest of cases filed, or being litigated?

**BOB LANNIN:** Perfectly honest, I don't think there will be. In Nebraska, our system has been that you award damages for-- to compensate the person for the injury. And I really don't foresee that you're going to have some uprising of allegations that-- and allegations about punitive damages. I really do not.

**McKINNEY:** So if you don't think it will be, why make the argument that there will be a hornet's nest of cases?

**BOB LANNIN:** I think you're going to have a ton of litigation over the validity of-- the constitutional validity of the present bill; that it contravenes the US-- the Nebraska Constitution. I don't think it's going to open the floodgates. That's personally not my opinion. I-- my 40 years has shown me that we file things, we litigate them, and, and we-- 93 percent of the time, we reach a resolution. I think there's anecdotal evidence to exist, where you have an allegation of punitive

damages that might enhance the claim damage, make the case more difficult to settle, but I'm not worried about opening the floodgates.

**McKINNEY:** And you also acknowledge that there are different barriers that an individual that wants to file a case has to meet to even-- be even heard in court.

**BOB LANNIN:** As far as punitive damages?

**McKINNEY:** Yes.

**BOB LANNIN:** Yeah. I, I started my career in Kansas City, and both Missouri and Kansas had punitive damages. During that time that I was there, from 1984-1991 was this big punitive damage push-- cap push, and Kansas enacted caps. Missouri enacted a-- I think it was a heightened threshold for the allowance of-- and it would only be considered post-judgment. So, yes, there's, there's many different forms of protections that could be put in place.

**McKINNEY:** So it's not-- one, you don't think the floodgates will open. But there's also examples of ways to-- if there is, is even an argument that there will be a bunch of cases, there's examples across the nation, because 47 states has some level of punitive damages that-- it's not gonna cause all these fear-mongering problems that people are arguing.

**BOB LANNIN:** I don't share that concern. I think there's 4 states without punitive damages; I'm not good at math at all, but-- so, I think there's-- we're one of 4 states that doesn't have them.

**McKINNEY:** Yeah.

**BOB LANNIN:** I-- you hear anecdotal things from insurance carriers about how a case in Nebraska has a value of "X," and if it was filed in the state of Texas, it has a value of 10 times "X." Different jurisdictions have different-- present different situations; I think cases on the same facts would have much more value in Texas than they do-- I know insurance companies have related that to me numerous times. Is that going to happen in Nebraska? I really doubt it.

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**McKINNEY:** OK, so are we placing justice or, or damages just based on a monetary value? And what I'm trying to say is, is an opposition just based in, "We don't want to pay these families what they're due"?

**BOB LANNIN:** No, that, that's not my opposition. My opposition is that I believe you have constitutional problems that would ensue if the bill, as presently drafted, is, is passed. I-- it's terrible to hear that mother's discussion of her daughter's situation. That's a whole different part of this bill that I have no opinion on. The Moser case-- and that is-- has been a hornet's nest of problems forever and probably does-- the Legislature really does need to rectify that, and it can rectify it through the Tort Claims Act.

**McKINNEY:** So what if we-- Senator Wayne went-- two options. Figured out the constitutional argument that you're making statutorily, or, he tries and does it where we try to pass a sea-- constitutional amendment that is heard on the ballot, and all the voters in the state can vote on whether or not we should allow for punitive damages or not. Would you be opposed to that?

**BOB LANNIN:** I think anytime you submit an issue to determination of the voters, it's a good thing. And if the voters say we're going to amend the Constitution to provide for this, that's how the system should work.

**McKINNEY:** All right. Thank you.

**DEBOER:** Thank you, Senator McKinney. Are there other questions for this testifier? I don't see any. Thank you so much for being here.

**BOB LANNIN:** Thank you much.

**DEBOER:** We'll take our next opponent. Welcome.

**ELAINE MENZEL:** Thank you, Ch-- Vice Chair DeBoer and members of the Judiciary "Codittee"-- Committee. For the record, my name is Elaine Menzel. I'm here on behalf of the Nebraska Association of County Officials in opposition to LB57-- I didn't spell my name, did I? I apologize. E-l-a-i-n-e M-e-n-z-e-l, back to, on behalf of the Nebraska Association of County Officials in opposition to LB57. I would also like to record the opposition of the following organizations: the Nebraska County Attorneys Association, the Nebraska Sheriffs Association, the Nebraska Intergovernmental Risk Management

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Association, also known as NIRMA, the League of Nebraska Municipalities, and the Nebraska Association of School Boards in opposition to LB57, which would greatly erode sovereign immunity and expand the scope of liability to political subdivisions including counties and others. Our page for the day is passing out letters from both NACO and NIRMA for, for your review. As written, LB57 does not specifically exempt political subdivisions from the punitive damages sections that would be added, so, through the addition of that new potential liability and exposure, political subdivisions could be faced with additional fiscal impacts that necessitate the need to increase property taxes, reduce mandated or desired services that are provided, or a combination of both. Additionally, if political subdivisions end up having caps imposed upon them, as suggested in the Governor's special session call, it will be more difficult to fulfill unfavorable results of litigation if LB57 were to be "enasked"-- asked-- or, enacted. Excuse me. We ask that you do not impose punitive damages upon political subdivisions, or expand the current exemptions under the political "subdivinge"-- or Political Subdivision Tort Claims Act, as LB57 would do. Further, as proposed, it would create a heightened litigation exposure cost for governmental entities, and possibly result in property tax increases for political subdivisions. We do acknowledge that it is the Legislature's role, as the court has stated in court cases, to address the Political Subdivision Tort Claims Act. But we would ask you to please maintain the current level of sovereign immunity that we have at this time. If, if there happen to be any questions, I would attempt to answer them.

**DEBOER:** Are there questions, Senator McKinney?

**McKINNEY:** Thank you, Vice Chair DeBoer. I guess I have one question.

**ELAINE MENZEL:** OK.

**McKINNEY:** So, if all these political subdivisions are in opposition of LB57, my question is, how does-- or, how do these political subdivisions propose that the state or society deals with situations where children are grossly, negligently harmed in these situations? How do you-- how will these sub-- political subdivisions propose we assist with the medical care and the trauma care that is going to be needed for decades after these situations happen? Are, are they going to put up the money to help?

**ELAINE MENZEL:** I do apologize, I intended to reference, to some extent, portions of your question. With respect to the en-- many of the entities I mentioned-- in, in fact, I think all of them-- they have risk management organizations, as well as the parent companies that-- meaning, like our association, the county officials. But, we do trainings and education; we update them on information and best practices and take-- train them on risk management steps that they can, they can enact. Also, with respect to the jails, for example, we have the Jail Standards Division that we do a great deal of training that they update us on, again, best practices, and try to ensure that we're operating within their procedures.

**McKINNEY:** But none of what you stated is helping the children or the youth after they are harmed. So my question is, if this-- political subdivisions are in opposition of this, what are they doing proactively to assist these families that end up in these situations? Or what do they propose to do?

**ELAINE MENZEL:** They're-- counties would, in fact, be involved to some extent with perhaps the behavioral health issues that arise, if that is the case with some individuals, because they work with the regions, for purposes of providing behavioral health services to the counties and the areas, so that's one area--

**McKINNEY:** But there's no area where a family that is making \$30,000, \$35,000 a year needs help with extra medical care because their daughter has been sexually assaulted under the care of the county. There is nothing that the counties are proposing or preparing to do to assist those families outside of saying, "Apply for public assistance or state assistance."

**ELAINE MENZEL:** I, I guess I can't respond to-- come up with a situation or answer.

**McKINNEY:** And I think that's my issue. It's like, if you're going to be in opposition, at least put up some money or create a fund to help these families that are dealing with these situations. But don't "blanketly" say no, because we're going to have to pay for these services and which you're not even willing to step up to provide. That's the problem I think a lot of families have, and I think if the, the counties or these municipalities were willing to put up money to assist these families, then maybe this bill, LB57, or LB25 probably

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wouldn't be needed. But these entities are not stepping up, although they're acknowledging that these kids are being harmed. That's the issue. Thank you.

**DEBOER:** Thank you, Senator McKinney. Are there other questions? I have a question for you. Before the Moser decision, were there a lot of cases that were being decided, or at least brought before the court, that would have impacted political subdivisions in negative ways? In other words, before Moser, were you finding there was a lot of financial liability for these kinds of torts?

**ELAINE MENZEL:** Now, with respect to-- I think you know, enough about NACO to know that I'm not the one is necessarily dealing with the cases specifically, but I can con-- agree, because I just noted the case this morning again-- the case that Senator Wayne referred to, with respect to the Joshua v. State case. And, it indicated that the court issued at least 10 published opinions that dealt with that section of law that-- and I-- that would have been prior to Joshua. So I think, as Mr. Eickholt respon-- or, re-- discussed, there were probably a couple of other cases after Moser and that type of thing, so there would-- subtract 2 from 10, that's roughly 8 or so that I'm aware of.

**DEBOER:** So-- how long have you worked with NACO?

**ELAINE MENZEL:** A while. No, no it's the--

**DEBOER:** Pre-Moser?

**ELAINE MENZEL:** Yeah.

**DEBOER:** OK. Good enough. Pre-Moser. So, pre-Moser, were there political subdivisions that were talking to NACO a lot about having financial problems because they were being sued for these kinds of torts?

**ELAINE MENZEL:** Not, not to my recollection, but I, I will also state that there weren't-- wasn't the li-- statutory issues coming forward to the Legislature to be addressing that section of the Political Subdivision Tort Claims Act. That's not to say that there weren't other pieces of legislation that were introduced to, say, raise the caps, or raise the-- or increase the notice provisions, and--

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**DEBOER:** But, you're, you're just not aware of any political subdivisions that were going bankrupt because of these kinds of cases?

**ELAINE MENZEL:** No, and we are not asserting that, that, that would be the case. There would be increased litigation with respect to us having to handle, potentially, and that type of thing. I don't have an estimation, in terms of numbers, that we would be faced with though.

**DEBOER:** OK. Thank you. Other questions? I don't see any. Thank you.

**ELAINE MENZEL:** Thank you.

**DEBOER:** Next opponent.

**BO BOTELHO:** Thank you, Vice Chair DeBoer, and members of the Judiciary. And-- my name is Bo Botelho; B-o B-o-t-e-l-h-o. I'm the chief legal officer for the Department of Health and-- I'm here to testify today on behalf of the Department in opposition of LB57, as it pertains to the State-- a Tort Claims Act. By authorizing additional claims to be filed against state agencies, the Legislature would be choosing to waive the state's sovereign immunity. Sovereign immunity is a fundamental protection for Nebraska taxpayers, and is essential to the operation of government. Under LB57, mistakes or omissions could result in taxpayers being required to pay monetary damages because a perpetrator sees an opportunity to do harm. A third-party perpetrator. The safety of all children is utmost importance to DHHS, especially the safety of those children placed in our custody. However, tr-- tragedy can and does occur. DHHS utilizes internal review processes to determine whether system improvements are necessary to prevent future incidents. It's possible a state actor may exercise poor judgment, or admit a step in the process, which could be the proximate cause for third-party legal action, that results in harm or death. Authorizing claims against the citizens of Nebraska in these circumstances will not prevent future mistakes by individual state actors. It will increase the cost to Nebraskans, and force taxpayers to indemnify by-- bad actors by utilizing tax dollars to pay penalties on the perpetrators' behalf. It's important to recognize perpetrators who cause harm or death may be acting secretly or spontaneously; this makes these criminal incidents very difficult to predict and prevent. Ultimately, the person who should be responsible is the person who caused the injury, not the people of Nebraska. The current intentional torts immunity exemption to the State Torts Claim Act is a

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longstanding balance that's been in place decades. It's meant to give some measure of protection to the tax base from litigation, while still giving victims the ability to sue under the federal law. LB57 would remove this protection, and likely result in increased costs, not reduce taxes for taxpayers. Thank you. And, I'll be happy to answer any questions that I can.

**DEBOER:** Are there any questions? Senator Blood.

**BLOOD:** Thank you, Chair-- I was starting to call you the wrong name. Chair DeBoer. Thank you. So, who pays those claims?

**BO BOTELHO:** The state does.

**BLOOD:** How does the state pay those claims?

**BO BOTELHO:** Through tax dollars.

**BLOOD:** So you-- insurance doesn't pay any of that.

**BO BOTELHO:** The state's self-insured.

**BLOOD:** The state's self-insures?

**BO BOTELHO:** Yes.

**BLOOD:** OK. How does that work?

**BO BOTELHO:** I don't know exactly how it's-- the DA-- the Department of Administrative Services runs risk management for the state of Nebraska. They have a fund-- a tort fund that, that is filled with tax dollars appropriated for that purpose.

**BLOOD:** So, how much is in that fund right now?

**BO BOTELHO:** I don't know, Senator.

**BLOOD:** So, the government in Nebraska represents Nebraskan tax-- Nebraska taxpayers. Is that correct?

**BO BOTELHO:** Correct.

**BLOOD:** So, why do we have DHHS? What is their purpose?



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**BO BOTELHO:** Department of Health and Human Services? The Department of Health and Human Services was created by the Legislature, by statute, to provide services to Nebraskans that are in need.

**BLOOD:** Would you say that its, its main role is to protect Nebraskans?

**BO BOTELHO:** Yes.

**BLOOD:** So, this is where I'm confused. You notice I stay out of all the lawyer-speak, because I'm definitely not a lawyer. But I, I did run a crisis center for abused women and children, and I've been a very strong advocate for decades, probably more years than you-- you've been alive. And I find this puzzling that you guys are coming out against this. So, if I heard you correctly, you're coming out against it because you're worried that we'll tap into that fund that's already there, and it's for that purpose because we're expanding that purpose?

**BO BOTELHO:** No, what I am saying is that we are using tax dollars to indemnify a third party; the perpetrator, the person who did the harm. Right? If you ask people, should the victims of crimes be made whole, they will say, "Yes."

**BLOOD:** Absolutely.

**BO BOTELHO:** If you ask them, are-- do you want to be the one that pays for that, or should it be the perpetrator? You may very well get a different answer, etc. So, that's the issue that I'm raising here; that what we are doing, what this bill does, is it's, it's an indemnification bill. People are being harmed by a perpetrator, child abuser. The state is then saying we will use our dollars to compensate those damages. That's what this bill does. And that's the point I'm trying to raise.

**BLOOD:** I-- I'm clear on that. So you actually just answered my concern with that last sentence. I, I, I probably run in different circles, because most of the people I would ask that question, they would say, yes, let's, let's make that person whole, yes, let's, let's pay that. We have a fund that are set aside for that. That's a good use of my tax dollars, because that person will be a burden on the system in the future if we don't make sure that that person is whole. So, so I'm just a little surprised that you're here. I understand that that's

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your job, and I respect that. But I do appreciate you asking-- answering my questions.

**BO BOTELHO:** Thank you, Senator.

**DEBOER:** Thank you, Senator Blood. Senator McKinney, you're next.

**McKINNEY:** Thank you, Vice Chair DeBoer. So, listening to the line of questioning. First thing is, so if somebody who is staffed by DHHS assaults a kid, ends up in prison. Does the taxpayers pay anything?

**BO BOTELHO:** In, in what regard? If you're speaking about the person in prison, then the taxpayers are paying for that person to be incarcerated.

**McKINNEY:** But they're being paid-- the taxpayers are paying for that person to be incarcerated because of the-- because the Department of Health and Human Services failed on their end to employ the right people and to make sure their staff are doing the right thing. So, the taxpayers, regardless of how you want to argue, are paying something. Secondly, what is a-- is a foster care-- a child in foster care, are they considered a ward of the state, right?

**BO BOTELHO:** A state ward. Yes.

**McKINNEY:** OK. So, if that is true, and we're working under that premise, there was a kid who was a ward of the state that was in the custody of somebody that was technically-- or, not even technically-- employed by the state to take care of that child's well-being. That kid passed away. Does the state not have any responsibility of employing somebody who negligently-- grossly, negligently allowed for that kid to be deceased today?

**BO BOTELHO:** Are you, are you speaking of a state employee, or are you speaking about a foster parent?

**McKINNEY:** It's both. A foster parent-- however you want to word it, although you might contract out to different agencies to do foster care-- essentially speaking, a foster care kid, youth in foster care is a ward of the state. You're paying somebody to take care of that kid. Although that kid might-- although that foster parent might be

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employed by a different agency, technically, they're an employee of the state, so--

**BO BOTELHO:** I, I understand the question.

**McKINNEY:** So, if I'm a parent of a kid that is in foster care, whether I'm a fos-- whether my kid is in foster care, because I think it's right or wrong, if my kid is deceased or sexually assaulted, the state has no responsibility, is what you're saying?

**BO BOTELHO:** No, it's not what I'm saying. And, in regards to foster parents and caseworkers that work with youth, they're required to undergo a background check, which, which includes a federal background check, a national background check. That, that is done. So, there should be no one employed by the department that has access to vulnerable adults or children that has a criminal background. There should be no foster parent with that background, because they undergo a rigorous background check. But that being said, Senator, there are people who are monsters that have yet to be caught, and yet to be convicted, and those people do spend their life trying to get into positions where they can have access to children. They are predators. Now, what you are saying is that if a predator who may not have any criminal background gets access to a child and hurts the child, right? You're saying that the state should indemnify the family for those damages, not the predator.

**McKINNEY:** The predators should be held accountable, but the--

**BO BOTELHO:** Yes, they should.

**McKINNEY:** --the state, the state should, too.

**BO BOTELHO:** Well, and that's what this bill would do.

**McKINNEY:** So why are you against it?

**BO BOTELHO:** Because I'm saying the state taxpayers should not be indemnifying predators for harm--

**McKINNEY:** Why? They are "idemnifying" people in prison every day. We're building a, a \$350 million prison that the state decided to incarcerate all these people for-- over-incarcerate them, the state-- the, the state taxpayers are paying for it. So, that argument to me

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isn't valid at all. The people are paying. The s-- the taxpayers are paying for people to go to jail and prisons, regardless if it's property taxes, if they go to county jail, or if they go to the state penitentiary, the people are paying. So, to make an argument that the people shouldn't have to pay isn't valid. The people are paying. And for you to come up here and say that the state shouldn't be held responsible is crazy to me. Because they're paying; the people are paying, the taxpayers are paying. However you want to argue it, the taxpayers are paying, and you cannot-- you can't, with a straight face, tell me I'm lying. Thank you.

**DEBOER:** Thank you, Senator McKinney. Are there other questions? I don't see any. Thank you for being here.

**BO BOTELHO:** Thank you.

**DEBOER:** Let's have our next opponent. Welcome.

**HUNTER TRAYNOR:** Thank you. Vice Chair DeBoer, members of the Judiciary Committee. Thank you for the opportunity to testify today. My name is Hunter Traynor; H-u-n-t-e-r T-r-a-y-n-o-r. I'm appearing today on behalf of the Nebraska Chamber of Commerce and Industry, the Lincoln Chamber of Commerce, Great O-- Greater Omaha Chamber of Commerce, the Nebraska Federation of Independent Businesses, and the Nebraska Retail Federation, in opposition specifically to sections 1-7 of LB57. Just for clarity's sake, we proffer no opinion on the political subdivision and sovereign immunity aspects of LB57, and are only here to address punitive damages. As we understand it, these sections would permit private plaintiffs' recovery of punitive damages in civil disputes, with the payment of such damages then directed toward common schools located in the county of such a civil action. Many of our concerns have already been stated today, so, in the interest of brevity, I won't belabor them nor restate them, as they have already been discussed by the committee in previous testimony. The Nebraska Chamber has a longstanding position in opposition to the imposition of punitive damages for private civil actions. The Nebraska Supreme Court, as mentioned prior, has found that punitive damages imposed in actions that specifically arise at common law violate the Due Process Clause of the Nebraska Constitution. And setting legalism aside, more practically, it's our judgment that punitive damages-- and this has been discussed already-- introduce unpredictable and perverse incentives into litigation, distort settlement negotiations, and

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therefore skew general liability insurance market-- insurance markets. Excuse me. Which, in our judgment, would stifle business growth, and subsequently harm consumers. I'd be happy to take any questions.

**DEBOER:** Are there any questions for this testifier? I don't see any. Thank you so much for being here.

**HUNTER TRAYNOR:** Thank you. Thank you.

**DEBOER:** We'll take our next opponent. Welcome.

**JENNIFER HUXOLL:** Sorry, it's already been a very long day for you folks. It's only just beginning. Am I good to go? All right. Good afternoon, Senators. My name is Jennifer Huxoll; J-e-n-n-i-f-e-r H-u-x-o-l-l. I'm the civil litigation bureau chief of the Attorney General's office, testifying in opposition to LB57. As you all know by now, LB57 is a version of-- at least portions of this bur-- of this bill are a version of a bill that has "alray"-- already been offered in previous legislative sessions, including the most recent session. The Attorney General's office has been opposed to those previous versions; in the interests of the committee's time, I'm not going to reiterate every a-- reiterate all those reasons here. I have just circulated copies of our office's prior testimony on these similar bills for your review. So I thank you for your consideration as you take a look at those. I want to focus a little bit differently on the property tax issue, because, to the extent that LB57 is intended to provide property tax relief in this special session, we believe it is unlikely to result in property tax relief, and will instead likely result in the-- in need-- in the need for additional taxation to pay for increased insurance premiums, and potential judgments against the state and Nebraska's political subdivisions. This bill makes Nebraska's schools, jails, political subdivisions, and state agencies-- and thus, Nebraska taxpayers who fund these entities-- effectively ensures against the bad acts committed by child abusers, predators, and violent offenders who are held in our jails and correctional facilities. Instead of providing tax relief, LB57 will create a new opportunity for judgments against the states-- against the state agencies and political subdivisions. And, if those judgments occur, they will be paid by Nebraska tax dollars from some source. Also, regarding the punitive damages provision, which has been lumped together with this-- with the changes to the STCA and the political subdivisions, but they're very different, different bills with

different implications. If those judgments occur, they will have to be paid by Nebraska tax dollars again. And while such an award against a private party might result in additional funding available to the schools, a single punitive da-- judgment against a governmental entity is going to be paid again by taxpayers. So there is no tax savings. The taxes will-- the taxes to pay that judgment, even if the judgment goes into the common schools fund-- in order to pay the judgment, it's going to have to come from state tax dollars again. So, returning to the issue that the, the Governor's call, and the reason that we're all here, and with the intention of addressing property taxes, it's our position that that is outside the call. Happy to answer any questions.

**DEBOER:** Thank you. Let's see if there are--

**JENNIFER HUXOLL:** I know I'm going to take a hit here, so, let's get it over with.

**DEBOER:** Let's see if there's any questions. Senator Blood has some questions.

**BLOOD:** Thank you, Chair DeBoer--

**JENNIFER HUXOLL:** Good afternoon, Senator Blood.

**BLOOD:** Good afternoon. It's nice to see you again. And I'm sorry that you're the one from the Attorney General's office, because you're right, I'm going to ask some questions. So, you keep talking about how you're concerned about the taxpayers. Can you clarify for me-- when you guys do those frivolous lawsuits against the executive branch reps, like, against President Biden, who pays for those lawsuits?

**JENNIFER HUXOLL:** Oh, goodness. I, I don't know what frivolous lawsuit you're talking about. I don't believe any lawsuit that the AG's office has brought has been declared frivolous. There may be true differences of opinion about whether those are legitimate lawsuits or not, but I think that there-- there's never been a finding of a frivol-- frivolity-- frivolo-- frivolous lawsuit, as far as I know. I will say, I'm the civil litigation bureau chief, and what I do is actually defend the state against all the lawsuits that are filed. So that's why you're seeing me here today, and maybe not someone else from another bureau, because I deal with the judgments, and I-- I'm the one that-- I help the DAS rez-- risk manager manage the state tort claims

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fund and the indemnification funds, and those are covered by appropriations from, from the Legislatures.

**BLOOD:** From the Legislature, right.

**JENNIFER HUXOLL:** Again, also through the claims bill. When I bring you claims to, to pay each year, many of which-- one of which was the Moser claim; a 1983 claim. And you will see another one this year is-- that is a claim that is a 1983 action against HHS. So they do-- they are paid. They're just in a different [INAUDIBLE].

**BLOOD:** So, I [INAUDIBLE] the one that, that you just got-- that we just got involved in, in reference to something that happened to former President Trump in another state. But then again, there's a reason I'm not an attorney, because things like that don't make sense to me.

**JENNIFER HUXOLL:** They don't always make sense to me, either.

**BLOOD:** So-- or then, I look at like the AltEn litigation, which of course you can't talk about, because there's litigation.

**JENNIFER HUXOLL:** You mean the environmental cleanup?

**BLOOD:** But-- yeah, well, I thought you filed a lawsuit against the AltEn plant after it happened, and that was like years ago. And, the last I saw you had gone-- or, whomever--

**JENNIFER HUXOLL:** Ag and Environmental.

**BLOOD:** The Attorney General's office had gone and, and asked for even more time. And I, I just-- sometimes I'm just puzzled by when the Attorney General's office comes in here and they, they put up the red flags, which I know why and how. You know, I know why you have to do it. But I, I question-- like, we're so worried about the taxpayers, but if we're worried about the taxpayers, why aren't we protecting them in the AltEn suit that's been going on for years? And why are we rushing to take on lawsuits that really don't pertain to Nebraska? Sometimes I wonder if we have our priorities straight in Nebraska when it comes-- and I'm sorry. I'm not pointing this at you, but what-- when it comes to our Attorney General's office. And frankly, I feel like our Attorney General's office loves to sink bills by saying, "That's not constitutional." And the last I knew, the Attorney

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General's office wasn't a court. So-- and I-- again, I'm not an attorney, but I'm also not an idiot.

**JENNIFER HUXOLL:** Goodness, no.

**BLOOD:** Pretty damn smart.

**JENNIFER HUXOLL:** And I'm sorry, it, it. I think that what you're hitting upon is, is, it is being de-- hotly debated within many, many circles in our state. Who's right? Who's wrong? I don't know, we all have differing opinions on it.

**BLOOD:** Definitely. That's democracy.

**JENNIFER HUXOLL:** Absolutely. And we love it. And we love the First Amendment element of that. And we also-- I will say, as a-- I think I'm coming up on 18-year employee of the Attorney General's office. I have fiercely defended the Constitution for years, and I'm proud of our office and the work that we do. And we s-- and I work with a lot of good people who do a lot of good work. And we defend the state agencies, we defend DHHS, we defend the Veterans Administration; everybody that gets sued, including the Legislature, when the Legislature gets sued. So, that's what we're there for, that's what we do, that's what my team does. We d-- we strive to do our very best; we try to use our resources as wisely as possible. Part of that is trying to manage litigation and claims. I'm specifically-- this is my world, the State Tort Claims Act. And managing those claims is an important part of what we do, because I know, eventually, I have to come to you and ask you to pay them. And you're going to ask me, "Miss Huxoll, did you do a good job for the state? Did you litigate? Did you assert all your defenses? Were there affirmative defenses that you had that you asserted? Did you try to make sure that we paid fair value for the claim?" And I can assure you, when I go to mediation, or when I'm working through cases, that's what I'm thinking about. I'm thinking not just about what the fair value of the case might be, but also what the "taxmayer"-- taxpayer may be responsible for paying. It's, it's a, it's a huge issue though, that you take on, and I help you with part of it. So, I, I can't answer--

**BLOOD:** I, I hear you.



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**JENNIFER HUXOLL:** --your questions about the rest of it. I'm, I'm afraid we'll have to agree to disagree, Senator Blood. And I respectfully disagree.

**BLOOD:** And, and I respect that. And I believe what you say is in earnest. I really do, with you. And I will continue to have the same opinion about other people within that organization and question-- I'm not sure why we're having DHHS, the Attorney General's office come and testify in the nature that they're doing. But I, again, do understand why you, you guys thought you should be here.

**JENNIFER HUXOLL:** Right. And one of the reasons I will say-- it sometimes gets confusing is that the Legislature, and all of our taxpayers, are often saying to us, as state agencies-- and I am stating-- I'm, I'm here. I'm a state agency. Are you being good state-- stewards of your dollars? So, our messages are sometimes competing. Are you being good stewards of your dollars?

**BLOOD:** I, I just want to be really careful. I think we are-- because I know that there's another Senator with question. I do believe we're being good stewards with our dollars--

**JENNIFER HUXOLL:** And I didn't mean to imply that--

**BLOOD:** Protecting the children.

**JENNIFER HUXOLL:** Right. I didn't mean to imply that that was--

**BLOOD:** I just want to be really careful with that statement.

**JENNIFER HUXOLL:** --it was more a c-- recognizing all of the different perspectives and the interests that our state agencies manage every day. So-- thank you, Senator.

**DEBOER:** Thank you, Senator Blood. Is there another-- Senator McKinney has some questions.

**McKINNEY:** Thank you, Vice Chair DeBoer. Thank you. So if, if, if we're being good stewards of our dollars, then that would also mean that, being good stewards of our dollars, is that the attorney General's office, or these political subdivisions are not employing people that are going to harm our kids, and making sure that they're not in place. But because we don't have a system, or we don't have an incentive for

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the Attorney General's office or political subdivisions to make sure they're not hiring people that are going to assault our kids, are we being good stewards of our dollars?

**JENNIFER HUXOLL:** And, Senator McKinney, I know you're going to jump on me. But, there is a system for that, and that is section 1983, and that is deliberate indifference, and many of the situations that you describe are deliberate indifference. I know Senator Wayne disagrees with me on this point as well. But I think one of the things that's very-- I think one of your takeaways as a committee today is that how many lawyers came to testify, and that, that the reason that there is so much disagreement about this issue is because there is a lot of court activity about-- regarding this issue. It's so much so that the Supreme Court has had to issue a decision post-Moser. So, everybody-- we're trying to figure it out. The law is not perfect. It, it's a series of, of intentional acts by people who care very much to try to get it right. And I think that's the best we can do. And we have to accept, at the end of the day, we may disagree about the policies, and I can't answer those questions, because I, I don't-- I'm not a policymaker. I-- that's why you're here making a decision about whether to change the State Tort Claims Act and the Political Subdivisions Tort Claims Act.

**McKINNEY:** I-- yes. You're in opposition, but I just don't think it's a good policy for us to say to these families, "It's nothing we can do."

**JENNIFER HUXOLL:** And I respect your position, Senator McKinney.

**McKINNEY:** And, just to finish it off, if we're talking about taxpayer dollars, how many civil suits, or criminal suits, or whatever are made by AG's office every year that the taxpayers are paying for?

**JENNIFER HUXOLL:** State-- ate-- state lawsuits?

**McKINNEY:** Yeah, that, or file--

**JENNIFER HUXOLL:** Where you pay the filing fee?

**McKINNEY:** Not even just state. I'm saying how many instances are there, whether it's a lawsuit or some type of court interference that the AG's office is willing to step up for, that the taxpayers are

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paying for, that they don't even know about. What's the estimate of dollars?

**JENNIFER HUXOLL:** I just want to make sure I understand your question. Are you asking me about the cases I defend, or the cases I bring? They're different; that's why it matters. Because 90 percent of my caseload, i-- are cases I'm defending, where someone is, is suing the state, or I'm defending the Constitution, or I'm defending a judge, or a subpoena against a state employee.

**McKINNEY:** I mean, I want to say both, but let's just work under the 90 percent of the claims that you bring.

**JENNIFER HUXOLL:** Yeah. Although, that's that I defend.

**McKINNEY:** How much-- that you defend. How, how much is that on the taxpayer?

**JENNIFER HUXOLL:** Well, my salary is paid by the taxpayer. And everyone on my team, their salary is paid by the taxpayer.

**McKINNEY:** So what's the dollar amount?

**JENNIFER HUXOLL:** I don't know, sir. I mean, I, I really don't know. And I'm one part of the Attorney General's office. Our Ag and Environmental bureau is another part; the Consumer Protection Bureau is another part, and I really didn't even get a chance to, to talk very much about that.

**McKINNEY:** Of that, of that 90 percent, how many do you lose?

**JENNIFER HUXOLL:** I don't know if I can answer that question, Senator McKinney. I'm happy to go back and look at our figure, our numbers. But we, we litigate, with-- we, we litigate our cases to try to win them, because we understand there are taxpayer dollars to be paid. They're all different kinds of cases.

**McKINNEY:** Fair.

**JENNIFER HUXOLL:** I mean, they're not-- don't, don't have the misunderstanding that this is just sexual assault claims. I mean, it's not.

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**McKINNEY:** I don't think that is. I just-- my issue is that, for you and others to come up there and say the passing of this law will negatively affect taxpayers--

**JENNIFER HUXOLL:** Yes.

--is ignoring the fact that there are many claims that are many things that go on yearly within the AG's office, other political subdivisions, that taxpayers are paying for because of the negligence of political subdivisions, the AG's office and others. And just as much as you can argue that there might or might not be an increase, I just would like to see a figure that says, "this is what we're paying yearly, on taxpayer dollars, to defend cases or bring cases."

**JENNIFER HUXOLL:** I can, I can try to come up with a number for you. It can't come up with this off the top of my head. But I'm happy to work with you, Senator McKinney, and see if I can answer your questions.

**McKINNEY:** Because if we're saving taxpayer dollars for property tax relief, I want to see how we can save on the frivolous cases, or the cases that you bring yearly that are not successful.

**JENNIFER HUXOLL:** Also, just to clarify, my salary is not paid from property taxes. And my salary is paid out of general funds and state funds, and so many, most of our Attorney Generals aren't paid that way too, so it's just--

**McKINNEY:** That might be true, but--

**JENNIFER HUXOLL:** So, Senator McKinney, the only reason--

**McKINNEY:** If we didn't-- but if we didn't have your salary, or other salaries, we would have more money to pay for property tax relief. So, it is indirectly intersecting--

**JENNIFER HUXOLL:** The only reason I say that is that it's not always apples to apples.

**McKINNEY:** But as, but as-- they all intersect each other. As much as you don't want to say it.

**JENNIFER HUXOLL:** Taxes are burdensome to all Nebraska families. Yes, I will agree with that.

**McKINNEY:** Thank you.

**DEBOER:** Thank you, Senator McKinney. Are there other questions?  
Senator McKinney has one.

**McKINNEY:** Is-- also-- do you think this bill is outside the call?

**JENNIFER HUXOLL:** Do I think this bill is outside the call? I think that this bill is not likely to result in property ta-- in a property tax decrease. But I don't have a legal opinion about whether it's outside their call.

**McKINNEY:** Why is it outside the property tax relief?

**JENNIFER HUXOLL:** Because it's going to resul-- result in a-- potentially an increase in property taxes as my testimony said.

**McKINNEY:** But, even if you're saying that, if a political subdivision, let's say county--

**JENNIFER HUXOLL:** Yes.

**McKINNEY:** --has to pay some type of money, then--

**JENNIFER HUXOLL:** That comes fr-- if a county pays money, that comes from property taxes.

**McKINNEY:** Yeah, but if the state paying it, the county isn't levying taxes to pay for that.

**JENNIFER HUXOLL:** Right. So if you're--

**McKINNEY:** So, it could be property tax relief.

**JENNIFER HUXOLL:** If you're adding-- if you're adding claims against the state, you are also not effectuating a decrease in property taxes, because claims against the state are not paid by property taxes. So you're n-- neither-- in neither situation are you effectuating a decrease in property taxes. And that was the call.

**McKINNEY:** I don't think that's true. Because, if the state is picking up the dollars, the counties are not levying the taxes, which are the problem, property taxes. So, there could be a decrease in property

taxes. The county isn't asking the state, or asking the taxpayers to pay more in taxes to make up for those claims.

**JENNIFER HUXOLL:** I don't have, I don't have enough information to argue with you about that, Senator McKinney.

**McKINNEY:** Thank you.

**DEBOER:** Thank you, Senator McKinney. Now, are there any other questions? Actually, you're still here. Can I ask you one about UDTPA? Because we didn't get to--

**JENNIFER HUXOLL:** Yes. I-- and also, while you were asking your questions, I was trying to find the answer, Senator DeBoer. And so, I think I'll be able to follow up with you on some of those questions. My consumer-- our Consumer Bureau chief, who I think you've met in the last session, I know she'd be happy to visit with you and see if she can answer your questions. I don't know the answer off the top of my head.

**DEBOER:** Especially because we're maybe taking some for general funds and different things, like-- I just would like to know what that fund is, so that we can make sure that it's going where it's supposed to be going.

**JENNIFER HUXOLL:** Yeah. Chief Strnad, I'm sure would be happy to visit with you. So, I did tr-- I, I actually tried to find out, so--

**DEBOER:** Thank you. All right. Thank you for answering my question.

**JENNIFER HUXOLL:** Yes. Absolutely. Any other questions?

**DEBOER:** I don't see any others, so, thank you for being here.

**JENNIFER HUXOLL:** Thank you very much.

**DEBOER:** Any other opponents? We may have reached the end of the opponents; now we're going to go to neutral "testephone"-- testimony. Anyone who would like to testify in the neutral capacity? Well, I know that Senator Wayne will like to close. While he's ostensibly coming back, there are 12 letters: 1 proponent, 11 opponents. There he is. Senator Wayne to close. While Senator Payne-- Wayne is getting something from the page. The page is giving Senator Wayne something.

**WAYNE:** Thank you, Chairwoman DeBoer. I got updated numbers that I handed out earlier, so I'm gonna talk about that real quick. So, if you-- when you get it, you can flip to page 5 and see tort claims, political subdivision only. Pre-Moser there were 2, post-Moser there were 3, so it actually went up. 3, 3, and we don't have 2022-2023 yet. But just in case attorneys like me click the wrong one and say it's negligence, I would tell you to look at negligence, other negligence, political tort claim, and then the last one, I would say to look at tort unspecified. There's just not a lot of lawsuits. And even opponent agreed that there's not going to be a floodgate of anything. So, here is the theory. The theory is, a third party did something intentionally or negligently, therefore, a political subdivision should not be held liable. What we are missing is the political subdivision knowingly ignored their duty to stop it from happening; they did do something. But, if my colleagues truly believe that logic, that if somebody else does something, and the state shouldn't pay for it, then you're against property tax relief. Because we don't collect not one penny of property tax. It is a third party, political subdivisions, and everybody else-- actually political subdivisions who collect property tax. So why are we here? We don't collect it, but somehow we're saying we have some responsibility to taxpayers, even though we don't collect a dime of property tax relief-- property tax. But, because the political subdivisions have increased their property taxes over the years, and valuations have gone up because individuals have bought land at a higher value and drove up the price, we're stepping in, even though we didn't do anything, because we think it's the best thing for our taxpayers. But we won't do it for kids. As far as the back and forth with Senator DeBoer regarding the safeguards of settlements, that's 100 percent why I had the county attorney's and the county-- Attorney Generals: to ensure that 2 attorneys don't get in the room, we had a lower settlement for the payout, and the county-- in this case, the school districts are left out. They have a procedural safeguard. What I find ri-- ironic is they say insurance premiums are going to go up, but yet readily admit that they're going to exclude punitive damages. So why are they going up? They're going to exclude it. But I also find ri-- ironic is, if a school district is unreasonable about cleaning their snow from a sidewalk, we can sue, but if they're unreasonable about protecting a kid from a child molester, we can't. Is that who we are? It's not who I am. At some point, we have to represent the people. At some point, we got to protect the kids who are in our care. I've "gaven"-- I've given you

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all the evidence that there's no floodgates; that no political subdivision is going to go broke. To me, it comes down to one simple question: "Are we going to help protect kids, or not?" And votes on this will determine that. I'll answer any questions.

**DEBOER:** Are there questions for Senator Wayne? I don't see any, Senator Wayne.

**WAYNE:** Thank you.

**DEBOER:** That will end our hearing on LB57. We're now going to have a joint hear-- actually, let's take a 2-minute break. We'll clear the room and get situated.

\_\_\_\_\_: [BREAK].

**DEBOER:** We're gonna have a joint hearing on LB52 from Senator McKinney and L--

**HOLDCROFT:** A joint hearing?

**BLOOD:** Oh my God.

**DEBOER:** Let the record reflect that Senator Holdclo-- Croft would like to point out that we're having a joint hearing on this particular topic. So, LB52 from Senator McKinney; LB71 from Senator Wayne, LB-- Senator Wayne has indicated that he will waive his opening on LB71, so we will turn to Senator McKinney and LB52.

**McKINNEY:** Thank you, Vice Chair DeBoer, and members of the Judiciary Committee. My name is Terrell McKinney; T-e-r-r-e-l-l M-c-K-i-n-n-e-y, state senator for District 11 in North Omaha. I'm introducing LB71, a piece of "legilation"-- of, of legislation that seeks to legalize the use of marijuana in the state of Nebraska. The war on drugs have inflicted significant harm on marginalized communities in Nebraska, and across our nation, for decades. People of color and low-income individuals have been disproportionately affected by the criminalization of marijuana, which has led to higher rates of incarceration, and lifelong consequences that extend far beyond the sentence served. Opportunities have been lost, communities have been destabilized, and families torn apart, all for non-violent offenses involving a substance that is legal in many states across our nation. The overcrowding in our state prisons isn't just a social issue, it's



an economic burden on taxpayers. Each year, millions are spent to maintain the system that has proven ineffective in reducing or rehabilitating those incarcerated. One of the standout features of LB71 is the potential to "gerner"-- generate substantial tax revenue. By legalizing marijuana, and putting forth a well-regulated tax framework, we can provide tax relief in our state. This revenue can also be allocated in our educational systems, helping children receive the education they deserve, and into businesses and community development initiatives. Legalization also presents an opportunity for Nebraska to take part in a growing industry that creates jobs, attracts new businesses, and fosters innovation. Some may argue that this could lead to substance abuse, or negative social outcomes. However, data from states that have legalized marijuana show that these concerns can be managed through regulation; that the benefits, such as reduced incarceration rates, economic growth, and social justice outweighs the potential risks. LB71 gives an opportunity to the right-- to right the harms inflicted by the war on drugs, provided-- and provide a solution to some of Nebraska's complex issues, such as property tax relief and education funding. And just frankly to put it, all of our neighbors will legalize marijuana. And we could sit on the sidelines and say, "Not in our state," and be a nanny state, like we did with casinos and gambling for so many years, and then eventually the taxpayers decided enough with the Legislature telling us what to do, we're going to legalize it. So, I mean, yes, we could leave it up to the taxpayers, but what happened with the legalization of gambling-- the taxpayers legalized it, and we still had to come back and put in different stipulations and regulations to regulate it. So, we could either be proactive as a state, or we could sit on the sidelines, and, maybe not this year, but in a, in a subsequent election year, the taxpayers will put this on the ballot. And if you look at the data, the taxpayers are going to pass legalization of marijuana in the state of Nebraska. Now, we gather-- now, we could either sit on the sidelines and say, "We don't want to pass it, because our voters don't want it," which is not true, because the overwhelming majority of Nebraskans, urban and rural, support the legalization of marijuana. Now, if we are back for a special session because property taxes are so bad, and we need to come back for 2, 3 weeks in the middle of the summer to figure this out, and everything is supposed to be put on the table, I don't see how we can sit here and say "No," and ignore the potential revenue of 100-plus million dollars, and just say no to it. To me, once you say that, that means

everything else is illegitimate, it doesn't make sense, you're not telling the truth, and we're just here to waste our time. No, I don't think everybody should utilize marijuana. And yes, I understand-- yes, there's a potential harm for anything. Anything that's done, regardless of if you deem it illegal or not illegal, if you do it too much-- "eithil"-- even legal things, it could be harmful. It could be harmful to look at your phone all day. It could be harmful to do many things in this world every day. I grew up in a family that dealt with substance abuse, and though m-- and throughout my 30-- I'm almost 34, I'll be 34 this month-- in my, in my lifetime, no matter how much this Legislature, or the federal government, tried to be harder on crime and increase penalties, did that deter people from crime, or using other substances? It's-- to me, to make the argument that, that the world is going to, going to get worse ignores the fact that for a lot of people, the world is already horrible. The world is already not working for them. I'm not saying everybody should utilize marijuana, or anything like that, but the reality is the reality. The feds are going-- are, are in the process of deregulating marijuana as we speak. Many states already have legalization on the books, or working through it. For us to just be ignorant, and just say "No," tells me that we're not serious about solving property tax relief and educational funding. Which is cool with me, just don't make the argument that we're back here for it, because we're wasting our time. But I honestly think this is a legitimate piece of legislation as long-- along with LB52, to solve a lot of our problems. And I'm welcoming all the people that are going to come in opposition and say, "This is horrible, we're going to destroy our state, and student athletes are going to be harmed." I was a student athlete. If student athletes are going to be harmed, and cause them to start losing games, how did Colorado beat the Nebraska Huskers last year in football? Please explain that to me. A state that has legal-- legalized marijuana has athletes in their state that, for whatever reason, still beat our state, and we don't have it legally. So, to me, that doesn't mean it's going to harm performance. Also, the NCAA isn't going to test for it; NBA doesn't test for it; NFL doesn't test for it. I don't even think the Olympics tests for it anymore, because the data shows otherwise. And for people to come up here and make these type of arguments, they're going to have to present counter-data outside of what the Olympics, NBA, NFL, NCAA all say is true: that marijuana isn't as harmful as "argetize"-- as advertised, and that-- the criminalization of, of marijuana is really based on

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racism, if you do your research. But with that, I'll do my closing, and open myself up for question.

**DEBOER:** Are there any questions for Senator McKinney? I don't see any today.

**McKINNEY:** Thank you.

**DEBOER:** Let's have our first proponent. Ah, we don't have a page.

**JASON WITMER:** Thank you for having me again. I'll make it short. Jason Witmer; W-i-t-m-e-r. I'm policy fellow at the ACLU, and I'm here in support of LB52 and LB71. The criminalization of cannabis has drained Nebraska's resources without making us safer, often targeting vulnerable communities. In 2018, ACLU reported that black Nebraskans, only 5 percent of our state population, are 3 times more likely to be arrested for cannabis. And also, in the same year, nearly half of all Nebraska's arrests were for cannabis possession. So this is not necessarily a war on crime, or a war on drugs, but a war on people, and it's an expensive one. UNL's Center for Justice Research found that the cost-- it cost us \$9.5 million annually from 2009-2013 to enforce cannabis criminalization laws. In 2014, it jumped at \$10.25 million, and that was ten years ago. So, what have we accomplished, other than to nail criminal records on Nebraskans, and to waste hardworking taxpayer dollars? And, I would include, that we often talk-- that was mentioned and we're hear it's the gateway drug. Marijuana, whether it's charged as a misdemeanor or a felony, them are gateways to prison, and that's not serving anybody. Them-- and that has a long history in Jim Crow era. Legalization of cannabis would slash the costs; it would free up law enforcement resources. Furthermore, regulating and taxing legal cannabis can bring this state's fe-- the state's financial revenue to counter the need to tax hard paying Nebraskans to support the Governor's property tax plan. In 2014, Colorado, our sister state, collected \$78 million in taxes and fees during their first year of legal cannabis sales. As of 2023, Colorado's Department of Revenue, over the entire 10-- 9 years has collected \$2.5 billion in tax revenue. LB52 and LB71 offer a comprehensive public safety, social equity, and economic growth solutions. The potential of this shift can save family farms, it can create jobs, it can ease the suffering of individuals dealing with critical illnesses, and-- as well as provide tax cuts without tax hikes to hard working Nebraskans. I believe Nebraskans are kind; we're

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intelligent. And, if we can regulate liquor and cigarettes, over-the-counter prescription drugs, we can definitely deal with cannabis. Support LB52 and LB71, trust in the people, and let Nebraskans make their choices. If you have any questions for me, I'll be happy--

**DEBOER:** Thank you for your testimony. Any questions?

**JASON WITMER:** Thank you.

**DEBOER:** I don't see any. Let's take our next proponent. Thank you so much for being here. Go ahead whenever you're ready.

**JENNIFER HENNING:** My name is Jennifer Henning; J-e-n-n-i-f-e-r H-e-n-n-i-n-g. Hi, my name is Jennifer Henning. I'm here to express my strong support for LB71 and LB52. Thank you, Senator Wayne and Senator McKinney, for introducing these important bills. It's crucial that we, as a state, work to reduce the stigma surrounding marijuana. Marijuana is a natural therapeutic plant with numerous health benefits, and individuals should not be judged for health care choices they make. I am the proud mother of a 7 year old, who is profoundly disabled. His out-of-state physicians have recommended medical marijuana as part of his treatment plan. He suffers from multiple debilitating conditions, including epilepsy, cerebral palsy, profound intellectual disability, level three autism, chronic pain, dysautonomia. Due to significant deficits, and inability to communicate verbally, he cannot express what he is feeling, or what he needs. Every day, he experiences self-harm and aggression, which severely impacts his quality of life. He's endured broken bones, split lips, elopement, and even put his face through a window. His body bears the marks of his suffering every single day, with open wounds from biting, scratching and hitting himself. At 7 years old, he is nearly 4-foot-7, and weighs 93 pounds. He is strong and mighty. But he needs access to marijuana to help manage his symptoms, and "profoove"-- improve his quality of life. It makes absolutely no sense that marijuana, a natural substance, is illegal, when my son has been recommended to utilize enteral ketamine, methadone, and other pharmaceuticals. I still have not received any reasonable explanation into why it is acceptable to give a child ketamine, methadone and other pharmaceuticals for his profound needs, but not an organic natural plant. My child's doctors, with their education, and experience, and training, should carry more weight in these decisions than politicians who refuse to consider the benefits

for everyone. I've been deeply involved in the grassroots movements Nebraskans for Medical Marijuana, tirelessly working to ensure that medical marijuana makes it onto the ballot for voters. Throughout this journey, I have met countless individuals, people with disabilities, veterans and families of those incarcerated for marijuana use, among others. While I understand that these bills may not directly benefit my son or our family, I strongly urge the senators to consider amendments that include medical provisions. I firmly believe that everyone should access health care they need. I also encourage each senator who opposes this to engage with their constituents. Across Nebraska, we have "gained"-- we have garnered support in counties within each of your districts, including those represented by this very Judiciary Committee. I believe it is important to emphasize the potential cost savings for state, if individual like my son could receive medical marijuana as recommended by his palliative care doctor. These expenses associated with his self-inflicted injuries, harm to others, seizure management, medical equipment, prescriptions, and overall medical care could be significantly reduced if he had access to the recommended treatments, such as marijuana. This would not only improve his quality of life, but also result in substantial savings for Nebraska taxpayers. Currently, the costs of his care are largely covered by Medicaid, but if he had access to marijuana, those expenses would be borne by our family, instead of readily relying on the cost of treatments the state is currently funding. It's time for Nebraska to modernize its approach and recognize the benefits. I often hear arguments from politicians and others, claiming that marijuana will harm children, encourage people to get high, or increase crime. This is simply not true; numerous studies have shown that there has been no increase in crime associated with marijuana use, and there have been no reported deaths from marijuana overdose. I don't want my child to be high. I want him to have access to treatment options that he can prove "ix" quality of life, just as if--

**DEBOER:** Ma'am?

**JENNIFER HENNING:** --he would have as he lived in other state.

**DEBOER:** I'm sorry. You've hit the red light. Let's see if there are any questions for you, OK?

**JENNIFER HENNING:** That's okay. Wonderful.

**DEBOER:** Are there any questions for this testifier? OK. Why don't you just finish up one last thought, give us your last parting thought.

**JENNIFER HENNING:** Wonderful. I'm not naive to think that the Legislature hasn't considered this economic benefit. The Nebraska legislator fiscal office, as in your packets, estimated that the revenue from, from marijuana in this state would be \$150 million by 2028. And I believe that the government should stay out of our health care, especially my son-- my disabled son's health care. If his doctor believes that he should have this, and it would help him-- not only would it help him, it would help my family, it would help this state, it would help Nebraska taxpayers save money. I strongly encourage you to consider this, and I, I really hope Senator Wayne and Senator McKinney can add a medical provision, because people like my son are depending on this.

**DEBOER:** Thank you. I don't think that spurred any additional questions. Thank you so much for being here.

**JENNIFER HENNING:** Thanks. Have a good day.

**DEBOER:** Let's have our next proponent. Anyone else who would like to testify in favor of the bill? Let's move to opponents; are there any opponents? Welcome.

**JOHN BOLDUC:** Thank you. Good afternoon, Vice Chair DeBoer, members of the Judiciary Committee. My name is John Bolduc; J-o-h-n B-o-l-d-u-c, superintendent of law enforcement and public safety. I'm here today on behalf of the Nebraska State Patrol to offer testimony in opposition to LB52 and LB71. As a career law enforcement officer with over 37 years of experience, I'm unfortunately all too familiar with the unintended consequences of legalizing, or decriminalizing marijuana. Midwest High Intensity Drug Trafficking Area, or HIDTA, statistics from July 2024 show that about 1 in 10 individuals who use marijuana become addicted. While proponents of marijuana legalization contend that marijuana commercialization will eliminate the underground market, reality has proven otherwise. Currently, marijuana is routinely being produced in states where marijuana has been legalized, only to be trafficked and distributed through illicit markets. The overproduction of legalized marijuana has led to groups and

individuals selling untaxed marijuana on the illicit market, where this controlled substance can be sold at a lower price due to the willful avoidance of state taxes that would normally be incurred through legal sales. North Dakota became the first state in the Midwest HIDTA to approve a medical marijuana program in 2016. North Dakota marijuana-related emergency department visits increased 336 percent following the legalization of the medical marijuana. Following medical marijuana legalization in South Dakota, hospitals have observed an increase in emergency department visits and hospitalizations for marijuana complications. From 2018-2024, South Dakota cannabis-related emergency department visits increased 184 percent, and hospitalizations increased 74 percent. It must also be acknowledged that marijuana remains a Schedule I controlled substance under the federal Controlled Substances Act, or CSA, which currently prohibits the manufacture, distribution, dispensation and possession of marijuana, except in federally government-approved research studies. This classification as a Schedule I controlled substance unquestionably reflects a finding at the highest levels of the federal government that marijuana retains a high potential for abuse. The fact federal law continues to prohibit firearm possession by anyone who is addicted to, or an unlawful user of any controlled substance, remains unchanged. I previously testified before this committee as to the serious safety consequences posed by the legalization of marijuana. I know from my many years of training and experience that marijuana usage unquestionably impairs the ability to safely operate a motor vehicle, and is the illicit drug most frequently found in the blood of drivers who have been involved in vehicle crashes. And I see my light is on. I will just close by saying that the increased cultivation practices has resulted in high concentrations of, of THC, and we have seen increasing behavioral health consequences as a result of that high THC content. I'd be happy to answer any questions.

**DEBOER:** Are there any questions for this testifier? I don't see you today. Thank you so much for being here.

**JOHN BOLDUC:** Thank you.

**DEBOER:** We'll have out next-- next testifier. Welcome.

**AARON HANSON:** Thank you. Douglas County Sheriff Aaron Hanson. I appreciate the opportunity to--

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**DEBOER:** Can you spell your name?

**AARON HANSON:** Oh. A-a-r-o-n H-a-n-s-o-n, in opposition to LB52, LB71. You know, I can tell you that before becoming sheriff, I was very actively involved in violence prevention, interruption, investigation, specifically with gang investigations. And, without a doubt, I would say that one of the most violent drug distribution groups that we would deal with was the marijuana distribution group. Recently, I got some fresh information from Midwest HIDTA; I'll also try to give you some information from Rocky Mountains HIDTA here soon. But, similar to what the colonel said, I think we have to-- we do have to look at the data. I agree with Senator McKinney, and I do appreciate his lived experience. I think that, unfortunately, what we're seeing is-- across the country, there's a movement that has been co-opted by folks with a political agenda that is above and beyond the reality and the real data. The real-- reality of the situation is that you do want to look at the data of what's happened in communities where marijuana has been legalized, and don't read the fairy tales. I passed out a fairy tale, we've got extra books. There are three little pigs, oddly enough; it's ironic. That's about the only fairy tale book that I could find. But if you look at, for example, Colorado, 2012-2022, they saw a 300 percent increase in homicides. They saw 100 percent increase in violent crimes. They're the number one highest rate of growth out of cities over 500,000 in violence. And why? In my opinion, rampant legalization of recreational marijuana. Missouri is struggling as well. 10 percent increase in traffic fatalities, 98 percent increase in marijuana usage ages 12 and up. One third of the marijuana in Colorado is black market marijuana. In San Francisco, they had to suspend the tax on dispensaries because they could not compete with the cartels. There are psychological damages that occur to teenagers when, when they're ingesting marijuana, and especially this high-grade THC that we are seeing now more than ever. The high-level THC hallucinogenic marijuana. When you're talking about the, black market marijuana trade, also, it's-- whether it's grown legitimately or illegitimately, it takes six gallons of marijuana a day to grow one marijuana plant. That's twice that of corn, sor-- soybeans or sorghum. I think we need to be more thoughtful. We are not going to address our property tax concerns, and I-- there's some data in the back here that will show you that the revenues by marijuana, in states that have legalized it, have gone steadily down. I-- please do your due diligence, and make decisions with eyes wide open.



**DEBOER:** Thank you very much for your testimony. Let's see if there are any questions. Senator Blood has a question.

**BLOOD:** It's nice to see you again. Don't worry, it's not a hard one. So you talked about Colorado, and I had actually reviewed some information from Colorado for a bill that I did. Wouldn't you also say, though, that it's a major interstate transit point? Isn't that one of the reasons their crime rate is high? So that would mean, you know, just like we know that sex trafficking is pretty rampant in Nebraska, because we, we have all of these highways and byways and interstates that cross-- and it makes for a perfect portal to traffic people. So we know that Denver-- Colorado as a whole has a major interstate transit point, right?

**AARON HANSON:** I would say it's not dissimilar to any large metropolitan area along an interstate, or intersecting interstates, which is not atypical for, for large metropolitan areas, Omaha included.

**BLOOD:** So the information I read attributed the crime rate to that, and the fact that they have such a young population. Which, I'm guessing, is there because pot is legal there, but--

**AARON HANSON:** I, I have a different experience. I've spoken with law enforcement professionals and executive peers in Denver, and they point the finger of blame almost exclusively at significantly increased drug use. And I think you also look at the, the explosive growth in their homeless population, the homeless tent population, which is not-- I shouldn't use the term homelessness, because usually it's unaddressed behavioral health and addiction challenges, but if you-- Denver is struggling with a lot of challenges right now; addiction, societal challenges, violence, just being a few. If you were to ask my opinion, which I'm assuming you are, I, I do believe a large portion of that is focused back on the rampant growth of the marijuana industry.

**BLOOD:** And, and I, I will partially agree with you. I, I remember talking to a gentleman from the FBI who was stationed in Hawaii, but going to Colorado, and he had said that, once they legalized marijuana, marijuana, their homelessness problem became much, much bigger, because people were coming there, camping out in border communities. So, I do agree with you partially that, that it does

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cause some problems, but I'm not sure if I-- I, I do appreciate your sharing. I'm going to read every page of this. But, I don't know that we can--

**AARON HANSON:** Please do, especially the revenue portion at the end, because it'll show you that it is not the revenue panacea. And that's why I want to illustrate the fairy tale versus the data. Look at the real data, and make sure it's not data generated by the cannabis industry. Because if you Google anything with marijuana, all you'll find is websites that are generated by the cannabis industry, and data that they have created. Look at the actual government source data when it comes to revenue, and crime and negative consequences.

**BLOOD:** So all the other states that legalized pot, are they in here as well, or is Colorado the only one that used it as an example?

**AARON HANSON:** Well, Colorado was not mentioned in that Midwest HIDTA; it's mostly Missouri. Missouri has faced extreme challenges lately. And that's because they not only legalized medicinal marijuana, which is a whole different subject. I think if you look at North Dakota and South Dakota, they have medicinal marijuana, and they have not seen the challenges that Missouri has, that Colorado has. Because Colorado and Missouri, w-- did full-on recreational legalization. You know, again-- and I think a lot of that comes back to the high-grade THC; I try to explain it to folks. When, when we were young--

**BLOOD:** Very familiar. It's the difference between ditch weed-- right.

**AARON HANSON:** It's like a 12 ounce beer, as opposed to a 12 ounce glass of vodka.

**BLOOD:** Yeah, I, I don't disagree with that. I mean, when we were growing up, the kids were smoking ice, and ditch weed and whatever. And then, as it became more artful, now we have things that are very intense, I'd agree.

**AARON HANSON:** Genetically modified. And it's very, very potent.

**BLOOD:** Thank you.

**DEBOER:** Thank you, Senator Blood. Senator Ibach has a question.

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**IBACH:** Thank you, Madame Chair. So, if we just look at the income potential when-- with regard to property taxes, or just the-- because it seems like a lot of times we focus on, we should do this because of the income potential. What are your estimates, or what do other states go through as far as expense? Or, consequences of actually legalizing it from a, from a-- from the sheriff's perspective, or from the criminal perspective?

**AARON HANSON:** Yeah, that's the irony, actually, because when you look at-- actually, if you look back at the source materials that I gave you, there's a marijuana tax report. It's generated by Colorado, and it'll show you that steadily, over the years, that the, the revenue collected by the state has gone incrementally down, down, down, down. And that is because the cartels have come in, and they are growing it. And again, one third of Color-- of Colorado marijuana now is black market cartel marijuana, because it, it doesn't have a barcode on it. You don't-- you can't really distinguish it from legally-grown marijuana. But I can tell you, in terms of the pesticides, and the impact on the environment-- very, very different story. And so-- but then, when you step back from the reducing revenue, then you look at what more it's going to cost for local government to have to deal with that increase, whether it's increased mental health and addiction problems, which end up in homeless tent encampments; whether it's going to end up with higher levels of crime, street crime, violence; whether it's going to be more investigations, more mental health facilities that are going to be needed on the, on the local level. The experience I hear from my peers in these communities that have full-out legalized recreational marijuana is that the costs are exceeding the revenues, and that the revenues are shrinking because legitimate industry cannot compete with the illicit drug cartel growers.

**IBACH:** Thank you. Thank you.

**DEBOER:** Thank you, Senator Ibach. Other questions? I don't see any. Thank you for being here. Let's have our next opponent.

**ROGER DONOVICK:** Good afternoon, members of the Judiciary Committee. My name is Dr. Roger Donovanick; R-o-g-e-r D-o-n-o-v-i-c-k. I am the executive medical officer in the Division of Behavioral Health for the Department of Health and Human Services, and I am here to testify in opposition to LB52 and LB71. Legalizing cannabis, for any purpose,

poses a risk to the health and safety of Nebraska citizens. An article in the official journal of the World Psychiatric Association entitled "Assessing the public health impacts of legalizing recreational cannabis use: the U.S. experience," states there are a number of reasons why the effect of cannabis legalization to date may underestimate the full impacts on public health in the longer term. There is significant evidence of a statistical association between cannabis use and increased risk of motor vehicle accident fatalities and injuries involving cannabis-impaired drivers. Impaired cognitive performance, also; psychotic symptoms, or a diagnosis of schizophreniform psychosis. Hyperemesis syndrome, including severe abdominal pain, cyclical vomiting, strokes in young adults, cardiovascular disease, and myocardial infarction. Additionally, the article mentions that, since legalization, Colorado has seen an increase in cannabis-related hospitalizations and emergency room presentations. Colorado's Amendment 64 to legalize recreational cannabis use for adults over 21 was passed by voters on November 6, 2012; between 2012-2014, emergency department presentations for mental illness and cannabis related code-- with a cannabis-related code increased 5 times faster than the mental illness presentations without such a code. There's no such thing as a harmless controlled substance, which is why we have significant concerns with this proposed bill. Cannabis use in Nebraska has already increased in recent years, and is currently the third highest-reported substance being used by individuals seeking addiction treatment. In summary, legalization and commercialization of cannabis would lead to increased negative health impacts, a greater strain on our health systems, and most importantly, put the health and safety of Nebraskans at risk. We respectfully request that the committee not advance these bills to General File. Thank you for the opportunity to testify today, and I would hap-- be happy to answer any questions.

**DEBOER:** Thank you for your testimony. We'll start with Senator DeKay.

**DEKAY:** Yeah. Thank you, Vice Chair DeBoer. Thank you, Doctor, for being here. Right at the end of the one paragraph, you had mental illness with cannabis related code. Can you describe what that code is?

**ROGER DONOVICK:** Yeah. So, the, the main cannabis codes are-- these are ICD-10 codes. And they-- it would designate cannabis use disorder, cannabis intoxication, or cannabis withdrawal. So those would probably

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be the main things. And cannabis intoxication, most, most of the time presents with-- or, much of time, with some type of agitation, psychosis, something like that.

**DEKAY:** So this, this is just within the scope of the time they're intoxicated? This doesn't show short-time or long-term effects of what could take place with that?

**ROGER DONOVICK:** Well, so, so that piece is just talking about presentations to the emergency room. But yeah, signi-- you know, there are certain numbers that go on to have longer-term type of psychiatric illness. The, the one thing mentioned here was schizophreniform disorder, and that's a persistent psychosis that lasts beyond what you would normally consider an intoxication episode. Up to six months.

**DEKAY:** Thank you.

**DEBOER:** Senator Blood?

**BLOOD:** Thank you, Senator DeBoer. So how does your department feel about medical marijuana?

**ROGER DONOVICK:** So, medical marijuana is-- we-- you know, we believe in the FDA process for approval of, of medications for the treatment of certain diseases. And, you know, at this point, there's still a lot to be looked at, in terms of the use of marijuana for medical illness. There are-- we do have medications that are cannabis derivatives like dronabinol--

**BLOOD:** Right. And have been peer-reviewed, and-- yes, been through the process-- thank you.

**ROGER DONOVICK:** Yeah, they've been peer-reviewed; they've gone through clinical trials, they've gone through the process. You know, for the use with specific disorders.

**BLOOD:** So, so listening to what you had to say, I'm curious-- what if we were able to-- and I don't even know that you can do this, but I assume so, because the, the little shops we have all over Nebraska now, that we didn't bother to regulate, are, are told now-- or, going to be told, like, the percentage that something should have. Can we--

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especially since we've become so scientific-- I don't say we because I'm not growing it.

**ROGER DONOVICK:** Yeah.

**BLOOD:** But we become so-- it, it has become almost something clinical. Like, we know that, that the marijuana now is not the ditch weed that, you know, they were smoking in the 1930s, 1940s, 1950s. And-- couldn't we just say that we can only allow this amount of THC, and have some kind of control over it? I mean, couldn't that be something, based on what you just share with us? Sounds like your concern is we don't know the magnitude of what they would, would take in.

**ROGER DONOVICK:** Yes. So, so "potency"-- potency of cannabis certainly has an impact on both addiction rates, as well as toxicity, in terms of the acute sense. But it hasn't really been worked out about, you know, what levels are-- would be, you know, really considered safe. And for some--

**BLOOD:** Isn't there a lot of peer-reviewed data that clearly shows what levels are safe? I mean, let's be frank.

**ROGER DONOVICK:** No.

**BLOOD:** No?

**ROGER DONOVICK:** In, in fact-- yeah, I mean-- so look, even, even back in the day, when you're talking about marijuana that wasn't professionally grown, where the THC levels were much lower, there was still a connection with adverse outcomes, including first-break psychosis, schizophrenia and things like that. In fact--

**BLOOD:** But you just-- you just told me there hasn't been any research, now you're telling me there is. I'm confused.

**ROGER DONOVICK:** I-- I'm saying that-- to talk that-- I said that there's not research on identifying a specific level that would be considered safe.

**BLOOD:** Well, but if you're telling me that they've researched-- I mean-- I, I-- like, I'm a big fan of science. I use the F-word a lot too; I say "facts, science, and data." Right? So, the, the thing that I'm hearing you say is that they've done research. Would I be

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incorrect in saying that, if I'm a scientist-- which, I wish I was, because I think it's an awesome job-- that I would put in my data-- All right, we used one ounce of the "Wowie-Maui," or whatever, I don't know what they call it anyway. Marijuana-- we did it-- we baked it in brownies, we put it in a joint, we made a liquid out of it. This was the results. Isn't that how science works? Like, they, they have a percentage or a weight, and they have to put that in their peer-reviewed information as to exactly how that pot, or that whatever medication they're researching, was ingested, the quantity that was ingested, and the results that you're talking about. Is that not true? Am I, am I just watching too much TV? All right.

**ROGER DONOVICK:** So, you're, you're, you're talking-- yes. No, that, that, that is how science works. But that's not-- that hasn't been done with cannabis. And cannabis has--

**BLOOD:** But you're telling me the results of cannabis. So how, how, how do you know that it causes this, this, and this if it's not been tested?

**ROGER DONOVICK:** I, I, I don't understand. I'm telling you the results of cannabis.

**BLOOD:** You're telling me that-- the bad things that can happen from marijuana. How do you know that without the science? There was science, because you have the data, correct?

**ROGER DONOVICK:** Yeah, there, there, there's some science. But, you asked me specifically about is there an identified level that would be safe.

**BLOOD:** Right. There has to be science behind that, if, if we know all these things that are caused by it.

**ROGER DONOVICK:** I'm not aware of any, any science that has identified a level of a certain-- of a, a, canna-- a TH-- a tetrahy-- a, a Delta-9 level that is safe. I'm not aware of that.

**BLOOD:** Well, you talk about Delta-9, Delta-8, the-- you're talking about the chemical process. Correct?

**ROGER DONOVICK:** Yeah, so, Delta-9--

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**BLOOD:** So I don't know if that's comparable to what we're talking about.

**ROGER DONOVICK:** Well, Delta-9 is considered the main psychoactive compound in marijuana.

**BLOOD:** And you can buy that legally in Nebraska.

**ROGER DONOVICK:** That's Delta-8.

**BLOOD:** Also Delta-9.

**ROGER DONOVICK:** I--

**BLOOD:** Come to, come to the, the shops in Sarpy County, and walk in and ask for Delta-9.

**ROGER DONOVICK:** But, regardless, cannabis ha-- it has over 100 psychoactive compounds in it--

**BLOOD:** Right. No, I--

**ROGER DONOVICK:** Which makes it very difficult to re--

**BLOOD:** I'm very much against those, those drugs because they, they are not what they say they are. But we're talking about plants right now, so-- I do-- I, I'm not trying to argue with you. I'm trying to get my head wrapped around what you're telling me, and now I'm going to be looking at the science. So, I appreciate you. Thank you.

**ROGER DONOVICK:** Of course.

**DEBOER:** Are there other questions, Senator? Senator DeKay?

**DEKAY:** One more quick question. In Colorado, you walk down old stree-- old town Colorado Springs, there's all these shops where they're selling gummy bears and stuff. Is that a uniform level on each one of those packets of gummy bears? Or, how's it--

**ROGER DONOVICK:** No, because, because those are not-- they're not, they're not regulated in the same way that, that a prescription medication would be. So you can have variable levels, var-- variable potency.



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**DEKAY:** All right. Thank you.

**DEBOER:** OK. Thank you, Senator DeKay. Other questions? Thank you so much for being here.

**ROGER DONOVICK:** Thank you.

**DEBOER:** We'll take our next opponent. Welcome.

**MAGGIE BALLARD:** Good afternoon, Vice Chairperson DeBoer, and members of the Judiciary Committee. My name is Maggie Ballard; M-a-g-g-i-e B-a-l-l-a-r-d, and I am here on behalf of Heartland Family Service in opposition of LB52 and LB71. Heartland Family Service prides itself on being trauma-informed across all ages of service. We are opposed to expanding access to addictive substances, because our agency opposes initiatives that increase adverse childhood experiences, which, if you're unfamiliar with those, I ask you to refer to the back of your sheet. One of those is having a parent with a substance use disorder. Like many of the clients that we serve in our offices, what's cannabis use disorders? We know that individuals with addiction are, of course, not the only people affected. While we support "creeding"-- creating clean slates for people and giving them additional opportunities for success, we cannot get on board with having our state open its door to yet another for-profit industry based on addiction. In other words, we do support decriminalization, but oppose the commercialization. Furthermore, it does seem backward to bring this bill forward after Nebraska has had decriminalized marijuana for the past 5 decades. We've seen President Biden sign an executive order to pardon the very few remaining cases across our country of people that still had simple possession on their records. So I hope that in the future, our Unicameral will look harder at addressing criminal justice reform, without putting public health at risk. I've repeated some of the things that I've said in previous hearings down there. I just wanted to take a moment to express, for Mr. Tom Osborne-- I grabbed him on Wednesday and asked him if he would testify. He came hoping to testify; unfortunately, he had to leave shortly after 3:00 PM. But he had concerns about this bill as well. And I also want to make sure I have time to address a couple of things that I've heard so far. When-- in prevention, we are all about the research, like Senator Blood brought up. And, at this point in time, there is no known low-risk amount of THC that can be consumed. If studies change that, then we will change what we support. With alcohol, at this point in time,

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studies show that there are low-risk amounts of alcohol that can be consumed. That's not the case with nicotine, or THC, or these other products. And so, that's why we have the stance that we do. It sounds like everyone's done their homework about understanding. Unfortunately, we're not talking about just a plant. If we were, I honestly wouldn't be here; if we were talking about this stuff that people used back in the 1970s, 1980s or 1990s, or even, probably, back in the 2000s. But instead, we're talking about, you know, pictures of the products I showed on the back: the waxes, the dabs, the shatter, the things that are so concentrated that a serving size is recommended to be 1/35 of a gummy bear-- or, I'm sorry, 1/10 of a gummy bear. 1/35 of a soda, and things like that.

**DEBOER:** All right. Thank you so much for your testimony. Senator Blood has a question.

**BLOOD:** I do; a quick question. So-- but, depending on how we craft this legislation, we could only be talking about a plant. True?

**MAGGIE BALLARD:** I would like to believe that. With all due respect, you are never going to get the cannabis industry on board with that.

**MAGGIE BALLARD:** Well, then they can stay out of Nebraska. But we're allowed to set the parameters, right?

**MAGGIE BALLARD:** Absolutely.

**BLOOD:** And, you know, I look at, like, medical marijuana legislation, where they specifically say, depending on what state, you know, you can grow 2 of your own plants, or you can use it in this liquid form, or you're allowed to-- you know, I know he was making the joint joke earlier. I want to know where you were at in the 1970s, but--

**HOLDCROFT:** Oh, I was there.

**MAGGIE BALLARD:** To be clear, I was not born then.

**BLOOD:** We need a little levity in here. I mean, that is what our job is as policy-makers. So, if I hear you correctly, you're saying that, if indeed we just talked about plants, you said the cannabis industry would come out against that, fine. It's up to us, as policy-makers,

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not to listen to the lobby, not to listen to big interests, but to do what's best for Nebraska.

**MAGGIE BALLARD:** Sure. [INAUDIBLE]

**BLOOD:** I appreciate the fact that you said that. Thank you.

**DEBOER:** Thank you, Senator Blood. Other questions? Senator Ibach does have one.

**IBACH:** I will ask one. Just from the last session, I have lots of lingering thoughts. So in your profession, because we've talked a lot about this, are there challenges other than-- because I see the back of your page in some of these experiences-- Are there challenges other than just the addiction side? And I know that THC and marijuana has changed so much in the last 10 years, like you said-- or, even 15. Other than the addiction portion of it, I mean, what are some of the, what are some of the other repercussions?

**MAGGIE BALLARD:** Yeah, that's a really great question. Thank you for asking me that. So, the journal of the American Medical Association, they've published hundreds of studies talking about how we're not talking about correlation anymore, but causation for anxiety, depression, bipolar disorder, schizophrenia, making PTSD, unfortunately, worse. And, of course-- I, I wish that wasn't the case. Right? I wish that this could be the magic bullet that, I, personally believed that it was going to be 10 years ago, before I started being inundated with growing bodies of research, indicating that, unfortunately, this is not all that it's hyped up to be. Unfortunately, we just see problem after problem, including that psychosis that was mentioned. The link to schizophrenia-- that's what really grabs me, is the cannabis-induced psychosis, because there is-- there's just no comparison to any other substance that I have studied, where using one time so significantly increases the chances of developing schizophrenia, or developing an episode of psychosis, which has been devastating to several people that I know with their ad-- young adult children.

**IBACH:** So, other than addiction, the mental part of it is, is a big deal.

**MAGGIE BALLARD:** Absolutely.

**IBACH:** Then just one follow-up question. This summer, I was able to tour a CBD processing plant, and in the course of our tour, which was interesting, I had the, I had the-- I asked a question, and the, the response was, nobody has ever died from CBD or marijuana. Is that true?

**MAGGIE BALLARD:** If you're going to say that no one has ever died from marijuana, then we also need to be saying that no one has ever died from tobacco. Because when people say that-- when people talk about deaths from tobacco, we're talking about the effects of people smoking, and the effects that that has on their health and on their person. We're not talking about people overdosing from nicotine, and that that's why people die from cigarettes, right? In the same way, you know, people, generally speaking, do not die from overdoses on THC. But we do see people have died from heart attacks. I'm sure the doctor behind me could have spoken to that being quite a common situation in a lot of ERs that are in states that have legalized. So, there's the heart attacks. Unfortunately, again, many, many suicides. And, of course, there's been murders tied to cannabis-induced psychosis, and those types of things.

**IBACH:** Thank you. Thank you.

**DEBOER:** Thank you, Senator Ibach. Are there other questions? I don't see any. We'll have our next opponent. Welcome.

**JOHN KUEHN:** Welcome. Good evening, as we're getting close to that time. Vice Chairman DeBoer, and members of the Judiciary Committee, I am John Kuehn; J-o-h-n K-u-e-h-n. And I'm here this afternoon representing Smart Approaches to Marijuana Nebraska, providing testimony in opposition to LB52 and LB71, which seek to legalize marijuana for recreational use. There are many reasons to oppose marijuana legalization, including its impact on public health, its impact on safety in the roads and in the workplace, its impact on socioeconomic disparities. However, youth disproportionately bear the negative impacts of marijuana legalization, and that's where I'll focus my brief comments with you this afternoon. Although no state allows the sale of marijuana to kids under the age of 21, the increased commercial availability of high-potency marijuana and THC products readily find their way into the hands of kids. According to the re-- report released by SAMHSA just this last month, in July, one of every nine 12-21-- 12-20 year olds in the United States used

marijuana in the past month alone. 61 percent of Washington state high schoolers report, in one study, that marijuana is "easy to obtain." THC impacts the developing adolescent brain much more severely, and in many cases, permanently. Actual physical changes in the gray matter of young marijuana users has been documented, and frequent marijuana use is associated with cognitive and learning impairment, as well as poor academic performance. Increased marijuana use is associated with a greater risk of depression and suicidal thoughts in young adults. And while pot advocates love to mock the "reefer madness" of the 1970s, the evidence is stark that the use of high-THC marijuana, especially at a young age, is linked with worsening mental health, including the development of violence and psychosis. Approximately 1 in 10 individuals who use marijuana become addicted, with the National Institute of Drug Abuse reporting 30 percent of marijuana users have some form of marijuana use disorder. Addiction increases to 1 in 6, if that use begins before the age of 18. It's no surprise, it seems to have found that cannabis use disorder in age 12-17 grew by 145 percent between the years 2018-2021. The experience of other states has shown us what happens when states normalize drug use, and increase access to high-potency marijuana products. Remember, no state has legalized marijuana for kids, yet nationwide, 1 in 15 eighth graders have used THC in the last month, and 1 in 15 high school seniors across the country use marijuana daily. The well-documented negative effects of marijuana use by kids are exacerbated by earlier and more frequently use. Similar findings of increased youth use after legalization, especially among younger children, and more frequently, have been documented in comprehensive epidemiological studies in Colorado and Washington state. Putting the brains of our future, and the future of Nebraska youth at risk by legalizing is the worst policy option we can take at this point in time. I'm happy to entertain any questions that the committee may have.

**DEBOER:** Are there questions for this testifier? Senator Blood?

**BLOOD:** Thank you. It's nice to see you again. You used to sit behind me.

**JOHN KUEHN:** Yeah. Good to see you as well.

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**BLOOD:** Two quick questions. Do you have comparative data that shows that there's been an increase, like, say 20 years ago, 30 years ago-- what was the percentage of that same demographic?

**JOHN KUEHN:** Yep. Absolutely. What I'll do, Senator Blood, is I will send you a link to the updated, with the 2023 data that just came out in July for the SAMHSA report. The SAMSHA report has been documenting that for over 15 years, and has been looking at that survey data, and it breaks it down by tables, and you can see that increasing trend. And, and what the trends show us is that we see an increase in frequency of use, and we see an increase in use of younger and younger ages with each subsequent year. So I'll get you all that data.

**BLOOD:** Does that include alcohol?

**JOHN KUEHN:** It-- you know, the SAMSHA reports do actually include and look at alcohol, they look at tobacco, they look at, at cocaine, and they look at methamphetamines. What's interesting is that we know from abuse, that abuse is what's available. And what's interesting is tobacco use is down, because we've made a concerted public health and policy choice to make sure that tobacco wasn't available to kids. So, young adults use cannabis at a much higher rate than they use tobacco, due to normalization, and due to availability of those products.

**BLOOD:** Is alcohol down? Because we certainly have a lot of laws pertaining to alcohol.

**JOHN KUEHN:** Yeah, we do. And I, I think that's a really interesting example to talk about. People love to say that, well, alcohol has problems. And it's, it's kind of-- this is the way I would, I would describe it. Alcohol and, and THC are two completely different beasts. To say that, while alcohol is legal, and alcohol is one problem, and, and youth use of alcohol is absolutely a critical public health problem we need to address.

**BLOOD:** Right. I agree.

**JOHN KUEHN:** That does not, however, justify the legalization and the normalization of THC. We don't say, "Gun violence and gun deaths are a problem for children, so, you know what? Let's make available grenades at Scheel's." Because that's what you're doing, is you're saying that ille-- no, you--

**BLOOD:** No, but we consistently loosen those laws.

**JOHN KUEHN:** We have not loosened laws available for alcohol. We have not loosened laws available for minors to have access to harmful substances. Quite the opposite. We've taken a very hard stance on ensuring that what's, for example, contained in nicotine vapes is no longer-- and, and keeping it out of the hands of young adults. What we've seen, despite the myth of regulation of THC in every regulated state, is that THC continues to find its way into the hands of young adults and children at a younger and a younger age. And for them, it's devastating, because the adolescent developing brain-- it's like playing Russian roulette. They don't know which gummy is going to be the one that induces a psychotic break. They don't know which gummy is the one that is going to, cause a suicidal thought, and, and the youth behaviors associated with this, including dabs and shakes and, and all kinds of other highly-concentrated forms of THC continue, persist and grow, despite every legalized state's attempt at regulating it.

**BLOOD:** So, because based on what you just said, isn't it just actually quite normal? And I'm not saying I agree with it, OK? I want to make that clear. That people with mental health issues tend to self-medicate with what they can find?

**JOHN KUEHN:** Of course they do. Of course they do.

**BLOOD:** Be it alcohol, be it Delta-8, Delta-9, be it-- what is it, kratom?

**JOHN KUEHN:** Certainly. But we don't say that the solution for someone's financial and familial stress is to increase-- and their access, and they just need to go drink a fifth of Jack. For some reason, we do seem to have this idea that some people should be able to self-medicate for their financial and psychological stress with THC gummies, which are way more psychoactive, and have a much more unpredictable outcome in the brain and in their personal health.

**BLOOD:** So-- you know, I work a lot with veterans, and veterans continue to tell me that, at the very least, they would like to see medical marijuana happen in Nebraska. How do you feel, then, about the research being done on mushrooms?

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**JOHN KUEHN:** Well, that's a completely separate issue. And, and somewhat of a distraction.

**BLOOD:** Actually, it's something that could happen in Nebraska, instead we're talking about addiction and mental health. So I'd be curious, since you're so-- feel so strongly about this, how would you feel about something like mushrooms?

**JOHN KUEHN:** And you-- right. And-- yeah. You know, there is conflicting controlled research on the use of "silbosizin" [SIC], and again, when we're talking about research of things for a medical purpose, where is a very controlled scientific process by which we understand the data, and that's using a purified and isolated form of a single compound by which we can assess both the positive effects, as well as the negative drawbacks. And one of the challenges of, of many of these substances, cannabis included, is that you're not really actually gaining any useful data. Because they're mixtures of a wide variety of purities, a wide variety of compounds, they're used erratically. So, it's difficult to actually tease out benefits from the negative results. And in the case of marijuana, the overwhelming epidemiological evidence, the population evidence of outcomes is overwhelmingly negative, even if there might be individual cases where someone may anecdotally report a perception of a perceived benefit.

**BLOOD:** So, so if I hear you correctly, much like the young lady that was before you-- it really isn't the concern about marijuana, it's a concern of what they do with it, what do they add to it?

**JOHN KUEHN:** Are they inextricable? Can you separate the substance from what they do, and the outcomes? That's that seems to be a, a logical fallacy.

**BLOOD:** But yet, we control many foods that way. When we say, OK, you can only have a certain percentage of mouse poop in your peanuts, or--

**JOHN KUEHN:** Sure, but in all due respect, Senator Blood, mouse poop in your peanuts cannot induce violent psychosis. There's a dramatic difference.

**BLOOD:** It's pretty disgusting. And I said that more to bring--

**JOHN KUEHN:** That is, but-- I understand, but you know.



**BLOOD:** There is-- there are things that are harmful that the government controls, from, from diet foods, to-- and drinks--

**JOHN KUEHN:** Correct. Correct. And when we're talking about s--

**BLOOD:** So, why can't we do that if we start with just a plant?

**JOHN KUEHN:** When we're talking about-- when we're talking about something that can induce violent psychosis, the-- that is a, a s-- matter which requires and, and should ask for extreme caution, and an extreme attention to detail for public health and safety.

**BLOOD:** But haven't you all consistently said it's not the pot of yesterday, it's the pot of now? That's something that we could have control over.

**JOHN KUEHN:** I've never said we could have the control over the pot of yesterdays, and I'm-- that's not a position I've ever asserted.

**BLOOD:** So, you're just against everything that has to do with marijuana.

**JOHN KUEHN:** Marijuana legalization, and we can't go back to the pot of yesterday. High-concentration-THC cannabis is there, and it is available. So, could I go back in time and change things? If I had that power, I'd do a lot of things. I'd go back in time, and I'd make sure that the, the Sacklers didn't get their name on any buildings, exploiting the deaths of millions for opioid addiction. If I could go back in time and, and say, you know, maybe we need to take a look at how we normalize and legalize high-concentration alcohol. I'd go back in time and re-do a lot of things. And I'm fighting here, and I've fought consistently against this issue for the last--

**BLOOD:** Yes, you have.

**JOHN KUEHN:** --6, 8 years, because I don't want to sit here 20 years from now with another batch of legislators and say, "If only we could go back in time. If only we could not have another opioid crisis. If only we don't have another big tobacco. If only we don't have another public health crisis. What were they thinking?" That's why I remain steadfast in my opposition, and will continue to do so, for the, the

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public health of those who don't have the ability to be here and, and advocate for themselves.

**BLOOD:** But I, I will say, just like we are now bringing back vegetables that hadn't been growing for decades, and hundreds of years, that I, I disagree with you in the fact that we could very well bring back the plant. So, I believe you don't need a time machines-- machine for that. You just need a bunch of smart farmers, which we have in Nebraska. And, you know, you may have a good crop. So, thank you very much.

**JOHN KUEHN:** You bet. Thank you.

**DEBOER:** Senator DeKay has a question for you.

**DEKAY:** Two questions real quick. Have there been any surveys or data done on, say, a specific age group, 10 to 15 year old kids or whatever, that would say if they are using marijuana, as compared to saying we are not, we are not using alcohol at all? Is there a [INAUDIBLE]

**JOHN KUEHN:** Yeah. Yeah. If you're looking about whether it's displacing abuse of other substances-- yeah, and there's the lot of different-- there's a, a, a number of surveys looking at youth behaviors and risk-taking behaviors in general. And it is interesting-- and I don't have the direct numbers in front of me, but we can-- I can certainly obtain those for you and send them to your office-- that look at overall risk-taking among this particular generation of youth. And we know that their traditional risky behaviors, like sexual behavior and attitudes towards alcohol, are somewhat cautionary. Yet, because marijuana has been normalized, and there's been this myth that has been presented that it is safe, they have a much higher threshold, an acceptance level of marijuana as something that is safe and without risk than they do other, should we say, more traditional adolescent indiscretions.

**DEKAY:** I guess what I was wondering was if availability played into that at all.

**JOHN KUEHN:** Absolutely. Yeah. In legalized states, the more available it is, despite the fact that it's illegal, the higher the use by young adults. Especially, again, at 12 to 17 year old. And, you know, I will-- it's, it's kind of disheartening to think about a 12 year old

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using marijuana. I was in a public school here in Nebraska doing some, some classes at the request of the school administration, who are having a serious vaping problem. And, while I was in with the junior students, giving them a discussion and we were talking about this, the school went into a lockdown because a seventh grader was vaping in one of the bathrooms and was caught. And, when you walk out of a room, and you see a, a seventh grader, you know, they're just little, and they're being walked out because they were vaping THC in a restroom during the school day. It's shocking. It, it's shocking, and it makes you step back for more than just a beat and say, "What are we doing, that this is something that a seventh grader would reach for?" I, I was still farming in the carpet on my knees when I was in seventh grade.

**DEKAY:** And then, my last question would be, in states that they do have legalized recreational, did that ever, did that ever come before starting out with medical marijuana?

**JOHN KUEHN:** All of the states that moved into recreational first started with, with a use in a medicinal-- or under the medical guise. And I, I want to be clear that we label medical marijuana as something, but there is no distinction, and there's no difference between marijuana that is labeled as medical versus commercial. In fact, in dispensaries that may be selling only medical marijuana, it is the same marijuana that is grown in grow farms for recreational purposes. It's often the same products, the same label, the same packaging, the same preparation. So, medical or medicinal marijuana is a, is a political label used to desensitize consumers and, and create an o-- a guise of it being safe. It's not a distinct product.

**DEKAY:** Thank you.

**DEBOER:** Thank you Senator DeKay. Other questions? I don't see any. Thank you so much for being here.

**JOHN KUEHN:** Thank you.

**DEBOER:** Let's have our next opponent. Welcome.

**ZACH VIGLIANCO:** Good evening. My name is Zach Viglianco. I am a deputy solicitor general with the Attorney General's office, here to testify in opposition to LB52, LB71, and any legislative proposal that would expand access to intoxicating cannabis. The Attorney General's office

believes that there are both policy concerns and serious legal concerns. I will not repeat all of the facts on the policy front, although there are a few things I want to highlight. But, just to start by saying that there is a perception that marijuana is safe, that expanding access to marijuana is harmless, and that perception is a myth. It contradicts the scientific, medical, and sociological evidence. It's addictive; there was discussion about cannabis use disorder, which is defined as the continued use of marijuana, despite significant negative impact on one's life and health. As many as a third of individuals who use cannabis ultimately develop cannabis use disorder. And, you know, it's harmful. Nearly a quarter of all drug rehabilitation admissions to substance abuse facilities involve cannabis use, and more than a third of illicit drug-related emergency room visits come from marijuana consumption. You know, the consequences of addiction are, of course, very well-known, but addiction is only one of the many problems that are related to cannabis. It has scientific connections to increased, increased "ricks" of heart attack, several forms of cancer, and it can exacerbate or cause mental health conditions such as anxiety, suicidal ideation and schizophrenia. The harm, as my-- the former testifiers have em-- ins-- em-- emphasized to children and adolescents is particularly acute, and it's especially acute under these bills, which would permit marijuana to be included in products like gummies, baked goods and candies, which are uniquely attractive to children. Long-term exposure to marijuana causes statistically significant declines in IQ, it impairs brain development in areas critical for learning and memory, and ultimately leads to lower educational attainment. You know, these harms are significant. They're suse-- they're compounded by societal harms. The creases-- marijuana increases the number and severity of motor vehicle accidents, and introduces significant complexity into the enforcement of DUI laws. It's associated with rising homelessness, crime, and reductions in workplace productivity. The legal problems are also significant; it's important to remember that marijuana remains fully illegal as a matter of federal law, and nothing that this Legislature does can annul or override the federal Controlled Substances Act. It's also important to emphasize that this bill contains extremely broad rulemaking authority, with minimal substantive guidance about how that rule making authority will be carried out, which creates concerns about the improper delegation of the legislative authority. I

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appreciate the opportunity to testify before you today, and I'm happy to answer any questions that I can do.

**DEBOER:** Are there any questions for this testifier? I think that marks our first post- Chevron argument here. So-- all right. Thank you very much. Is there any other opposition testimony? Anyone else here in opposition? Are there any neutral testifiers?

**BILL HAWKINS:** Vice Chair DeBoer, members of the Judiciary Committee. My name is Bill Hawkins; B-i-l-l H-a-w-k-i-n-s. I'm with the Nebraska Hemp Company. I am here in neutral position because we haven't quite worked out all the details of the bill. I have worked for many years here, educating the senators on cannabis reform. And so, I want to thank Chairman Wayne, Senator McKinney, the Judiciary Committee and the offices for working on this joint hearing of LB52 and LB71. As you've heard from the testimony, "reefer madness" is here in the state of Nebraska. From the testimony, we have s-- violent, schizophrenic people running around this state and this country because of the use of cannabis. I have over 50 years of practical, real-life cannabis use. When I was in high school, we had cannabis in the school. People were dealing drugs out of the locker. So cannabis has been here, it is here. I am also a property owner, and so, yes, to Senator Blood's questioning, this does have direct implications on property tax reduction. In the Governor's proclamation, he specifically states in line 7 taxing consumable hemp products. Hemp is cannabis, cannabis is hemp. My herp-- my shirt is made out of hemp. What we have in stores all over the state is recreational cannabis. You want to tax it; it is already here. You're allowing it to be sold in stores all over the state. I am offering a chance to tax and regulate cannabis. 24 other states have already done it, many of them through legislative action. If they believed all the "hystoraria" that has come from behind me, they wouldn't have done it. So I would look-- ask you to look at the real facts of cannabis use. Because, some of the facts that have been stated aren't quite real. There have been thousands of medical studies on cannabis. So, I appreciate the time. I wish I had more time, but I'm here to educate you on this property tax relief opportunity.

**DEBOER:** OK, let's see if there are questions for you.

**BILL HAWKINS:** I'm sure not.

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**DEBOER:** Maybe not this late in the day. Thank you for being here.

**BILL HAWKINS:** And I appreciate your time.

**DEBOER:** Oh, Senator Ibach decided to ask one.

**IBACH:** I'll just make a comment. I would just say thank you for your continued efforts. Mister Hawkins worked very closely with us on, on LB999, and you've helped me understand a lot of the issue, and you've really helped everyone in the Capitol when we've asked you to. So thank you very much.

**BILL HAWKINS:** I appreciate that, and I am here to continue educating people.

**DEBOER:** Thank you, Senator Ibach. Thank you-- or, Senator DeKay now has a question.

**DEKAY:** Thank you, Vice Chair DeBoer. You said we could tax and regulate it. How-- I know we can tax it. How do we regulate it, then?

**BILL HAWKINS:** You have the right and the ability to-- number one, protect the children. If we put it in a taxed and regulated system, then it helps to take it away from the black market. You can regulate packaging. Right now, the hemp stores or whatever can advertise on TV, on radio. They are advertising premium cannabis buds. You don't have to go to Colorado, you don't have to go to Missouri. They don't have any regulations, any testing requirements. By regulating cannabis in a legal industry, you have local business owners that want to make this industry work. And that's what's happening all over the country. And so, they want to make this work. You have over 300,000 Nebraska citizens that want to go in a taxed and regulated store and make it mainstream. In my display tables out in the rotunda, there is a Time Magazine that is "Marijuana goes mainstream." That was from 2017. So, cannabis is mainstream. If you put it in a taxed and regulated system, it helps to keep it away from the children. It doesn't completely do it, because alcohol you tax and regulate; they still have access to it. Nicotine, no; it is a real serious problem right now, and it is a poison that you tax and regulate it. So, cannabis is mainstream right now. And so, it's an opportunity to slash the costs of prosecution, even though we're tax-- we're decriminalized. And it also gives you a revenue source. It's here. It's time to tax it. And I, I've taken more than enough of your time, and I greatly appreciate the patience of

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this committee and, and the legislative body in dealing with this issue that, as a property tax owner, is a problem.

**DEBOER:** All right. Thank you so much for being here.

**BILL HAWKINS:** Thank you for your time.

**DEBOER:** We'll have our next neutral testifier. There are no neutral testifiers left, so that will-- we have letters to report on LB52. There were 9 letters: 2 proponents, and 7 opponents. On LB71, there were 7 letters: 1 proponent and 6 opponents. So, Senator McKinney we'll have you close, and then I'll have the opportunity for Senator Wayne.

**McKINNEY:** Well, if these 2 bills are going to die, that means the Revenue bills need to die, because they had more opposition, too. But there will probably be people trying to discuss and pass those as well, although, if you go off the online comments, those bills should never have the light of day. We've, we've had a lot of fear-mongering going on, and a lot of people saying there isn't any data to say that we should legalize, but they coming up here stating all these statistics and data. So, either there's data, or there is not data. If there's not data, don't come up here and say, we have all these "stasti"-- statistics to say that we shouldn't do it. I've never-- I, I would never sit up here and say that everyone should utilize marijuana, just like I would never sit up here and say everyone should utilize tobacco or alcohol. To each his own. If you're an adult, live your life; have fun with it. Do what you want. And my overall point is that, we're back here for a special session on property tax relief that people are going to have to take a vote on, whether for or against it, because, for whatever reason, it's such an important issue that we should be here. We were told that everything is going to be placed on the table, and this is being placed on the table. The State Patrol didn't come up here and say that in, I think, 2022 or 2021, the spike in overdose deaths happened because of their, their office, or their crime lab, or their evidence department. They didn't say that. It's, it's kind of funny, but there's going to be all these things that are going to happen. It's-- it's just not there. When you look at the data-- I heard the sheriff from Douglas County say that the data on the revenue is skewed, because it's only coming from marijuana people. Well, it's easy to go on Google, and Google the state of Colorado's revenue. From the state of Colorado, 200-plus million

dollars is 200-plus million dollars from the Department of Revenue. That didn't come from a cannabis association or entity; that was from the Department of Revenue for Colorado. And you could go across the country and just research the Department of Revenues in all those states, and see that those revenues are positive in the hundreds of millions. But-- I'm not going to take forever; I just hate the fear mongering and "the world is going to end because we legalize marijuana." The world is not going to end. But we also have to acknowledge that the prohibition of marijuana, in a large part, was due to racism. And a large part of people who have been prosecuted in the United States of America are not white. They're Black, and Latino, and Native American at a disproportionate rate. So, if we know factually that the prohibition of marijuana is racist in nature, the overwhelmingly amount of people convicted of marijuana convictions in this country, disproportionately, are people from those-- from backgrounds that are Black, Latino and Native American. Then, how can we stand up and say we should keep this on the books? But, neither here or there-- I mean, if we don't want to solve property tax relief or education funding, then it is what it is, but after this fails this year-- this property tax plan-- don't come back next year and say, "We need property tax relief," because we won't-- this body is not open to things that would actually address it. And, since all these people are fear-mongering, I'm going to bring a bill to prohibit the sale and usage of alcohol, and I hope they all show up. Thank you.

**DEBOER:** Thank you, Senator McKinney. Let's see if anyone wants to ask you a question. They don't. OK. Senator Wayne.

**WAYNE:** So, thank you, Chair DeBoer. To me, this is easy. When we look at the negative testimony, they are actually the reason why we should have recreational and regulated. I had the honor of serving with Dr. Kuehn, when-- my first two years here. And I think he's right on when he said the reason why tobacco among children decreased is because of all of the policies and pushing, by the industry, to make sure it didn't happen. That's the truth. It's because it's regulated, and because public policy has pushed it in a way to make sure it's regulated. Everybody can agree it's here. But we sure do like to tax. In fact, whether it's the Governor plan, my plan, or Nebraska plan, all of them have a cute name called the sin tax. It's a cute name that we throw around, because we want to regulate and tax alcohol and tobacco. Every argument you heard here opposed is the same argument you can say for alcohol; the same argument you can say for tobacco.



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The one argument-- there's no direct link of overdose when it comes to cannabis. Not a direct link that there is in tobacco, and damn sure not a direct link of alcohol poisoning. But yet, those are legal and we regulate it. And by regulating it, and putting the industry and marketing on notice that they are going to help us regulate it, those other industry over the years have declined youth participation. So if you want to solve that, there's the model: regulation. And with that, I'll answer any questions.

**DEBOER:** Any questions for Senator Wayne? I don't see any, Senator Wayne. That will end our hearings on LB52 and LB71 and our hearings for the day.