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Floor Debate
May 23, 2011

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SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the eighty-fourth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Senator Cook. Please rise.

SENATOR COOK: (Prayer offered.)

SPEAKER FLOOD: Thank you, Senator Cook. I call to order the eighty-fourth day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

SPEAKER FLOOD: Thank you. Are there any messages, reports, or announcements?

CLERK: Your Committee on Enrollment and Review reports LB703 to Select File. And, Mr. President, I have the Reference report referring certain study resolutions... [LB703]

SPEAKER FLOOD: (Gavel)

CLERK: ...to the various standing committees for purposes of conducting interim studies. That's all that I had, Mr. President. (Legislative Journal pages 1727-1736.)

SPEAKER FLOOD: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR213. Mr. Clerk, we proceed to LB397A. [LR213 LB397A]

CLERK: LB397A is a bill by Senator Lathrop. (Read title.) [LB397A]

SPEAKER FLOOD: Senator Lathrop, you're recognized to open on LB397A. [LB397A]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, very simply, when we passed LB397 on Select File to Final Reading, that bill included a provision that required that the CIR meet and have three judges preside during wage cases. That

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means that they're going to be paying those lawyers more to be at hearings. The A bill is for \$18,600 and it's a direct result of the response to those who were concerned about having more judges hear cases, three at a time, so that we have more consistency with the CIR. It's sort of the price we pay for the reforms found in LB397, and I would encourage your support of LB397A. Thank you. [LB397A LB397]

SPEAKER FLOOD: Thank you, Senator Lathrop. Members, you've heard the opening to LB397A. There are no lights on. Senator Lathrop, you're recognized to close. Senator Lathrop waives his opportunity. Members, the question before the body is, shall LB397A advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB397A]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB397A. [LB397A]

SPEAKER FLOOD: LB397A advances to E&R Initial. Mr. Clerk, we now proceed to Final Reading. Members, please find your seats in advance of Final Reading. All unauthorized personnel please leave the floor. Members, the Legislature is on Final Reading. Mr. Clerk, the first vote is to dispense with the at-large reading of LB669. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB397A LB669]

ASSISTANT CLERK: 40 ayes, 0 nays on the motion to dispense with the at-large reading, Mr. President. [LB669]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB669]

ASSISTANT CLERK: (Read title of LB669.) [LB669]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB669 pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB669]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1738.) Vote is 47 ayes, 0 nays, 2 excused and not voting, Mr. President. [LB669]

SPEAKER FLOOD: LB669 passes with the emergency clause attached. Mr. Clerk, LB642. [LB669 LB642]

ASSISTANT CLERK: (Read LB642 on Final Reading.) [LB642]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB642 pass with the emergency clause attached? All those in

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favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB642]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1738-1739.) Vote is 37 ayes, 4 nays, 6 present and not voting, 2 excused and not voting, Mr. President. [LB642]

SPEAKER FLOOD: LB642 passes with the emergency clause attached. Mr. Clerk, we now proceed to LB590. The first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB642 LB590]

ASSISTANT CLERK: 44 ayes, 0 nays to dispense with the at-large reading, Mr. President. [LB590]

SPEAKER FLOOD: The at-large reading is dispensed with. Please read the title. [LB590]

ASSISTANT CLERK: (Read title of LB590.) [LB590]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB590 pass? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB590]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1739-1740.) The vote is 48 ayes, 0 nays, 1 excused and not voting. [LB590]

SPEAKER FLOOD: LB590 passes. Mr. Clerk, LB590A. [LB590 LB590A]

ASSISTANT CLERK: (Read LB590A on Final Reading.) [LB590A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB590A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB590A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1740-1741.) The vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB590A]

SPEAKER FLOOD: LB590A passes. Mr. Clerk, LB521. [LB590A LB521]

ASSISTANT CLERK: (Read LB521 on Final Reading.) [LB521]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB521 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB521]

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ASSISTANT CLERK: (Record vote read, Legislative Journal page 1741.) Vote is 38 ayes, 9 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB521]

SPEAKER FLOOD: LB521 passes. Mr. Clerk, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB669, LB642, LB590, LB590A, LB521. Mr. Clerk, we now proceed to the next item on the agenda, Select File, LB704. [LB521 LB669 LB642 LB590 LB590A LB704]

CLERK: Mr. President, with respect to LB704, Senator Larson, I have Enrollment and Review amendments first of all. (ER141, Legislative Journal page 1719.) [LB704]

SPEAKER FLOOD: Senator Larson, you're recognized for a motion. [LB704]

SENATOR LARSON: Mr. President, I move the E&R amendments to LB704 be adopted. [LB704]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB704]

CLERK: Mr. President, an announcement before, if I may: Judiciary will have an Executive Session now in Room 2022; Judiciary Committee now. Mr. President the first amendment to LB704 after Enrollment and Review, Senator Karpisek, AM1517. (Legislative Journal page 1703.) [LB704]

SPEAKER FLOOD: Senator Karpisek, you're recognized to open on AM1517. [LB704]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, AM1517 is the amendment that I brought last week and pulled off the agenda in order to work with Senator Lautenbaugh in trying to negotiate some sort of a change in the map. I hope everyone still has those maps. I don't want to recreate them at more expense. I'm sure they're not sitting here, but we can kind of remember that it did include Saline County in the map. It was a map that was more straight-line north to south in between the First and Third Congressional District, and it also changed Sarpy County back from the map that the committee had put in, back the other way around. I just think that this map is much cleaner, much more on a north-south boundary. I do realize that Colfax County had to be split on this map in order to get a 0 percent deviation and I know that did cause some distress. As we've worked on this over the weekend, I've come to figure out there's no way to get a map without splitting a county down to 0 percent deviation. I do have a couple other maps that I have drawn, one that is lower in deviation than the current map that has been presented so far in LB704 and another map that does change the districts a little bit to get a 0 percent deviation. The one that I will be bringing

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has a .02 percent deviation and we will have that one in fairly soon. I have said all along that my point on this is to put Saline County back in the First Congressional District where I feel that it should have been ten years ago but got flopped out for a different reason that I don't want to go into right now, but I feel it was not done right. I feel it did a great injustice to Saline County. That's why I'm bringing this map and I am hoping to negotiate something along the way. If we cannot negotiate anything, I will take this to cloture. If that happens, I don't know where we get. Do we end up in a special session? Do we...if there's not the cloture votes, what happens? I don't know. What I would like is a little bit of cooperation. Senator Lautenbaugh has been very good on working with me and we're finding it very hard to come to any sort of a compromise. I do want to say up-front that he has been a man of his word. He sat down with me. We talked about it, we looked at it, and I will let him talk about where we're at on it. But I do want to say that he has tried very hard and I appreciate his effort. I have not talked to a lot of the other committee members because, as I understand it, Senator Lautenbaugh drew many of the maps or worked on it because in his previous life that is kind of what he did. Again, I'm not happy about doing this but I don't think that the map that we have proposed in LB704 is fair, just, and what we do in this body is to try to negotiate and compromise. If we cannot do that then we will be here longer and we will take it to cloture. Again, I do not like doing that. I don't feel there's a need to do that. I have a couple maps coming that change the boundaries. In my opinion, this map gets us to where we want to be. It's as clean as we can get. It's a 0 percent deviation. Yes, it does split Colfax County, which I don't like, but as I said before, to get 0 percent deviation some county is going to have to be split. Now when this map was brought last week, some of the members complained about the split in Colfax County. Well, if we're going to have 0 percent deviation, there's going to be split in a county. So I'm very curious to hear what some of those same members had to say about that. And I'm sure that we will have plenty of time to ask them questions and find out how they feel, and somehow over the weekend, if splitting a county now is okay with them, if it comes out a different way. Again, I have a couple more amendments coming. Hopefully, one of them will be more to the body's liking. If not, we will discuss them at length. Thank you, Mr. President. [LB704]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Karpisek. Senator Lautenbaugh, you are recognized. [LB704]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body, and thank you, Senator Karpisek. I appreciate your comments. I appreciated working with you on this. We did not get where we needed to be and I can't support the pending amendment. I will just say briefly at this time, I have a substitute amendment that is coming, probably two or three amendments down I should say, that takes the population on the committee amendment map that was advanced, the variance between populations down to one person, so those of you who are concerned about the

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population variances, that should be addressed. It cleans up the borderline in Sarpy County to the extent that everything that is the city of Bellevue is...would be in the eastern part of Sarpy County, would be in the First Congressional District and everything that is Papillion or La Vista or even arguably Papillion and La Vista, though not quite Papillion and La Vista, would be in the Second Congressional District. I think that addresses the two main concerns that were voiced last week and I do look forward to your support of that map when it comes. And I will not belabor the point on this map currently, but I do not rise in support of this amendment. And I will yield the rest of my time back to Senator Karpisek, if he would have it. [LB704]

SENATOR GLOOR: Senator Karpisek, 3 minutes 36 seconds. [LB704]

SENATOR KARPISEK: Thank you, Mr. President, and thank you, Senator Lautenbaugh. And again, I do want to reiterate how Senator Lautenbaugh has tried to work with me on this and I do appreciate it. That's the way that we should do things here. I don't know that it will stay near as cordial as it is right now and I'm sure it will not. But I do want to hear the reasoning behind why we can't move some of these counties, why we want to move ten counties rather than six, why one county has to be one way or another. I've been straight up honest to say that I want my county, Saline County, moved back into the First District. I would like to hear county by county why one or another can't move. I'm being up-front saying I want my county back in the First District. Again, I do have other maps that we're having the amendments drawn up right now because we worked over the weekend. I want to thank my staff for working very hard over the weekend, coming up with some compromises that have not been accepted. I guess that we will just talk about it. I wish we didn't have to. I wish we could move this, get a compromise and move on, because this could turn into a situation that we don't want to be in because this is not the type of body we have. We don't get into these sort of issues very often and when we do it's no fun. I don't like it, but sometimes they have to be done. I feel I'm standing up for a majority of my population in my county that I represent and I know that everyone in here does the same and I hope that they appreciate that fact and understand. I know cloture votes are already being asked for. We'll see. I plan to move through some of these. I don't plan to stay on this map all day until clotures, because if we cannot agree on this map then we need to move on. However, I know that I'll probably have some people fall off from this map that might gain some traction with another map, and I don't like that either. But when we can't negotiate, when we can't move this county or that county, when we can't split a county, when we can't hardly move the map... [LB704]

SENATOR GLOOR: One minute. [LB704]

SENATOR KARPISEK: ...in any direction, that's where we're at. We'll keep talking about it. We'll try to find some compromise. We'll see where the cloture votes are. I hope that if people have given a cloture vote already just to turn around and then vote, don't like

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the way the vote goes, I hope they think about that. Once you get past cloture, I think we all know where this is going to go. So I hope you think about when you give your cloture vote. I don't think that Senator Lautenbaugh will come ask for mine. He can and we'll probably laugh about that a little bit. But again, I do intend to take this all the way if we don't get anywhere, so I hope that if anyone doesn't want to do that, you can come talk to me. We can try to work it out. I am not set on any exact boundaries here. Again, my whole idea here is to try to get Saline County back in the First. I... [LB704]

SENATOR GLOOR: Time, Senator. [LB704]

SENATOR KARPISEK: Thank you, Mr. President. [LB704]

SENATOR GLOOR: But, Senator Karpisek, you are the next speaker in the queue, continue if you wish. [LB704]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I do wish that Sarpy County would stay the way it is right now, the way that it was drawn up ten years ago or close to that line. I realize it can't stay exactly the way it is. But in my opinion, it looks like it is flipped. And I know I've asked Senator Lautenbaugh some questions about that and I may ask him a few, I'll ask some of the other members of the committee some questions about that. We've heard about cores of districts. I still don't understand the cores of districts and I'll ask a little bit more on that. Again, I wasn't involved in the redistricting process. I don't like to come in at the eleventh hour and try to throw a bomb into it, but I don't like how the maps came out. I think if we look at a straight-line map, in the map that I have produced right now, it looks cleaner, we don't cut anyone out, we actually only move six counties. We put Platte County back to the Third, where it is now; Polk County where it is now. I don't know why we would move ten counties rather than six. We all knew coming into this the counties were going to have to move because of the population moving east. We realize that. But why do we have to be changing Sarpy from one side to the other? Why do we have to bring Platte and Polk into the First only to jettison eight others? To me, that just doesn't make sense. I know Senator Mello has more numbers on how many people will be in a new district next year if we go with the proposed map in LB704. We all know that the maps have to change. In ten years I'm afraid they're going to look even much more different than these do because of the shifting population. Hopefully over the next ten years something will change and people will, number one, quit moving east; number two, start moving west. There would be nothing that I would like better. I know that Senator Harms has worked very hard on those sort of issues and I think all of the members in the body have worked very hard, and I commend the Omaha and Lincoln senators for trying to help the population out in the western part of the state. Many issues in here do get to be east versus west, urban/rural. I don't like that but I think this year in this body we have done a very good job of trying to keep that rift out of many of our bills, and I appreciate that. We also, as a Unicameral, keep the partisanship at a very minimum. This may not

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be one of those times. Again, when we flip Sarpy County, I see no good reason to do so. Again last week we talked about that the map in LB704 keeps every county whole but it is not 0 percent deviation. Is there a court challenge there? I don't know. I've heard that a lot. That is not my push in this. I don't want to see a court challenge. I don't want to hear that we're going to have to do that. But if that happens, it happens. That's out of my control. I am presenting a map with 0 percent deviation. I have another map with 0 percent deviation, and I have yet another map that has less of a deviation than the map in LB704. So... [LB704]

SENATOR GLOOR: One minute. [LB704]

SENATOR KARPISEK: ...if members want a 0 percent deviation, and I think maybe Senator Lautenbaugh is bringing an amendment which does so, I also am bringing two maps with 0 percent deviation. Or do members want one that doesn't split a county, as I heard last week? Again, going to be very interesting to hear how opinions changed over the weekend. Thank you, Mr. President. [LB704]

SENATOR GLOOR: Thank you, Senator Karpisek. (Visitors introduced.) Senators wishing to be heard: Wallman, Mello, Ken Haar, Hadley, Karpisek. Senator Wallman, you are recognized. [LB704]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Senator Karpisek, my good friend, Senator Karpisek, this looks like a "CS" amendment, called common sense. The line is drawn pretty well straight up and down. And what is a core district? I'd like to know. On this other map, what was my core? Is it Grand Island or where? And we're pretty close to Lincoln here and Lincoln is our core and it always has been and it always will be. So why draw it this other way? I don't know. And I know there's reasons, trying to keep districts and county lines, but in a sparsely populated area, county lines probably don't make that much difference. But this map, I like it. I'll see what else comes down the pike, but anything you like is worth fighting for. And I met with Congressman Fortenberry's staff this morning. We joked around this. But do I want to stay in District 1? I'm in District 1 right now, so why shouldn't I stay there? Why should we have to go way to the Missouri River? So these are questions. I think about mileage issues just alone, how are you going to cover, how is your Representative going to cover that much area more than so now? So I really, really appreciate this amendment. I think it's a good amendment. I think it's a "CS" amendment, called common sense, and that's what we're supposed to do, try to save money down the line. And so others behind us will have to change it again maybe ten years from now, somebody, but not us. So I'd urge your support of this and I'd yield the rest of my time to Senator Karpisek. [LB704]

SENATOR GLOOR: Senator Karpisek, 2 minutes 56 seconds. [LB704]

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SENATOR KARPISEK: Thank you, Mr. President. And thank you, Senator Wallman. I've gotten a little flak back here for you saying I had any common sense, but I'll take the compliment. Thank you, Senator. I do think that the map that goes more straight up and down just makes more sense. It doesn't look like anything is being carved out on purpose for no reason. I wish that I could have gotten Jefferson County to come straight down. We looked at trying to do that, but then we really couldn't do anything with the northern counties because they wanted to stay where they were. I understand that. They wanted to stay; people wanted them to stay. Okay, we'll try to work with what we have. We have tried to stay as close to what we can do by keeping people where they would like to stay. Now I realize that we've heard that, well, not everybody wants to stay there; we just heard from some people. True. That is very true. We're not going to hear from everyone. We're not going to take a poll out in the counties because no one would probably want to know where that is. I think we know where people are. I think people want to stay where they are. Why would anybody really want to switch other than, again, when I say Saline County got moved from the First to the Third ten years ago, which made, in my opinion, the map look pretty silly. And what the reasoning for that was, I don't know why it looked the way it did. I don't know exactly why the committee map in LB704 looks the way it does. But again,... [LB704]

SENATOR GLOOR: One minute. [LB704]

SENATOR KARPISEK: ...we'll have time to find out and ask some questions. We'll hear about cores. And when someone can really define a core and make me understand what it is or one of my friends understand what a core is, then maybe I'll be satisfied. But right now it sounds like... [LB704]

SENATOR GLOOR: Forty seconds. [LB704]

SENATOR KARPISEK: Thank you, Mr. President. [LB704]

SENATOR GLOOR: It was 40 seconds, Senator Karpisek. Senator Karpisek waives. Senator Mello, you are recognized. [LB704]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Good morning, colleagues. Here we are on Select File and LB704, and I found today's debate starting off with an interesting note. My colleague and fellow Redistricting Committee member, Senator Lautenbaugh, apparently has an amendment in the queue which adamantly admits that those of us who argued and debated against LB704 last week were correct. But there's an amendment coming up put forward by Senator Lautenbaugh that moves the deviation to one, which was a lengthy debate that we had last week in regards to what some of us felt were an unconstitutional map. Also contained in the amendment is the desire to try to not split municipalities within Sarpy County when the obvious flip-flop from one side to the other moved Congressional

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districts. Another point of contention that was raised last week of why is it that if the rationale of splitting Sarpy County the way that Senator Lautenbaugh and the members who supported that map, and the committee did, why did they split the city of Bellevue? Why did they split the city of Papillion? The amendment that they're bringing forward today looks to rectify that which, in my mind, sets the stage for what I feel is the tale of two maps. One map was discussed January 2, prior to the Redistricting Committee even being established. The Lincoln Journal Star quotes our Governor saying, "I believe it's entirely possible and highly likely that the Third Congressional District will go border to border." That was January 2, colleagues. January 17 it alluded as well, Heineman has said Adrian Smith's Third District will stretch from border to border when redistricting is done. Colleagues, I support Senator Karpisek's amendments that he is putting forward, while I do not agree with all of them, because there's an underlying point that's been brought forward--trying to reduce the number of Nebraskans that are displaced through the uncertain and unexplainable LB704. Beyond quotes from the Governor that was given early in January before the Redistricting Committee was even established that laid the foundation for what is LB704, there has been very little rationale given beyond saying a core is a core; "is" is what "is" is; and my definition is not what his definition may be. The current map we have, LB704, displaces 226,000 Nebraskans. Senator Karpisek's staff is running the numbers of what his proposal will do in regards to the number of displaced Nebraskans. But I want to bring you back to the tale of two maps because an amendment that I have filed which I mentioned on General File will show whether or not we believe in the nonpartisan nature of this Legislature. The nonpartisan Legislative Research Office drew a base map, a map that was not influenced by the Governor, was not influenced by any elected official, was not influenced by any senator in this body. It's a map that displaces roughly 134,000 Nebraskans. It takes a little bit of what Senator Lautenbaugh's map is and takes a little of what my map ultimately is. In theory, it's a grand compromise that was established by a nonpartisan body before we even started to debate LB704. Now I fully expect that we'll have a fruitful debate on that amendment as well, but I want to steer first on Senator Karpisek's amendment. I do support it in the sense that it's moving us in the right direction. I think Senator Karpisek has admitted last week that none of the amendments that we've seen so far are perfect and I don't know if you can ever draw a, quote unquote, perfect map. I would wholeheartedly agree with that assessment. But I know from looking at Senator Karpisek's map on AM1517 that it displaces significantly... [LB704]

SENATOR GLOOR: One minute. [LB704]

SENATOR MELLO: ...fewer Nebraskans than LB704. It moves one county from the Third District to the First, instead of LB704's two counties that move from the Third to the First. It also keeps whole most of what the existing Second Congressional District is. Colleagues, we had a grand debate last week that unfortunately ended with the thought that we were going to look for a compromise. Senator Karpisek withdraw his

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amendment, I withdrew an amendment because we believed that we could find a compromise with what currently lies in LB704, understanding that there is plenty of faults in the current legislation. Unfortunately, it seems the only compromise that has been made is Senator Lautenbaugh willing to acknowledge that a few of us were correct in regards to the unconstitutionality of LB704 right now, thus, the changes that need to be made of not splitting municipalities and making it a one person deviation. My hope is through the four hours at least debate we'll have this morning we can look for more compromise, whether it's on... [LB704]

SENATOR GLOOR: Time, Senator. [LB704]

SENATOR MELLO: ...AM1517 or my amendment. Thank you, Mr. President. [LB704]

SENATOR GLOOR: Thank you, Senator Mello. (Visitors introduced.) Continuing with floor debate, Chair recognizes Senator Ken Haar. [LB704]

SENATOR HAAR: Mr. President, members of the body, I rise in support of Senator Karpisek's amendment, AM1517. Just going through the whole redistricting process, one of the things that I value very highly and I think citizens value is this whole issue of displacement. Nebraska is small enough so that people get to know who their elected officials are. It starts, of course, with the legislative level. Many of us have gotten to know a lot of people in our districts and developed that relationship. And I know there's going to be disruption in the patterns because of the population displacement, but I think as much as possible we have to look at keeping people in the districts that they're currently in because, again, many people, many citizens have actually gotten to know their elected officials. So with that, I'll listen carefully and probably be at the mike a few more times. I'd like to give the rest of my time to Senator Karpisek. [LB704]

SENATOR GLOOR: Senator Karpisek, 3 minutes 48 seconds. [LB704]

SENATOR KARPISEK: Thank you, Mr. President. Thank you, Senator Haar. Senator Haar is exactly right about working together in the Legislature trying to find some compromise, trying to see what we can do. I am a little bit saddened to say that people are coming and looking at maps but not a whole lot of discussion, just looking at them. I guess we're headed for the cloture vote, which again I wish that I would have just kept going on the day last week, whatever day it was. I said that day I had the high ground and I hope I wasn't given it up. I gave it up. I should not have--valuable lesson learned. There weren't the members in the body. The votes weren't there for cloture. I'm sure that I gave the other side plenty of time all weekend to rally the troops, put on some pressure. I'm not talking about Senator Lautenbaugh here, put on the pressure and make sure that we have the votes for cloture. I may not remember a lot of things but I remember things like that, and that will bite some people in the rear by the time it's over. It's really not the way we do things around here. I, in faith, stood down. And again

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Senator Lautenbaugh has worked with me, has tried, just can't get it to work out. So I again in no way want to blame him for my being a little testy on the issue. I think in all fairness, when we get down to it, we look at something and we try to compromise. I don't think that; I know that. We've seen it on CIR. We've seen it on, I don't even know how many issues in the body this year, the budget, many, many things. We knew this would be a fight coming in, everybody knew that, but you know overall it went pretty easy, a little bit of legislative redistricting out west. Again, I shouldn't probably have given up my high ground on that because I'm sure I cast a vote on that, that probably made some people not very happy and maybe will withdraw their vote for me on this. [LB704]

SENATOR GLOOR: One minute. [LB704]

SENATOR KARPISEK: I should have kept the pedal to the metal and kept going, so I'm trying to get back on the "footfeet" now and see where we get. There's still a few days left. We can still work on things. We can still do a lot. We've done a tremendous amount of work in the Legislature this year, much, much of it very good work. I don't want to see this going down at the end as a thing that wasn't such good work. Thank you, Mr. President. [LB704]

SENATOR GLOOR: Thank you, Senator Karpisek. Senator Hadley, you are recognized. [LB704]

SENATOR HADLEY: Mr. President, members of the body, I wanted to read you some headlines, "Redistricting, state budget among legislators' daunting tasks"; "Redistricting sets stage for urban-rural battle"; Census shows redistricting for Legislature"; "Saline Democrats fight redistricting decision"; "New districts pose old problems to senators"; Lawsuits (sic) ignore guidelines; Amendment would add six new (sic) state senators; "Opinion gives boost to new redistricting bill"; "Redistricting hearing draws huge crowd"; "Democrats drop redistricting lawsuit." These were all ten years ago. Those are all headlines from ten years ago. So to say that this is kind of a new fight in the Unicameral, at least looking at the headlines from ten years ago, it doesn't seem to be. Would Senator Karpisek yield to a question? [LB704]

SENATOR GLOOR: Senator Karpisek, would you yield? [LB704]

SENATOR KARPISEK: Yes, I will. [LB704]

SENATOR HADLEY: Senator Karpisek, I've heard you say you want to redo the injustice that was done ten years go for Saline County. [LB704]

SENATOR KARPISEK: Correct. [LB704]

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SENATOR HADLEY: What exactly was the injustice ten years ago? [LB704]

SENATOR KARPISEK: The injustice ten years ago was a political flip and there's nothing more, nothing less. It's a count of Ds and Rs. [LB704]

SENATOR HADLEY: You mean political flip, the Legislature moved Saline to the Third District for political reasons? [LB704]

SENATOR KARPISEK: Correct, in my opinion. [LB704]

SENATOR HADLEY: Okay. That's what some of the headlines, and it says that the argument from, I think it was, Don Eret and Jill Ingham was to that. How has the ten years of being in the Third District impacted Saline? Has it been a negative impact for the county? [LB704]

SENATOR KARPISEK: I would say that it sure hasn't done any good for voter turnout because of the votes cast in the Third District are very much Republican. There's no chance of a Republican being...or, sorry, a Democrat being elected in the Third District for a long time. [LB704]

SENATOR HADLEY: Has there been many in the Second District and First District? [LB704]

SENATOR KARPISEK: Not many but it's been closer. [LB704]

SENATOR HADLEY: Oh, okay. Okay. Thank you, Mr. President. [LB704]

SENATOR GLOOR: Thank you, Senator Hadley. Senators wishing to be recognized: Karpisek, Mello, Ken Haar, Wallman, Avery, and Nordquist. Senator Karpisek, you're recognized. [LB704]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Senator Hadley's point is very good and very well-taken; however, let's start messing around maybe with his county and see where that goes, because I think we certainly maybe could draw a map to grab him and put him in somewhere else because some of the maps look pretty goofy anyway. So maybe we could draw one that stretches straight east and west across the state. Again, my whole thought on this is why is the map drawn the way it is? I haven't heard a lot of good reasoning why. Again, I've been honest to say why I think my map is fair. Now there can be people who disagree with that, but when you look at the map and you look at how it's jogged out and cut around, what is the good reasoning of that? Again, I heard about cores. That seems to be a great way to skirt the issue. Ten years ago I was not involved, that's for sure. I wasn't involved as much as I was, but when I found out what happened I was not happy. I

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called Senator Coordsen and I let him know what I thought. Of course, Senator Coordsen told me what he thought and that was fine. I respect Senator Coordsen; one reason I wanted to run. But I don't think that it was the right thing to do, just like I don't think now it's right to take Platte County out of the Third and put it into First. What good reason is there to put Platte and Polk County into the First District? When is the last time? I don't know if we've ever found that out. When is the last time they were in the First District? Are we trying to make a circle, concentric rings from Omaha, is that what we're trying to do in this map, or are we trying to make straight lines? Doesn't seem like it wants to be straight lights. Seems like it wants to be some sort of a circle emanating from Omaha. I guess that's one way to do it. I don't think it's the right way to do it. Where's the mix? Don't we want to have a good mix in all of our districts so they're competitive, so we get voter turnout, so we have people that actually want to go to the polls, want to see their candidate succeed? Let's face it, these last elections were completely dominated by one side. I would say they will be again this next time around. But I do say, as Omaha and Lincoln grow, the voter registration in those parts of the state are changing and, by God, some people don't want to see that and so we'll do anything we can to try to fix that. We had a bill in the Government Committee for a winner take all; didn't get out of committee. I've been called all sorts of names about it and I don't care which party I am, I think that's a horrible idea. We're only one of two states in the country that do it that way. We're the only one with a Unicameral also. There's a lot of things that we're the only one of. I think that's the way everybody should do it but partisanship plays too much into all these other states. So is this a way to get around winner take all? I don't know. Something seems a little different to me about these maps and I'd still like to find out just... [LB704]

SENATOR GLOOR: One minute, Senator. [LB704]

SENATOR KARPISEK: Excuse me? [LB704]

SENATOR GLOOR: One minute. [LB704]

SENATOR KARPISEK: Thank you, Mr. President. I'd still like to know what it is. And again, I absolutely am not pointing a figure at Senator Lautenbaugh. There is a whole committee here and a whole Legislature and a whole bunch of people who have their fingers in the pie. So what is it? It's not good policy to try to finagle the maps the way we are trying. Thank you, Mr. President. [LB704]

SENATOR GLOOR: Thank you, Senator Karpisek. Chair recognizes Senator Mello. [LB704]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature, a little update in regards to the displacement issue. I know that, unfortunately, the proponents of LB704 spoke very little about the 226,000 Nebraskans who are being displaced

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under the current proposal and my staff and Senator Karpisek's staff, in working with the Legislative Research Office, was running some of our amendments to find out the total displacement. And Senator Karpisek's amendment, AM1517, displaces roughly, I believe it was, 112,000; 112,000 Nebraskans are displaced under AM1517, which is half of the current LB704. So last week we discussed a proposal that displaced 77,000, right now we're discussing a proposal that displaces 112,000, and we're still...there's been no argument, no premise, no logic given of why we need to displace 226,000 Nebraskans. Colleagues, that is a very, I think, significant sticking point in regards to how do you devise and how do you create new political boundaries when you have guidelines that specifically say you're supposed to follow the existing district boundaries when all possible? I know that there is a general disagreement between Senator Lautenbaugh, myself, and a host of other people in regards to what the definition of "is" is and what the definition of "core" is. Following prior district boundaries, which you saw in an amendment last week as well as what you see mostly in Senator Karpisek's amendment, with one small change of moving Saline County back into the First Congressional District, our district boundaries that follow the core of the prior districts. And that is why you see the significantly lower displacement of Nebraskans moving from different districts. If that is something that we are concerned about, which LR102 says we should be, then we should be embracing AM1517. I know Senator Karpisek has a few other amendments. As I mentioned before, I have an amendment that adopts the nonpartisan Legislative Research Office base plan. That displaces, unfortunately, 145,000. My math was a little off. My staff double-checked it. So it displaces 145,000 Nebraskans instead of the 226,000 currently in LB704. Nonetheless though, it still follows mostly the existing prior district boundaries. Colleagues, the underlying issue that you've heard Senator Karpisek talk about is his desire to right a wrong that was done ten years ago of moving a county from one Congressional district to another. The underlying issue in front of us though is, what is the logic, rationale, and reason behind displacing over 225,000 Nebraskans, beyond the argument that, well, we did it because we needed to make the numbers work? There's a host of other proposals that have been put forward that shows you can make the numbers work by displacing significantly less Nebraskans, almost by a third, right now more than a half. It's one thing to make an argument based on fact. It's another to make an argument based on opinion. LB704 is purely an opinion-based argument, colleagues. The facts are very poignant of what Senator Karpisek's doing with his map that displaces 112,000 Nebraskans. My amendment last week displaced 77,000. Even the nonpartisan Legislative Research Office map, one that was not discussed publicly by the Governor back on January 2, displaces 145,000. [LB704 LR102]

SENATOR GLOOR: One minute. [LB704]

SENATOR MELLO: Colleagues, we can debate this issue, I imagine for days if so be, because all of us have an opinion. All of us have a perspective primarily in regards to what our own definitions I guess would be of LR102, what we all feel is maybe more

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stronger guidelines or heavier guidelines in LR102 or those that we debated last week in regards to the Fourteenth Amendment, if that supersedes LR102, if there are traditional redistricting principles that supersede other aspects of traditional redistricting principles. But the facts are the facts, and the numbers can't lie. We have a map in front of us that displaces 12 percent of Nebraskans. We have an amendment that's coming forward later on in the queue that tries to correct all the wrongs that we so aptly pointed out last week. But yet the arguments against us last week have now been co-opted by those who are proposing the amendment. [LB704 LR102]

SENATOR GLOOR: Time, Senator. [LB704]

SENATOR MELLO: Thank you, Mr. President. [LB704]

SENATOR GLOOR: Thank you, Senator Mello. (Visitors introduced.) Chair now recognizes Senator Ken Haar. [LB704]

SENATOR HAAR: Mr. President, members of the body, when I campaigned for this current legislative stint I'm in, going door to door was...people found it unusual to have elected officials coming to their door to talk to them. And so in this whole process, again, Nebraska is a small state, when people do get to know their elected officials, and that's very possible in the state of Nebraska, you cannot only know your county board members and if you live in the city of Lincoln, for example, you can actually get to know the city council members, who your state legislators are. And over a period of time you can actually, in the state of Nebraska, get to know who your Congressional Representatives and U.S. Senators are because in Nebraska we take a lot of time, as elected officials, visiting with our constituents. I think that's so important. And every time you separate a constituent from somebody they've gotten to know who's an elected official, I think you're breaking part of the political process. Again, I'm not sure which of all of the maps that we'll eventually see will have the smallest displacement, but for me that's such a crucial issue. Because for those folks who take the time to get to know their elected officials to all of a sudden be shifted to a different one for no other reason than, you know, the party and power can do it, and that's what's happening right now. The reason all this happening and all these shifts are taking place is because they can do it. I don't feel that's a really good reason and I think the voters, if you really consider who the voters are and the relationships they develop with elected officials, I think it's important to displace as few people as possible from their current elected officials. It also gives us elected officials more impetus to get out there and actually talk to constituents on a personal basis. With that, I would give the rest of my time to Senator Karpisek, if he'd like it. [LB704]

SENATOR GLOOR: Thank you, Senator Haar. Senator Karpisek, 2 minutes 33 seconds. [LB704]

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SENATOR KARPISEK: Thank you, Mr. President, members of the body. We may be winding down on this amendment, I don't know, we'll see, and move on, although I do think this is the best amendment that I have, although I have others. But I do want to go back a little bit to my move last week of withdrawing my amendments in good faith. Again, I don't want to berate this, but I'm not blaming Senator Lautenbaugh. What we do here is try to work together. I will never again move a bill from General to Select File and say we'll work on it in between if I have anything involved with it, no way, no how. I don't think that's the way we work in here. We never do. And if we have to be there, and I will say that Senator Lautenbaugh told me right away, well, I'll do my best, I don't know, we may end up there, and I said, well, I agree, but I sure hope not. But it seems that we are. I'll talk more about that as we go along because we could look at many bills that have went along this year and we moved with a promise of negotiation and it happened. [LB704]

SENATOR GLOOR: One minute. [LB704]

SENATOR KARPISEK: I don't know how else to say that but I don't think it's right. I don't think it's fair. And I should not have given up my high ground, and I don't know where we'd be right now. But we may be staring at a cloture vote, we're going to anyway. I just want everyone to think about that, how many bills you've moved on from Select...or General to Select and people haven't stood in your way and worked with you; maybe no longer. Thank you, Mr. President. [LB704]

SENATOR GLOOR: Thank you, Senator Karpisek. (Visitors introduced.) Senators in the queue: Wallman, Avery, Nordquist, Conrad, Karpisek, Mello, and Nelson. Senator Wallman, you are recognized. [LB704]

SENATOR WALLMAN: Thank you, Mr. President. Members of the body, I truly appreciate what I just heard. Working on Select File can be good, can be bad. It's done. But I'd like to ask if Senator Lautenbaugh would yield to a question. [LB704]

SENATOR GLOOR: Senator, would you recognize...would you yield? [LB704]

SENATOR LAUTENBAUGH: Yes, I will. [LB704]

SENATOR WALLMAN: Thank you, Senator. What would be my core so-called headquarters district now in this new map that your committee proposed? [LB704]

SENATOR LAUTENBAUGH: What would be yours? [LB704]

SENATOR WALLMAN: Core city, yes. [LB704]

SENATOR LAUTENBAUGH: I don't know that you would have a particular one, Senator

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Wallman. I'm not sure how to answer that. [LB704]

SENATOR WALLMAN: Well, thank you. Now it's Lincoln and the voters knows that and we've always been in First District, and it used to be also Saline County. And does that bother me, why they shift people around, that many people, thousands of people who are used to voting in that particular district? Like my district happens to be Congressman Fortenberry so I know his staff, I know him personally, and so...and I also know Senator Smith, I mean Congressman Smith. I have no trouble with that. But I just have trouble with keeping things together the way this map is here. And I really do like Senator Karpisek's amendment and that's probably selfish on my part, but you're going to be really, really hard. His deviations are better than this base plan, the way it looks. And the base plan out of the Capitol, I didn't get to see that, what that was. But it looks to me like going down this redistricting path, it has to be done outside this building. We'll have to hire like Iowa does and do away with this gerrymandering stuff, moving LD districts here and there and everywhere. And we're usually proud of fixing our own problems, but can we fix them? When a certain party is in power for years and years and years, and they get what they want, then pretty quick sometimes common sense goes out the window. Let's think, fellows. Let's think, fellow senators. Just think how many people you're moving and the miles between one end of the district to the other. If that makes sense, then I guess my common sense is gone. Thank you, Mr. President. [LB704]

SENATOR GLOOR: Thank you, Senator Wallman. Senator Avery, you're recognized. [LB704]

SENATOR AVERY: Thank you, Mr. President. When we discussed LB704 on General File last week, I raised about four points that I believe make LB704 judicable and I believe it will be challenged in court if we proceed down the path it seems that we plan to go. I want to tell you that those four points that I raised are still relevant to LB704, but when I look at the alternative proposed by Senator Karpisek, I don't see those problems. Let me explain. If you go back to our resolution, LR102, these are the principles that we adopted on April 8 that set the path for this Legislature on how we would go about redistricting. These are the principles that we said we would follow. We didn't do that. The principles were to guide our behavior and determine the manner in which we produced the redistricting plans. The first problem with LB704 that is corrected by Senator Karpisek is the deviation problem. Under LB704, the deviations are too large and we say very clearly in our resolution that, "Any deviation from absolute equality of population must be necessary to the achievement of a 'legitimate state objective,'" and we discussed that on General File. I did not hear a satisfactory definition of "legitimate state objective," and I know that there was a great deal of effort made to try to come up with one. These deviations don't have to be there. There are 273 too many people in CD3, there are 121 too few in CD2, and 151 too few in CD1. We don't have to do that. Believe me, if we...the most sacred principle of redistricting is one person, one vote, and

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it is possible, if you take an objective approach to the process, it is possible to get to absolute zero, equality, which is what the constitution requires. We don't do that with LB704 but AM1517 does. Second point that I argued on General File that LB704 was erring in and that was it did not preserve the core of the districts. By flipping Offutt Air Force Base with west Sarpy County, we move 12 percent of the state population from CD2 to CD1, 12 percent. This violates another principle contained in LR102. Third point: We have in LR102 provisions 5, 6, and 7 that make it clear that we are to draw the district lines without regard to any political party or any group or person. And, in fact, we specifically say in item 6 that "In drawing district boundaries, no consideration shall be given to the political affiliations of registered voters." Yet, front-page news story... [LB704 LR102]

SENATOR GLOOR: One minute. [LB704]

SENATOR AVERY: ...in the Journal Star that was published on Friday, May 6, showed a map where in fact there is plenty of evidence that by flipping Offutt with west Sarpy County you dilute the Democratic vote in one district and you enhance the Republican vote in another. Was that happenstance? I think there is some evidence that that is not the case. The fourth point, and this is serious because I believe this is the most judicable point, and that is the dilution of the voting strength of any minority population. It is not legal, folks. It is not legal to draw a map that dilutes the voting strength of any minority population. And it is on page 2, number 7 of our rules and it reads, "District boundaries..." [LB704]

SENATOR GLOOR: Time, Senator. Time, Senator. [LB704]

SENATOR AVERY: Thank you, Mr. President. [LB704]

SENATOR GLOOR: Thank you, Senator Avery. Senator Nordquist, you are recognized. [LB704]

SENATOR NORDQUIST: Thank you, Mr. President and members. I rise in support, at this point, of the Karpisek amendment. I think it puts us on the right path forward to address a number of concerns that were raised on General File debate of LB704, the first of which is the issue of the deviation. I think the case that we presented on General File was pretty clear and the legal precedent that the Supreme Court has established is very clear. Reading from the National Conference of State Legislatures' book on redistricting, the equal population standard for Congressional districts, first enunciated by the Supreme Court in Wesberry v. Sanders, arises from Article I, Section 2 of the constitution saying Representatives shall be apportioned among several states according to their respective numbers, and that this standard has been strictly interpreted by the court in a number of cases: Kirkpatrick v. Preisler, White v. Weiser, and Karcher v. Daggett. It's interesting that this body is arguing against or voted against

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the strict interpretation of a section of the constitution. And going through some of those cases this guideline for state legislators doing redistricting says that in the Kirkpatrick opinion, which is from 1969, specifically rejected the suggestion that there is a point at which population differences among districts become de minimis, and held that insofar as a state fails to achieve mathematical equality among districts it must either show that the variances are unavoidable--right now we're looking at Senator Karpisek's amendment which avoids the variance or a larger deviation than one person, we had Senator Mello's on General File avoided that, and we have a Congressional base map done by our Legislative Research Office, all of which would allow us to avoid that deviation, so that does not hold--or specifically justifies the variance. The opinion, however, went on to reject several purported justifications at that time by the state of Missouri and those were thrown out, and including one of those was the desire to avoid fragmenting of either political subdivisions or areas with distinct and social interests. So the division of counties doesn't hold, trying to maintain areas doesn't hold as a specific reason to justify the deviation. So certainly this is an issue that we have to address. I heard Senator Lautenbaugh say that he has come to that position himself and will be offering an amendment to address that, but my question is why did we have a vote on party lines out of the Redistricting Committee which went away from a zero deviation that was originally in LB704 and the vote on the floor on General File took us away from that to a deviation that certainly is problematic. I read last time about a 2002 Pennsylvania case where the court threw out a vote, I believe it was a 19-person, yes, 19-person deviation, because they could not justify the reason for that. Certainly the issue of cores and displacing populations has been discussed. People have subjective definitions of what cores are, but until we can come up with some other objective definition that we can agree on, the only thing objective we have is to look at the numbers, and the numbers say clearly that LB704, as it sits right now, displaces more people than any of the maps that we have before us. So if that's a standard we truly want to uphold or we want to... [LB704]

SENATOR GLOOR: One minute. [LB704]

SENATOR NORDQUIST: ...meet that standard of displacing as few people or cores as possible, then I think we need to look at an alternative to LB704. Certainly no one has provided a clear, objective measure. Last, on General File, we heard integral and central. Well, those aren't quite as objective and clear as it needs to be. What's your definition of integral and central? Certainly, also looking at the map before us, Senator Hadley had a concern on General File about the distance that the Third Congressional District member would have to travel. Now, granted, you still have a significant part of the state, but Senator Karpisek's amendment here, AM1517, does a better job of kind of drawing a straight line, certainly it goes in and out, but it certainly cuts off a couple corners of the state so that the distance traveled by the Third District member of Congress is significantly reduced. [LB704]

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SENATOR GLOOR: Time, Senator. [LB704]

SENATOR NORDQUIST: Thank you. [LB704]

SENATOR GLOOR: Senator Conrad, you're recognized. [LB704]

SENATOR CONRAD: Thank you, Mr. President. I rise in support of AM1517 and would be...I know Senator Avery was going through a variety of different legal and policy points in relation to this specific issue. I was going to yield him some time so that he could finish those thoughts. But if Senator Nordquist would like to continue his comments, I'd be happy to so yield. [LB704]

SENATOR GLOOR: Senator Nordquist, 4 minutes 35 seconds. [LB704]

SENATOR NORDQUIST: Thank you, Mr. President. Just to continue on the point I was making. Certainly, we adjust the deviation. I think now that there is a consensus in the body that a deviation needs to be done, at least one of the proponents of LB704 believes that the deviation needs to be significantly reduced and may offer a solution to that problem. Certainly, the issue of core districts, it's a standard we set out in LR102 that we were going to try to maintain the cores of districts. We don't have any way to analyze that or to come up with a way to measure that outside of the number of people displaced. Outside of that we're just kind of looking at semantics and throwing words around that none of us certainly can agree on, on what the definition of those is in an objective manner. So the one objective measurement we have is that LB704 as is does not do as good a job as Senator Karpisek's amendment, the amendment offered by Senator Mello or the core map done by the nonpartisan Legislative Research Office. And then the third concern, another concern as I was saying about Senator Hadley and the travel that the Third Congressional District member has to do. Senator Karpisek's amendment does a great job of that. But I also want to address the issue Senator Karpisek brought up. Certainly meant many of us invested a lot of time and participated a lot in the discussion on General File. And, you know, it kind of goes to the saying, you know, fool me once shame on you, fool me twice shame on me or as our former President said, fool me once shame on you, you're just not going to fool me again. But that's kind of what happened on General File. There was a commitment, there was an offer to work on this, to compromise, that's what we do in this body. Certainly, I know we've had a number of big issues before us this year and that's been the path we've taken. But unfortunately, we've diverted from that path, and that will raise a lot of questions in future when we get asked, well, give us a little support on General File and we'll work through these issues. Well, that has not happened in the interim. And, I think, that's unfortunate for the future of this body if we can't come together and trust each other to work in the interim to come up with a solution or a compromise. I think we can do better than that. We're better than a party line vote out of committee and better than party line votes here on the floor. If Senator Karpisek would like the remaining amount

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of my time...or, actually, it was from Senator Conrad. So I don't think I can yield, but...
[LB704 LR102]

SENATOR GLOOR: Senator Nordquist, you cannot yield yielded time. [LB704]

SENATOR NORDQUIST: Can I yield back to Senator Conrad? [LB704]

SENATOR GLOOR: Yes, you may. Senator Conrad, 1 minute 22 seconds. [LB704]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Nordquist, for the time and the lesson in parliamentary procedure. That was instructive I know for me and probably for others. Thank you, Senator Nordquist, for your comments. And I'm glad that you had a chance to conclude those. I think one thing that may be missing from this debate thus far is the hope that members will go back and will carefully consult LR102, which is indeed one of our primary authorities in moving through the redistricting process. We've talked about some of the... [LB704 LR102]

SENATOR GLOOR: Forty-five seconds. [LB704]

SENATOR CONRAD: I'm sorry? [LB704]

SENATOR GLOOR: Forty-five seconds. [LB704]

SENATOR CONRAD: Okay. Thank you, Mr. President. We've talked about some of the legal parameters surrounding Supreme Court case law. We've talked about the restrictions of the Nebraska Constitution when it comes to legislative redistricting and Supreme Court redistricting. But when it comes to congressional redistricting there is a variety of separate and distinct and important parameters in place that we need to be considering in LR102. And I know Senator Mello and others are going to have a chance to specifically address those in a bit. But in preparation for that discussion, members may want to grab LR102 and specifically review the section on congressional redistricting and... [LB704 LR102]

SENATOR GLOOR: Time, Senator. [LB704]

SENATOR CONRAD: Thank you, Mr. President. [LB704]

SENATOR GLOOR: Thank you, Senator Conrad. Chair recognizes Senator Nelson.
[LB704]

SENATOR NELSON: Mr. President, I call the question. [LB704]

SENATOR GLOOR: Question has been called. Do I see five hands? I do. The question

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is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Senator Nelson, for what purpose do you rise? [LB704]

SENATOR NELSON: Ask for a call of the house with a roll call vote. [LB704]

SENATOR GLOOR: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Senator Karpisek, for what purpose do you rise? [LB704]

SENATOR KARPISEK: Thank you, Mr. President. I'd like to contend that there has not been full and fair debate on this issue. [LB704]

SENATOR GLOOR: Senator Karpisek, we will finish the call of the house vote. And then I would ask you to come forward. All in favor vote aye; all opposed vote nay. We are in vote on call of the house. Have all voted who care to? Record, Mr. Clerk. [LB704]

ASSISTANT CLERK: 33 ayes, 0 nays to go under call, Mr. President. [LB704]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Wallman, Council, Ashford, Campbell, Loudon, Conrad, Mello, please record your presence. Senators Burke Harr and Mello, please return to the Chamber and record your presence. [LB704]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Senator Karpisek, as you're aware, your point of order regarding the allowance of a vote to call the question was not made in a timely manner. Therefore, it will not be considered. Members, the question before the body is, shall the debate cease on AM1517? Mr. Clerk, a roll call vote in regular order has been requested. Please read the roll. [LB704]

CLERK: (Roll call vote taken, Legislative Journal page 1742.) 32 ayes, 15 nays to cease debate. [LB704]

SPEAKER FLOOD: Debate does cease. I lift the call. Senator Karpisek, you're recognized to close on AM1517. [LB704]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I apologize for the breach in protocol. However, if I would have known that the question was coming, which is usually the way we do things in here, I could have done something different. But speaking (laugh) on AM1517, I would say again there is no deviation in my

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amendment. It draws a north and south line, boundary between Districts 1 and 3. I feel that it is the most fair map that we've seen so far. We've heard about not splitting counties. That's fine, I've got another map coming on that. We're going to have to see a county split one way or another here if we're going to get to zero deviation. Once again, I'll be very interested to hear some of the senators who spoke last week about that problem. I gave up the high ground, folks, last week to try to work on an amendment, to try to work on a compromise. Haven't gotten it, so we're going to keep working on it and hopefully we'll get it. I'm in good faith trying to do this. I am trying to tell you what I want to do. I want to move Saline County back into the First District where it should have never been moved ten years ago. This map also keeps Platte County and Polk County where they are now. This map moves six counties compared to LB704 that moves ten and a half. Remember that the map ten years ago split a county. That's the way it went then. Everybody seemed okay with that. I don't like that. And again, I've got a map coming that doesn't split a county and it has less of a deviation than LB704. If there was any doubt in my mind about not taking this to cloture, if I don't get a compromise, it is gone, after that last escapade completely gone. I realize how this vote is going to go. I need to stand up and try to fight for my county as any one of you in here would do. I would appreciate your green vote on AM1517. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Karpisek. Members, you've heard the closing to AM1517. The question before the body is, shall AM1517 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. Senator Karpisek, for what purpose do you rise? [LB704]

SENATOR KARPISEK: I'd like a call of the house, Mr. President, and a roll call vote in reverse order. [LB704]

SPEAKER FLOOD: Members, the question before the body is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB704]

CLERK: 41 ayes, 0 nays, Mr. President, to place the house under call. [LB704]

SPEAKER FLOOD: The house is under call. All unauthorized personnel please leave the floor. Members, please return to your seats and check in. The house is under call. Senators Wallman, Ashford, Lautenbaugh, please check in. Senator Karpisek, all members are present or otherwise accounted for. Is it my understanding you wanted a roll call vote in regular order on the amendment? [LB704]

SENATOR KARPISEK: Reverse order, please, Mr. President. [LB704]

SPEAKER FLOOD: Reverse order, thank you, Senator Karpisek. Mr. Clerk, members, the question before the body is, shall AM1517 be adopted? Mr. Clerk, please read the

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roll in reverse order. [LB704]

CLERK: (Roll call vote taken, Legislative Journal page 1743.) 16 ayes, 28 nays, Mr. President, on the amendment. [LB704]

SPEAKER FLOOD: The amendment is not adopted. Mr. Clerk, I understand you have two motions on your desks. [LB704]

CLERK: Mr. President, I have a priority motion. Senator Dubas would move to recess the body until 1:30 p.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The house is in recess and I lift the call. (Gavel)

RECESS

SPEAKER FLOOD PRESIDING

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

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Do you have any items for the agenda?

CLERK: I have items, yes, Mr. President. Explanation of vote from Senator Sullivan (re LB669 and LB642). Bills read on Final Reading this morning (re LB669, LB642, LB590, LB590A, and LB521) were presented to the Governor at 10:40 a.m. Enrollment and Review reports LB397A back to Select File; the following bills correctly engrossed: LB397, LB400, LB700, LB701, and LB702. And I have an amendment from Senator Krist to LB703. That's all that I have, Mr. President. (Legislative Journal pages 1744-1745.) [LB669 LB642 LB590 LB590A LB521 LB397A LB397 LB400 LB700 LB701 LB702 LB703]

SPEAKER FLOOD: Thank you, Mr. Clerk. We now move to LB704. Mr. Clerk. [LB704]

CLERK: Mr. President, LB704, when the body recessed Senator Karpisek moved to reconsider the vote taken on the Karpisek amendment, specifically AM1517. [LB704]

SPEAKER FLOOD: Senator Karpisek, you're recognized to open on your motion to reconsider the vote last taken on AM1517. [LB704]

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SENATOR KARPISEK: Thank you, Mr. President and members of the body. I do not intend for this to go on for long because I do believe in the process, moving forward, and there are other alternatives that we can look at here. The reason I put this in is because I feel that I did not have full and fair debate. And I feel that the question being called was inappropriate. Hence, I am bringing this forward and I would like to reconsider the vote. I was hoping to get till noon, try to regroup and come back after lunch and have more of a plan on how we would move forward. With those plans being spoiled, I would again ask to reconsider the vote. I thought it happened fairly quickly, not everyone being involved in the discussion. Now that I've got everyone back, not to say that the votes may change but, I think, get everyone back to what we were talking about. I realize when we are on the floor that senators are pulled in many different directions. Now I have your attention again. Again, my map, AM1517, is what I feel a try to negotiate the map that was put forward by the Redistricting Committee. My map moves six counties, not the ten in the Redistricting Committee's map. My map also leaves Sarpy County the way it is, no, I'm sorry, currently. It would not allow the flip. And I'm sorry, I probably shouldn't use the word flip. It does not have the district being drawn in Sarpy County the way it is in the map but more currently how it is now. Now that is not my sticking point, been very clear on that, I think. That is not my sticking point, although, I think, there are issues on that. My sticking point is Saline County being in the Third District. I want to make perfectly clear, I will filibuster this bill till the end and cloture will need to be taken. I thought I was perfectly clear on that earlier. I guess, I was not, I think I am now. I do have other maps. Senator Mello has other maps. I don't think just to not even pay any attention to them is not a good move. I do want to give a lot of my colleagues credit for coming over, looking at the maps, thinking about them, asking this or that about them, I appreciate that. As long as we have some thought about it, that makes me happy, not just to stick with one thing just because that's how it is and we're going to push through no matter what. So I would like to get a vote on this, on the reconsider motion. I do not want this to take a long time. I would ask that people not hit their lights a whole lot and talk on this, that we get a vote on it. And if it doesn't work, move to the next amendment. However, I would certainly like to go back and get a better vote on my amendment. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Karpisek. Members, you've heard the opening on Senator Karpisek's motion to reconsider the vote last taken on AM1517. Senator Wallman, followed by Senators Mello, Avery, Conrad, Lautenbaugh, and Nordquist. Senator Wallman, you are recognized. [LB704]

SENATOR WALLMAN: Thank you, Mr. President. And I do appreciate Senator Karpisek bringing this back. And I do think it is a common-sense approach to redistricting in the state of Nebraska. And so I'm not going to use my full time, which I very seldom do, but I wish you would look at that with an open mind and truly wonder why the other map is better. Thank you, Mr. President. [LB704]

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SPEAKER FLOOD: Thank you, Senator Wallman. Senator Mello, you are recognized.
[LB704]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I rise in support of the reconsideration motion for two reasons. One, Senator Karpisek, I think, was being very nice in the sense of what the process was working out before we adjourned for lunch. Senator Karpisek was on a phone call with a family member and that is why he couldn't get to the Speaker in time to emphasize that he felt Senator Nelson's motion to call the question an hour and ten minutes into debate was out of order. So to some extent Senator Karpisek, I think, was very...was, I think, was a statesman in regards to at least following our process of trying to work out what he felt was the best way within our legislative rules to continue a thoughtful debate on what I believe is a thoughtful proposal, which is AM1517. The other reason I rise in support is because somewhere along the debate from last week to this morning I know that a variety of senators discussed LR102. And I distinctly remember Senator Lautenbaugh emphasizing that the proposal that we put forward last week that had a one person deviation, that a judge would laugh that out of the courtroom, and that was his words not mine. That there's no way the current proposal, LB704, is unconstitutional based on deviation because we're only talking a couple hundred people. But I would remind everyone, and it's something that was, frankly, a little bit of an oversight, I think, in my part of the discussion last week. And I looked at LR102 again this morning. And on page 3 of LR102, under (c), under the United States House of Representatives, it states, "To the extent that such objectives are relied on, they shall be applied consistently and shall include, but not be limited to, the creation of compact districts, the preservation of municipal boundaries, and the preservation of the cores of prior districts. Whenever there is presented to the Legislature more than one plan that will substantially vindicate the above objectives, preference will be given to the plan that provides the greatest degree of population equality." That last sentence, colleagues, I think, should ring very true to what we had discussed last week. I know, Senator Krist and myself had a lengthy floor debate in regards to what traditional redistricting principles weigh more. And I distinctly remember I believe that the Fourteenth Amendment, the Equal Protection Clause, actually weighs higher out of any of our traditional redistricting principles. In LR102, that one sentence states exactly that. When we have a legislative proposal that has a one person deviation, no matter if another plan we have in front of us is a two person deviation, our own rules and guidelines in LR102 says that we should adopt that plan because it provides more equality, colleagues. This is not a conspiracy to try to take down LB704. This is following the rules that we, as a body, adopted two months ago, saying that we will follow these when we do the redistricting process. In this one sentence, when more than one plan will substantially vindicate the above objectives and preference will be given to that plan if it provides more equality, we can't debate that. That's not negotiable, colleagues. That's why Senator Lautenbaugh has an amendment to try to rectify what is a bad bill in LB704. We brought forward legitimate criticisms last week, a plan that splits municipalities, a plan

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that displaces 12 percent of the state's population, a plan that has a larger deviation than one person, which was the current proposal that was introduced. If anything, LR102 says we have to do something. If we don't, we are violating our own legislative rules, we are violating... [LB704 LR102]

SPEAKER FLOOD: One minute. [LB704]

SENATOR MELLO: ...the own legislative resolution that we passed saying that we would do this. Senator Karpisek's amendment, AM1517, helps us accomplish that. There is logic, reason and rationale behind what he is trying to do. Unfortunately, we've not got the same rationale, reason or logic behind LB704 with the exception of questioning what "is" is and what "core" is. Displacing 12 percent of Nebraskans, when you have two proposals that have been put in front of you that displaces a third of them a half of that, let alone has a deviation of one compared to a deviation of 200, should raise red flags. And it has, that's why LB704 is unconstitutional, that's why we have multiple amendments trying to change it now because we made coherent, logical, rational arguments of why we need to change it. I urge you to reconsider Senator Karpisek's... [LB704]

SPEAKER FLOOD: Time, Senator. [LB704]

SENATOR MELLO: ...thoughtful amendment. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Mello. (Visitors introduced.) Continuing with discussion, Senator Avery, you are recognized. [LB704]

SENATOR AVERY: Thank you, Mr. President. I want to finish making some points that I started before lunch and ran out of time. I was talking about objections that I had raised on General File to LB704 and how that AM1517 addresses those objections. I had gotten through three of the four. And I will not repeat them here. But let me go to the last one because I believe that LB704 is most vulnerable on this last point. This is, in my opinion, a very judicable issue, meaning that it is probably, if challenged in court, this will be what the courts will look at most. I believe they will look at the deviations currently in LB704. And that will be a part of the deliberation. But when you come to the dilution of the voting strength of any minority population you're really in dangerous territory because the Voting Rights Act makes it very clear that any redistricting plan must not, must not dilute the voting strength of an existing minority population. And if you go to item number 7 on page 2 of LR102, you will see language that reads, "District boundaries which would result in the unlawful dilution of the voting strength of a minority population shall not be established." It doesn't say may not, it says shall not be established. Now why am I raising this point? I'm raising this point because LB704 reduces the minority population of CD1 by over 8,600 people. Now I do not have the number of voting age population. But this probably includes several thousand voting

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age people. The actual number is 8,645. That is not legal. It establishes a critical vulnerability in LB704 that is corrected in AM1517. And if you don't buy any of the other arguments that have been made, you ought to care about this one because LB704 is most vulnerable on this point. And the courts have been extremely consistent in how they have ruled in case after case where a minority population is being diluted by a redistricting map. Now if you could establish a legitimate state objective, and I don't know how you could, then it might pass constitutional muster. But I haven't heard any arguments that try to do that on this. And I haven't actually heard any of the proponents of LB704 even address the issue. So I would like to hear that from Senator Lautenbaugh or Senator Nelson or anybody else on the Redistricting Committee. I would like to know what is it that you see in this map that answers the question I have raised? If you are diluting a minority population you are making an illegal map and it will not stand judicial scrutiny. And I can assure you... [LB704]

SPEAKER FLOOD: One minute. [LB704]

SENATOR AVERY: Sir, was that a one minute warning? [LB704]

SPEAKER FLOOD: One minute. [LB704]

SENATOR AVERY: Thank you. I can assure you that if we move forward with this bill unamended then we will have a court case and, I believe, we will lose and we will be right back in here in a special session to correct it. Now I don't want to have to stand up here in two or three months and say, I told you so. We can fix it now and AM1517 does that. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Avery. Senator Conrad, you are recognized. [LB704]

SENATOR CONRAD: Thank you, Mr. President. If Senator Avery hadn't concluded his remarks, I'd be happy to...oh, he has concluded his comments. Well, then I'll just ask if Senator Nelson would yield to a question. [LB704]

SPEAKER FLOOD: Senator Nelson, will you yield to a question from Senator Conrad? [LB704]

SENATOR NELSON: Yes, I will. [LB704]

SENATOR CONRAD: Thank you, Senator Nelson. I saw that you were busy reading and working and listening intently as Senator Avery was talking about some of the issues that he brought up the last couple rounds of debate and then also reiterated again today. And as a member of the Redistricting Committee that's put forward this map, could you please specifically respond to Senator Avery's contentions and

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concerns surrounding the dilution of minority voters in the Second Congressional District. [LB704]

SENATOR NELSON: Yes, I will, Senator Conrad. Thank you. I can only ask at this time where Senator Avery is getting his amount of dilution that he seems to think is there. I can understand dilution in the concept of an established district, where you can bring nonminority people in to dilute what is there. But here we have a situation where we know nothing about the distribution of minority population in Sarpy County. And it seems to me, beyond the pale, that this could be considered dilution if...you could make this argument at any time you change any boundary within a county somewhat. So that would be my answer to that. [LB704]

SENATOR CONRAD: Okay. And, I think, if you remember, Senator Nelson, it did come up during the public hearing on the redistricting plan where some residents who were affected in the Sarpy County area talked about the ethnic and minority makeup of some of the areas in question. And how they would be moved into the First District instead of staying with a more racially diverse Second District. And they were concerned about that and implications for the Voting Rights Act. So do you remember that exchange from the public hearing? [LB704]

SENATOR NELSON: I recall discussion on that with regard to the legislative districts. I guess, the argument might have been made. I don't recall it specifically when we were talking about the congressional maps. Mainly the term that I heard at that time was disenfranchisement, which didn't make much sense to me. [LB704]

SENATOR CONRAD: Well, I think, that we had a long conversation at the committee hearing level about the legal definition of erecting barriers to exercise the right to vote and how that's typically utilized to define disenfranchisement. But also that many of the participants and citizens at the hearing felt that they were being excluded from the process. And so that there might have been a difference in that. But, Senator Nelson, let's take another issue that you mentioned, just forget about the public hearing for a moment. And you said, well, we have no idea of knowing what the ethnic or the minority percentages in Sarpy County. That's not really correct, is it? Because, really there's a spreadsheet that the Legislative Research Office puts together for every single redistricting plan that lists out those numbers, isn't that right? [LB704]

SENATOR NELSON: That may be true, but do we know what the distribution is across Sarpy County? [LB704]

SENATOR CONRAD: I think that it does lay it out for the counties and that it also lays it out for the various proposals as to what the percentage of minority voters will be. Isn't that right? [LB704]

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SENATOR NELSON: You're speaking about the 23 percent, is that the figure that Senator Avery used? [LB704]

SENATOR CONRAD: I think it was. But I see he has his light on and he'll speak more specifically to that. But my point is in asking you, what your response was, you said, well, we don't know what the numbers are. And I'm just going to clarify for the record that Legislative Research Office actually appends those numbers to every proposal that's before the body. So those... [LB704]

SPEAKER FLOOD: One minute. [LB704]

SENATOR CONRAD: ...are coming, thank you, Mr. President, from nonpartisan Research Office, not from any one of us. That's a fair assessment, don't you think? [LB704]

SENATOR NELSON: Well, if that's the figures that Research has come up with, yes,... [LB704]

SENATOR CONRAD: Okay. [LB704]

SENATOR NELSON: ...I think we can accept it to the extent that it is necessary to accept it. [LB704]

SENATOR CONRAD: Yes, thank you very much, Senator. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Nordquist, you are recognized. [LB704]

SENATOR NORDQUIST: Thank you, Mr. President and members. I rise in support of the motion to reconsider. I think it's important that as we go through this process, a process that happens only once every decade, that we do have full and fair debate on the proposals that are put forth in AM1517 by Senator Karpisek addresses a number of the concerns that were raised on General File. Certainly, some of the concerns now Senator Lautenbaugh has, by filing his amendment, has indicated that he shares the issue of the deviation. And, I think, we haven't heard from the opponents of AM1517 their reasons for it. Certainly, on Senator Mello's proposal there was some more debate on it. But largely, our debate on AM1517, to this point, has been one-sided and that is the proponents of it and very little discussion from the opponent side. And I would be very interested in hearing from some of those members that opposed AM1517 as to why. I'm supporting it because it addresses the deviation, it takes it down to zero. I'm supporting this amendment because it moves us away, at least it reduces the number of Nebraskans that are going to be displaced in their congressional districts, which is one

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of the key objectives of LR102 as the deviation. It does a better job, as Senator Hadley addressed his concern on General File, of making the district a little bit less length for the Third Congressional District. It would not require the Third Congressional District member to travel all the way to the furthest most southeast corner of the state. Those are the three reasons that I'm supporting this amendment at this time. But I don't know this morning that we've heard a single opponent. Senator Lautenbaugh made some points about the underlying LB704, but did not really address their concerns with AM1517. So I'm supporting the motion to reconsider, so we can have that full debate on this important process and the possibilities that are put before us. Again, I think, it's right for our body to have that full debate, but also to move forward in the spirit of working together and to see if we can resolve the differences at this point in a nonpartisan manner and uphold this body as the institution that it is. Whether it's redistricting or anything else, partisanship should not play a role here. So with that, I support the motion to reconsider and would support AM1517. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Nordquist. Senator Council, you are recognized. [LB704]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I rise in support of the motion to reconsider, principally due to the fact that at the time the question was called I was among many whose lights were on to speak on AM1517, along with several others. And to have such a short opportunity not only to address my support for AM1517, but to again raise very serious concerns about the process that led to the advancement of LB704. And quite frankly, every time I hear one of the proponents responses to questions about how LB704 was advanced, my concerns rise to a higher level of gravity. Just in response to Senator Conrad's questions on minority dilution, for Senator Nelson to say, and I wrote it down, we didn't know anything about the minority population in Sarpy County. And if I incorrectly heard that, I hope that I did, because for you as a member of that committee to vote to advance a bill that did not address, number one, the key principle set forth in the legislative resolution, but more importantly, one of the key issues under the Voting Rights Act that any redistricting plan that we advance needs to be in compliance with. I heard last week how the issue of the constitutionality around deviation apparently didn't resonate with those who advanced LB704. But in fact, every single time this body votes to ignore an alternative redistricting proposal for congressional districts that provides for zero deviation, every single time we vote to reject that proposal and instead wed ourselves to advancing LB704, we build the constitutional challenge to our redistricting. Senator Schumacher pointed out to you last week, if you were bothering to listen, that our neighbors in Kansas, their redistricting proposal was stricken and they went, and I don't know the exact number, Senator Schumacher, you can kind of nod if I'm close, it was a difference between about 161 and 33. Well, 33 was what they ended up with. And there was still a problem with 33. But they got down to 33 from 161 or something. But 33 was considered by that court to be acceptable. Here we have 271 and to date I've heard three alternative proposals to

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get us down to 1. How do we believe that to adopt a redistricting proposal that has a deviation of 271 people, when we've had not one, not two, but three proposals thus far that amount of zero percent deviation, gets us down to 1 person. You know, it would be something different if we could not come up with proposals that met the other principles set out in the legislative resolution and had to be faced with a deviation of 271 people. But if you look at the legislative resolution, Senator Karpisek's proposal, while it does provide for splitting two counties, the current congressional districts split two counties. Unlike LB704, you're talking about contiguous and compact districts, I mean, I don't know how you could get more contiguous and compact than what's reflected in AM1517. All of the counties in Congressional District 1 abut each other at some point. But if you look at what's in LB704 you have CD1 and 2 being circled by CD3, with CD3 district running from border to border, east to west. [LB704]

SPEAKER FLOOD: Time, Senator Council. [LB704]

SENATOR COUNCIL: Thank you. [LB704]

SPEAKER FLOOD: Thank you, Senator Council. Senator Lautenbaugh, you are recognized. [LB704]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do think it's important that I do address a few things today that have been said because there have been some unusual statements. And, you know, one of my favorite movies was called Road to Perdition. And at one point in the movie there are two guys alone in a room, and one of them calls the other guy a murderer. And the other guy responds, there's nothing but murderers in this room. And that was an interesting way of pointing out if you're going to make a charge, you better have your hands clean yourself is how I interpreted it. I just sent you all an e-mail that contains some of the maps that were thrown in the hopper in this process while our resolution and while our guidelines obtained. One of them is numbered 28001, the first number if the senator who proposed the map. This was Senator Avery's congressional proposal. And it was not thrown in as a lark. We were told we were rolling the minority when we didn't talk about this. And you heard Senator Avery's four points this morning. Number one, the deviation is too large on the committee amendment that passed on. Well, I have an amendment that takes care of that, it's down to one person. We heard the argument about preserving cores of the districts and how important that is. And Senator Nordquist has said that the existing proposal moves 12 percent of the population. Well, please look at Senator Avery's 28001, which we did not advance. It only relocates 24 counties, count them, 24 counties in moving District 1 as a southeast Nebraska district, still preserving its Lancaster County core, as we heard in the hearing, but you're only affected if you live in Cedar, Dixon, Dakota, Thurston, Wayne, Madison, Stanton, Cuming, Burke, Washington, Dodge, Colfax, Butler, Saunders, Hall, York, Adams, Clay, Fillmore, Saline, Jefferson, Thayer, Nuckolls, and Webster. So if you're not in any of those counties, you wouldn't

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really be affected by this map much, but a lot of people are, and I'd be willing to bet more than 12 percent. And all those people are now part of some mythical core of a district that we have to hold inviolate, not by the committees proposal, but by the discussion that you've heard from Senators Avery and Mello. Well, I would submit that this map does nothing to vindicate that principle that has become so important to Senator Avery belatedly and Senator Mello belatedly. We're supposed to look at this without regard to one person or one party. Well, I sent you the regents base map that pretty much preserves District 1 as the Lancaster County district it currently is. You can see it on there. Takes up, generally, the west half of, sorry, the east half of Lancaster County, most of the city of Lincoln. Senator Mello put in a proposal for the regents that cut off pretty much everything that wasn't part of the city of Lincoln. That seems like it didn't preserve an existing district very well. And I wonder if the people who live in the city of Lincoln have any difference politically from the people who live in rural Lancaster County? Why was this map put forward? We don't know. I suppose we can stand here and impugn the motives, because that's what we do. Now moving on to Senator Avery's minority dilution argument. You should wonder how serious this concern is when you aren't hearing specific percentages about specific minority groups, specific case law dealing with the specifics District 2 as it exists, etcetera, because rather than having a legal discussion here, what we're having again is constitutional open mike night, as I like to call it, where anyone who has a notion will stand up and say something is concerning and it's judicable. Well, everything is judicable when you file a lawsuit, it gets adjudicated one way or the other. There is not a legitimate concern here that has been voiced yet regarding minority dilution. And if there was an issue with that, don't you think you'd know a little more about it by now. It was brought up in the hearing, not by a Bellevue resident, by a gentleman from Douglas County who works for one of the parties, there is...has a title with one of the parties. There was a heads-up if you thought this was a serious concern, you might go that extra mile and get some authority and get some percentages and come here and actually tell you specifically what the problem is, how it compares to other proposals, and where we go awry. And the fact that you're not hearing that should speak... [LB704]

SPEAKER FLOOD: Time, Senator Lautenbaugh. Thank you. Senator Avery, you are recognized. [LB704]

SENATOR AVERY: Thank you, Mr. President. Looks like I have some questions to answer. Let me start with Senator Nelson's attempt to respond to Senator Conrad when she asked him, what is the rationale for moving some 8,600 minority voters from one district to another? And he suggested that he had no idea where my numbers came from. And then Senator Lautenbaugh suggested that I had given no specifics. Eight thousand six hundred and forty-five is specific, folks. It's a specific number. Now if you want to talk percentages, I can do that too. LB704 has a total voting age minority population of 21.7 percent. If you...that is, if you take one of the proposals we have already considered, and that's the Mello proposal, that voting age population is 22.86.

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All you have to do is a little bit of simple math to come up with numbers. If you look at the total population, not voting age population, that's where I got the 8,645, and they come from the very numbers that we have before us. That, to me, is a pretty serious problem. Now we heard some talk from Senator Lautenbaugh about my congressional map proposal. That map was never discussed in committee, it was never formally introduced. It was passed around for people to look at. It never got a motion to introduce it, never even did we consider it. So it was not discussed. It's completely irrelevant to this discussion and makes no sense in the context of what we're talking about now. I think we have to be seriously concerned about the dilution of the minority population because the Supreme Court has been crystal clear in restricting what can be done with these maps and these plans when you involve minority voting. And I don't know what the actual number is. Based upon the numbers that I have available to me I can extrapolate from those numbers and come up with the number 8,645 people that are a minority community that will be moved from one to the other. And I'm talking about the Offutt Air Force Base area that is now part of CD2. If you move that over to west Sarpy County, as we are doing in LB704, then west Sarpy County has over 8,000 fewer minority voters than you would previously have in CD2. That matters, folks. And there is no way you can twist the argument and look at the numbers and say it doesn't matter. Now is it exactly 8,645? That's what these percentages come out to when you look at what we have before us. But if I were to have the time to go to the map making room, I could probably give you an exact number. But I can tell you that's not insignificant. And I can tell you furthermore that we don't need to talk about actual court cases here. The Civil Rights Act is pretty clear itself. And you all know about the Civil Rights Act, arguably, the most important piece of domestic legislation this country has ever passed. [LB704]

SPEAKER FLOOD: One minute. [LB704]

SENATOR AVERY: I think we have to be serious about this. And to trivialize the discussion by talking about a proposal that never made it into our discussion in the committee is a classic look over there strategy, which we've heard before in here. Don't look over there, look here, exactly where we are right now, at the maps we are looking at right now, and what we're going to be voting on. That's what we need to be doing. I intend to vote for this motion to reconsider. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Avery. Senator Ken Haar, you are recognized. [LB704]

SENATOR HAAR: Mr. President, members of the body, I'd like to ask Senator Karpisek a question, if I could. [LB704]

SPEAKER FLOOD: Senator Karpisek, will you yield to a question from Senator Ken Haar? [LB704]

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SENATOR KARPISEK: Yes, I will. [LB704]

SENATOR HAAR: You gave some indication, you said there were six counties changed in yours versus ten counties in the other amendment. And Sarpy County you talked about sort of a flip going on. Do you know what the displacement numbers are of yours versus the other? [LB704]

SENATOR KARPISEK: I do have those, Senator Haar. I don't have them in my head right now. We'll have them coming real quick. [LB704]

SENATOR HAAR: Okay, well, we've got time. Just...I'm making notes here. [LB704]

SENATOR KARPISEK: Thank you, I apologize. Mine displaces 112,284,... [LB704]

SENATOR HAAR: Okay, do you know... [LB704]

SENATOR KARPISEK: ...about half. [LB704]

SENATOR HAAR: Do you know what the other one is? [LB704]

SENATOR KARPISEK: Two hundred and twenty-seven thousand, roughly. [LB704]

SENATOR HAAR: Okay. [LB704]

SENATOR KARPISEK: So it's right about half. [LB704]

SENATOR HAAR: Okay. So yours displaces less...or changes less counties, it pretty much left Sarpy County alone, and it displaces half as many people, is that correct? [LB704]

SENATOR KARPISEK: That is correct. [LB704]

SENATOR HAAR: Okay. Senator Avery, could I ask him a question? [LB704]

SENATOR DUBAS PRESIDING

SENATOR DUBAS: Senator Avery, would you yield to a question, please? [LB704]

SENATOR AVERY: I will. [LB704]

SENATOR HAAR: Senator Avery, do you have statistics on Senator Karpisek's in the minority shift versus LB704, the way it stands right now? [LB704]

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SENATOR AVERY: No, I do not. But I'd certainly like to see them. But I...you're talking about AM1517? I think what AM1517 does is take us back to Offutt and the Bellevue area remaining a part of CD1. And if that is what his map does, and I believe it does, then the issue of minority dilution goes away. [LB704]

SENATOR HAAR: Okay, because it pretty much stays the same, is that correct? [LB704]

SENATOR AVERY: Yes. [LB704]

SENATOR HAAR: Okay, okay. [LB704]

SENATOR AVERY: And if I might elaborate, Senator, I did get...break this down by racial group and it's...you're talking about over 3,000 African-Americans and almost 5,000 Hispanics that would be diluted by LB704. [LB704]

SENATOR HAAR: Okay. So the way it looks, the way things are going, changes will simply be made because they can be. Are you saying that's not legal? [LB704]

SENATOR AVERY: It is not legal, not when the result is the dilution of a minority population. [LB704]

SENATOR HAAR: Okay. I would give the rest of my time to Senator Avery, if he'd like it. [LB704]

SENATOR DUBAS: Senator Avery, 1 minute 40 seconds. [LB704]

SENATOR AVERY: Thank you, Madam President. And thank you, Senator Haar. I did a little bit more doodling with the numbers here. And as I just indicated in my elaboration on a question from Senator Haar, we're talking about more than 3,000 African-American voters. If we go with LB704 where you shift from Offutt and Bellevue over to west Sarpy County, you will see a dilution of the minority vote...of the African-American vote by more than 3,000. You will see a dilution of the Hispanic population by almost 5,000. [LB704]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB704]

SENATOR AVERY: Now we're getting very close to the 8,645, that number that I derived from the previous calculations. The 645 that are not accounted for in these African-American and Hispanic are probably other minorities. I don't know what those

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would be, they're not broken down by the census numbers we have here. But that's a significant reduction, folks. And I do believe that when you use the word judicable, it doesn't mean that you can file the charge, it means that it is a valid point of adjudication. A judicable point, meaning that you have some grounds here and that you have a chance to win or at least there is sufficient question about whether the action that you are challenging is constitutionally correct as to give you standing before the court. And, I think, that's what we have here. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Avery. Senator Nelson, you are recognized. [LB704]

SENATOR NELSON: Thank you, Mr. President, members of the body. We were approaching noon and I was prepared to talk about the displacement issue this morning. And decided at that time, since we had talked for an hour and 15, 20 minutes on Senator Karpisek's amendment, that perhaps the question should be called. And he was distressed by that. I didn't mean him any ill will by doing that. I just felt that it was time to address the question. Somehow it got by me that he was maintaining a full blown filibuster and that might have altered my thinking somewhat. But here we are and I rise in opposition to his motion to reconsider. I do want to talk about the base map a little bit. If you happen to have the base map with you, I just want to point out that that was, yes, drawn by an impartial person in the Research Office who, I think, has done an excellent job all the way along. But when he drew that map he was basing it on population figures and what works in arriving at a zero deviation if possible. And I want you, in light of what you know about where we are right now, and if you want to take a look at the base map you will find that it's very, very close to the distribution that we have on LB704. It looks almost the same. And the difference is that the Research Office placed Polk and Thurston in the Third District. And also placed Gage and Pawnee and Richardson in the Third District. LB704 puts Polk and Thurston in the First District, and also puts Gage, Johnson and Nemaha in the First. So it's kind of a distribution of counties and where they're going to fit in best and get you to your population figures. I think that we all realize that displacement is inevitable here. Let me mention that there's nothing in LR102 that even talks about displacement. We didn't hear very much about it the other day. But now it's a talking point. It's inevitable, as population moves to the west, that we're going to have what I might call congressional creep, I mean, to the east. And you can see that when we're going to work this into three districts a lot of counties have to go. And if you look at the base map and take a look at 18003, you see that you don't have much choice but to come across the top of Nebraska and go to the river there, and also have to do pretty much the same thing down on the Kansas line and go over there. Both the base map and both LB704 do that. And that means that some counties may not be able to go where they want to go. I happen to be from Fillmore County, which is adjacent to Saline. And my recollection is that those counties have been in the Third District for probably 20 years. And so the question I raise is, why is it appropriate now for Saline to move into the First District after it has been in the Third all

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this time? And a lot of other counties are having to become part of the Third District rather than the First, where they used to be. [LB704 LR102]

SPEAKER FLOOD: One minute. [LB704]

SENATOR NELSON: I think that's the thing that we have to be concerned with here. We want a contiguous group. Yes, a couple of counties got moved in and out to achieve the results that we want to get to a zero deviation. And we're going to see with an amendment coming along here that LB704 arrives at a deviation of only one person. So, I think, all things considered we've probably discussed Senator Karpisek's amendment, this particular amendment, as fully as we can at this time. And, I think, it's time to move on and therefore I ask the body to vote no on the motion for reconsideration. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Nelson. Senator Conrad, you are recognized. [LB704]

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. Apologize if I'm a little out of breath. I was across the hall discussing business with another member and wanted to make sure not to forego this time at the microphone. If Senator Lautenbaugh would yield to a question. [LB704]

SPEAKER FLOOD: Senator Lautenbaugh, will you yield to a question from Senator Conrad? [LB704]

SENATOR LAUTENBAUGH: Yes, I will. [LB704]

SENATOR CONRAD: Thank you, Senator Lautenbaugh. And having a chance to review where we were in terms of what was pending and what was not, I see that you've withdrawn your amendment that you filed earlier today and refiled that to the Final Reading copy. Is that correct? [LB704]

SENATOR LAUTENBAUGH: That is correct. [LB704]

SENATOR CONRAD: And why did you do that? We have this bill before us for consideration right now. Why shouldn't we take up those issues right now? [LB704]

SENATOR LAUTENBAUGH: I had reason to doubt that you would let us get to my amendment. And so I moved it to the next round. [LB704]

SENATOR CONRAD: So it's really to subvert political participation by minority partisans in this body? [LB704]

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SENATOR LAUTENBAUGH: Actually, what it is, is to get my amendment, which addresses your previously expressed concerns, actually heard rather than subverting anyone's attempt to do anything else. [LB704]

SENATOR CONRAD: Well, why can't we just take it up now then? [LB704]

SENATOR LAUTENBAUGH: Well,... [LB704]

SENATOR CONRAD: We can't call cloture, Senator Lautenbaugh, as the minority members. [LB704]

SENATOR LAUTENBAUGH: If you're telling me that everyone else will pull their amendments, I'll refile it and we can talk today. [LB704]

SENATOR CONRAD: Senator Lautenbaugh, I'm trying to understand your train of thought as the proponent of this map and as the proponent of your strategy. [LB704]

SENATOR LAUTENBAUGH: Well, once we started with the reconsideration motion, I figured that what was coming was a series of procedural motions, like we saw on the roads bill, I believe, at one point, that was not going to let us get to what I considered to be my substantive amendment, which again was brought to address concerns that were previously expressed by you and Senator Avery and Senator Mello. If we're not going to get to it today, then we'll get to it on Final Reading, I guess. [LB704]

SENATOR CONRAD: But, Senator Lautenbaugh, to be clear, Senator Mello, Senator Avery and myself can't file a cloture motion, only proponents of the legislation or actually the principal introducer or the committee sponsor can file a cloture motion. So no one is going to shut off debate from you at this point in time, at least from our perspective. So that would be an issue, I guess, that you'd have to take up with Senator Lautenbaugh or I'm sorry, Senator Langemeier as committee Chair. And it seems to me, as a reading of the rules, he would really be the only one who could file a cloture motion. [LB704]

SENATOR LAUTENBAUGH: Okay. [LB704]

SENATOR CONRAD: Okay, thank you, Senator Lautenbaugh. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Cornett, you are recognized. [LB704]

SENATOR CORNETT: Thank you, Mr. Speaker. I rise in support of the reconsideration motion from Senator Karpisek. I have not spoken on this bill previous to this because it so directly affects my district that both...I'm very torn on it. I have 50 percent of my

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constituents who are in favor and were angry about my comments in the paper when I said that I felt that we had more in common with Omaha. And when I meant that I was beaten around pretty significantly without being allowed to justify my words in regards to we have interlocal agreements with Omaha, we have cooperation with Omaha in a number of things in regards to snow removal, fire service, police service. Omaha looks at themselves as part of the Offutt community. They do a tremendous...Omaha Chamber does a tremendous amount of work in regards to keeping...working with the base and keeping the base in the state. On the other side, I have a lot of e-mails and angry phone calls that are in significant opposition to the underlying bill. I am going to support AM1517 because of my original statements that we have a lot in common with the Omaha community. Omaha has always been a significant supporter of the base and of Sarpy County. I do see, though, with LB704 why the line was drawn there. We either separate a community out from the...I believe Senator Carlson was speaking about counties. We're actually talking about individual cities. The choice is do we divide the cities of Sarpy County down the middle or do we separate one community out from the others and put them in a different congressional district? And that is a decision that the body is going to have to make whether it is better to split communities or whether it is better to carve them out as a whole. I would prefer, personally, to stay in our current congressional district. But again, I have remained quiet until now because literally it's 50-50 in my district on what we do in regards to the e-mails and phone calls that we've received in support or nonsupport from my cities and my mayors. But I do support the reconsideration motion. I do not feel that we had enough discussion on this earlier. And I thank Senator Karpisek for bringing the amendment. [LB704]

SPEAKER FLOOD: Thank you, Senator Cornett. Senator Avery, you are recognized. And, Senator Avery, this is your third time. [LB704]

SENATOR AVERY: Thank you, Mr. President. I heard somebody say a while ago that we have not specifically mentioned any court cases, so I'm going to do that. And it will take us back to the question of deviation because that is still a salient point. I'm reading here from a news letter prepared by the Legislative Research Office here in this Capitol, dated February 2000 or March 2010. And it notes that a 1964 case, of Wesberry v. Sanders, the court held that the population of the state's congressional districts must be as nearly equal in population as practicable. In subsequent opinions, the court clarified that as nearly as equal in population as practicable means absolute mathematical equality. Let me say that again because apparently nobody has heard this. In subsequent opinions, the court clarified what it means by "as nearly equal in population as practicable" and it means absolute mathematical equality. That's zero. And LB704 does not do that. In plain English, it does not hold up. The court further provided that if a state fails to achieve absolute mathematical equality, it must either show that the variances were unavoidable or specifically justify them. And nearly 20 years after this decision, the court decided, in Karcher v. Daggett, in 1983, this is the leading case in population equality in congressional districts. That decision reaffirmed that there is no

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level of population inequality too small to worry about when it comes to congressional districts. The decision reaffirmed that there is no level of population inequality too small to worry about when it comes to congressional districts. Now that's the Supreme Court. They decide what is the supreme law of the land. And what we're doing here is messing around with things that will not stand constitutional scrutiny. So I'm asking you to step back a little bit, take off your partisan hats and ask yourself, do you want to come back here in a special session and redo this all over once more? I certainly don't and I don't think many of you do. And we have an opportunity with AM1517 to correct two glaring problems with LB704. And, I think, we ought to take that opportunity. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Avery. Senator Schumacher, you are recognized. [LB704]

SENATOR SCHUMACHER: Thank you, Mr. Speaker, members of the body. I voted for Senator Karpisek's amendment. Platte County stays in the Third District. Platte County would prefer to stay there, even though it is not a heart-burning issue because we look down the road ten years and see that in all probability the eastward march in Nebraska will not stop and we will end up in the First District. And if we're going to get moved, we just as well get the moving over with and get settled into our new district. But we would prefer to stay in the Third and prefer to have some faith that maybe all the economic incentives and all of our wishing to reverse the trend of the eastward march will have some fruit, even though we're skeptical. Senator Karpisek's amendment, I've listened very carefully so far today, and nobody has anything bad to say about it. Last week, we looked at the original LB704 and LB704, several problems of a very legitimate nature were pointed out. And those problems we were told we were going to get to fix today, assuming as in all probability it would, Senator Karpisek's amendment would fail for partisan reasons. I am now told that we are not going to have an opportunity to fix LB704. And the body seems on a course to advance a clearly problematic bill. I cannot go along with that. So to the extent I would have been fully prepared to vote for cloture at the end of the proper time, had that amendment...and we fixed LB704, I will not now. Now I don't know if that makes a bit of difference to anybody or not. But that's right, we fix this bill on Select File, and we fix it. Meanwhile, I think, we should go back to looking at Senator Karpisek's bill. I have yet to hear a single thing wrong with it, in spite of the wrong things, theoretical or not, valid or not, that have been alleged with regard to the underlying LB704. And I can't go along with advancing LB704 without some amendment fixing those problems. This...tricks on Final Reading just aren't fair play. And I rise in support of the motion to reconsider Senator Karpisek's amendment. Thank you, Mr. Speaker. [LB704]

SPEAKER FLOOD: Thank you, Senator Schumacher. Senator Lautenbaugh, you are recognized. [LB704]

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SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And to be clear, I believe we did articulate on General File a reason why the trivial population deviation we had was not going to end up being ultimately found to be unconstitutional. However, for all the talk you've heard about no one is listening, no one is doing anything, I did prepare an amendment which makes the population deviation one person. There's an extra person in the First District. And that was with good reason. And I hope Senator Schumacher hears me when I say that it would be important to actually get to vote on that amendment today, if we ever got to it. But there's a realistic way to do things and there's a way that would end up with the amendment not being discussed. If memory serves, we've seen that on a bill prior this year where there were substantive amendments way down the line and, through a series of procedural maneuvers and whatnot, we never got to them. I want to pass my amendment. I just asked Senator Avery for some authority on the minority dilution argument, and he again came back with authority on the zero population deviation argument. Well, then I've got an amendment for Senator Avery that he should be willing to support. And it was my intent to get that up earlier today, but there were intervening amendments, one filed either late Friday or early today, that pushed us farther down the line. And I don't have confidence that we're going to get to my amendment today in a timely way. Believe me, I would much prefer that we handle this on Select File. But we are being faced with a filibuster. And I know how this works. And I'm not just making this up, it has been called a filibuster. So we are where we are. My amendment, when we do hear it, also addresses Senator Mello's unusual concerns that, while I took care of the city limits for La Vista or Papillion, I didn't take care of the places that have a mailing address of La Vista or Papillion. So I even went to far as to take care of that. And as far as the population deviation, I can't stress enough it was only created by the amendment because we were trying to accommodate a member who didn't want a county split. Well, fine. If the opponents of this won't tolerate a county split, my amendment does split a county to bring everything into perfect balance. If that's what it will take, that's what we'll do. And I am still waiting for someone to have some authority regarding minority district dilution, because, I think, what you are going to hear is that applies with you a majority-minority district, which we don't have here. And all of these proposals have about a 20...low 20 to 25 percent minority population in them. So you are being given a red herring. And after a couple days now of listening to Senator Avery hammer on the guidelines, the guidelines, the guidelines, I thought it was helpful to point out how Senator Avery approached the guidelines when left to his own devices. So we all pick and choose. And these things are contradictory. But, I think, if we're going to stand up here and say, in a new standard that isn't found anywhere in law, oh my gosh, we're moving 12 percent of the people, it's instructive to note what other maps have proposed by people who are making that argument. And I don't know if Senator Avery ran his map by Senator Nordquist before he proposed it, but I do know whatever you consider to be the core of districts it seems to shift it around a little. And I've made clear why I don't believe mine does. And the amendment only improves the bill that we advanced as amended. And I would be happy to vote on it today if we are allowed to get to it today. But right now

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we're talking about a motion to reconsider and everyone is talking about the population deviation, as if everyone isn't conceding that with all of the amendments coming that will be taken care of. But, I guess, we're going to consider to talk about that. And I suppose the prudent thing would be just to leave my amendment hang there, some would say, and hope that we get to it some time this evening. But I'm not going to do that. I'd be happy to if the other amendments were pulled we'd jump to mine right away. And it would address the concerns that were so vocally voiced last week, if people are of a mind to actually do that. So you can ask yourself who is playing games here. Ask yourself who is trying to correct some issues that were raised, meritorious or otherwise, on General File. My amendment would correct those. I'd be happy to vote on it today. But if we don't get to it today, we're going to... [LB704]

SPEAKER FLOOD: Time, Senator. [LB704]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Mr. Clerk, items for the record? [LB704]

CLERK: I do, Mr. President, thank you. Senator Pahls has an amendment to LB40. New resolution, Senator Dubas, LR334, LR335, LR336; Senator Campbell, LR337, all will be laid over. LR338, offered by the Urban Affairs Committee, calling for an interim study. That will be referred to the board. That's all that I have, Mr. President, thank you. (Legislative Journal pages 1746-1749.) [LB40 LR334 LR335 LR336 LR337 LR338]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Ken Haar, you are recognized. [LB704]

SENATOR HAAR: Mr. President, members of the body, Senator Karpisek, could I ask you a question? [LB704]

SPEAKER FLOOD: Senator Karpisek, will you yield to a question? [LB704]

SENATOR KARPISEK: Yes, I will. [LB704]

SENATOR HAAR: In your plan, what is the deviation in terms of numbers between the districts? [LB704]

SENATOR KARPISEK: Is this the same that you asked me last time, Senator Haar? [LB704]

SENATOR HAAR: No, I'm sorry. Last time I asked you about the displacement. [LB704]

SENATOR KARPISEK: Okay. [LB704]

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SENATOR HAAR: This is just the deviation, how... [LB704]

SENATOR KARPISEK: We are...the deviation is zero. [LB704]

SENATOR HAAR: Zero. And do you know what it is in LB704? [LB704]

SENATOR KARPISEK: I think it's point...it's 200-and-some people, .02, possibly. [LB704]

SENATOR HAAR: Okay, 200. Okay. I would just echo to a great extent what Senator Schumacher brought up, that we've heard really nothing against your plan, except it's not the plan brought forth by the Republicans. Yours changes only six counties, LB704 changes ten. Sarpy County is pretty much left as is. Yours displaces only half of what LB704 does, minority, there's less minority dilution and a zero deviation. So I would give you the remainder of my time, if you'd like to talk about your plan. Thank you. [LB704]

SPEAKER FLOOD: Senator Karpisek, 3 minutes 20 seconds. [LB704]

SENATOR KARPISEK: Thank you, Mr. President. And thank you, Senator Haar. And, yes, everything you said is true. And I appreciate the time because, as I did say when I opened this afternoon, I don't intend to take this much further. I didn't really care for it to go this long. I haven't had my light on. And I do apologize for that because I do know exactly what Senator Lautenbaugh is talking about. It is not my intent not to get through these amendments. That is not my intent at all. I would like to, well, (laugh) I would like to get this one passed, if that doesn't happen, I'd like to get to the next one because my next one, I think, is a little bit of compromise as I talked to Senator Lautenbaugh, over the weekend, on what absolutely couldn't work. So my next plan is to go...to leave Sarpy the way it is in the map that has been provided. Also to still leave Saline in, but leave Madison in the First. There's a lot of things in there I haven't passed it out because I don't want to waste a whole lot of paper. But I do have it under the north balcony. I am a little concerned that nobody is looking at any of that, that we're just going to shove forward with what the committee has put out. So Senator Lautenbaugh is concerned that we won't get to his amendment. I'm concerned that no one will negotiate with my map nor say what's wrong with it. We haven't heard anyone say what is wrong with it. I don't want to echo everyone else, it's just, well, we don't like it and we just don't have to and that's all. I've told you what I would like to see. I will negotiate. I said the first time I stood up, I think, that my lines are not firm. Obviously, the other side is firm, we're not moving, we're not budging. That's fine. So I can be accused of wasting time, running this thing to the end... [LB704]

SPEAKER FLOOD: One minute. [LB704]

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SENATOR KARPISEK: ...and it can be all my fault if you want to think that way. I'm standing here wanting to compromise but getting none. So if you want to talk about who's wasting time and who won't come to the table, that can be pointed both ways. And that's fine. If we don't want to and we're going to go to the wire, we'll go to the wire. I understand why Senator Lautenbaugh put his amendment on Final Reading. However, he could have left it and switched it right away. But I understand, he wanted to get it first in line. Completely understand that. I hope we don't get to Final Reading to find out. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Karpisek. Senator Nordquist, you are recognized. [LB704]

SENATOR NORDQUIST: Thank you, Mr. President and members. You know, I don't think we should characterize trying to get full and fair debate as wasting time. We have not had full debate. We have not heard any legitimate opposing argument to AM1517 besides it's not what we want or maybe it's not good for our party. Maybe that's what it is. We need to reconsider this and give it full and fair debate. This is a legitimate proposal that addresses many of the concerns laid out on General File, but instead we're spending our time talking about a map that was never introduced in committee, never introduced on the floor of this Legislature. I drew some maps down there. I spent literally probably 35 minutes one day and that's the amount of time I spent in the redistricting room, drew some maps. I don't know where the deviations were on them. Do we need to bring those up here and talk about those as well? We're not wasting time here. We're giving full and fair debate to a legitimate proposal that addresses the deviation, that addresses the number of core areas, that addresses the size of the Third Congressional District. So with the amendment that Senator Lautenbaugh has on Final Reading setting before us, what are we left with? We're left with a pledge that will address the concerns on the next round of debate. Funny, that's what we heard on General File, too, and here we are. So, I think, it's time we get serious about coming up with a compromise here, otherwise we are going to end up at a roadblock here in a couple hours. That's the alternative. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Nordquist. There are no other lights on. Senator Karpisek, you're recognized to close on your motion to reconsider the vote last taken on AM1517. Senator Karpisek. [LB704]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Again, I do apologize for this one taking so long. I did not mean it to. I would not have ever even put it in had not I felt that I didn't have time to get to noon and try to recollect my thoughts and get my strategy put back in order. So I do apologize for that. However, I do want to say again what is wrong with this map? I think it takes into consideration many things. I think it is contiguous, it is not jutting around everywhere. I don't know, other than just not liking it, what it is. I have not heard people even off the mike come up and tell me what's

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wrong with it. Again, I appreciate a lot of you coming up, taking a look at it. And again, I've got another map to come, probably get just as far on that one. But that's okay. I don't like to do this. This isn't...well, it may be my idea of fun. But I can think of "funner" things to do than to stand and hold everyone up like this. But darn it, when you can't get someone to negotiate, you can't get anyone to talk to you, to tell you what's wrong with your map, again, Senator Lautenbaugh has talked to me. We've tried, we've tossed a few things back and forth and I appreciate that. But I do think that AM1517 is logical, there is nothing wrong with it. I don't like Colfax County being split. Again, there's going to have to be a split in a county somewhere or we are not going to get to zero deviation. Now which side of that is right, I don't know. I'm not the one trying to talk about constitutionality on that issue. I do, however, feel that there may be some issues in Sarpy County if we go with the proposal in LB704. Again, that is not my issue, that is not me trying to rattle swords on that. My issue is Saline County being where it should be and also the map looking as someone that would come in and not know anything about how this works, other than just trying to get the numbers right, I think, how it would be very close to working. Mr. President, I would like to ask for a call of the house and a roll call vote in regular order. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Karpisek. Members, you heard the closing on Senator Karpisek's motion to reconsider the vote last taken on AM1517. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB704]

CLERK: 33 ayes, 0 nays to place the house under call. [LB704]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Larson, Coash, Fulton, Ashford, Carlson, Krist, McGill, Conrad, please check in, otherwise return to the floor. The house is under call. Senators Fulton, Ashford, Carlson, please return to the floor. The house is under call. Senators Fulton, Ashford, Carlson, please return to the Chamber and record your presence. The house is under call. Senator Ashford, please return to the Chamber, record your presence. Senator Karpisek, all senators are present or otherwise accounted for. Mr. Clerk, please read the roll in regular order. The question is, shall the Legislature reconsider the vote last taken on AM1517? Please read the roll. [LB704]

CLERK: (Roll call vote taken, Legislative Journal pages 1749-1750.) 16 ayes, 31 nays on the motion to reconsider. [LB704]

SPEAKER FLOOD: The motion to reconsider is not successful. I raise the call. Mr. Clerk. [LB704]

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CLERK: Senator Mello, AM1509. I have a note you want to withdraw, Senator. [LB704]

SPEAKER FLOOD: Senator Mello, you want to withdraw AM1509? [LB704]

SENATOR MELLO: Yes, Mr. President. [LB704]

SPEAKER FLOOD: It is withdrawn. [LB704]

CLERK: Mr. President, Senator Mello would move to amend with AM1540. (Legislative Journal page 1750.) [LB704]

SPEAKER FLOOD: Senator Mello, you're recognized to open on AM1540. [LB704]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. AM1540 is the amendment that I spoke at length a little bit about, both on General File and this morning, that moves us towards what our neighbors to the east have currently finished up, in the state of Iowa. AM1540 is the base map, quote, unquote, devised by our nonpartisan Legislative Research Office, a map that is not tinkered with, not influenced by members of the Legislature, by the Governor, by any congressional delegation members or anyone else. It's a map, actually, when you look at the proposal, and it's marked 46001, I want to thank Senator Conrad for requesting it for me. If you look at the map in comparison the existing LB704 you see an awful lot similarities. You can see there is one noticeable difference and that difference is the change of the Second Congressional District, the flip-flopping, so to speak, of removing the current district boundaries and adding the entire county and then taking part of the eastern part of Sarpy County away. The base map, as you can see, keeps most of the city's of Bellevue, Papillion, and La Vista currently that reside in the Second Congressional District within the Second Congressional District. There are a few slight deviations as you look from the current LB704 to the original proposed nonpartisan Legislative Research Office map where you can see it does include Platte County, it does include a sliver of Merrick County. I know the debate has centered around whether or not we need to split two counties to achieve that one-person deviation. I think Senator Lautenbaugh has acknowledged from the extensive debate on General File that to get a one-person deviation you must split two counties. It's an argument that Senator Conrad, Avery, myself, and others made which apparently that's now been conceded that in order to achieve that one-person deviation we must do that. The base map had already done that. It was the initial proposal that was put forward, splits two counties--Merrick County and Sarpy County--otherwise it adds Platte County from the Third District to the First and then moves Richardson, Pawnee, Gage, Thurston, Dakota, Wayne, and half of Dixon County to the Third Congressional District. Colleagues, I know that...I just heard Senator Nordquist emphasize that to some extent I had this amendment ready to go on General File because I firmly believe that LB704 through the process has been a very

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partisan process, a very partisan approach. The reason why is there's been no reason or rationale given of why we've done what we've done beyond saying that the numbers are the numbers and we've got to make changes. I don't think that's good enough. I think the state of Iowa has seen success where they had a proposal drafted by their nonpartisan legislative research office that was passed by both houses of their legislature and signed by their governor on the first vote--not influenced by the legislature, not influenced by the governor, not influenced by political parties, or the existing congressional delegation members. We have an opportunity in front of us, colleagues, to follow a very similar approach, to see the weight of nonpartisanship in action, to determine whether or not we believe LB704 is the best approach for our state or whether or not we trust in the nonpartisan nature that we so claim to love that we want to put the faith of our redistricting process which we acknowledge the congressional maps are a much more partisan experience than the legislative Board of Regents, State Board of Education, or Public Service Commission that we want to take the most partisan offices that we can draw in this state and leave it to a nonpartisan office--the Legislative Research Office. I, myself, trust them. I believe that approach works well and I think Senator Avery mentioned on General File that it's an issue that he's going to look to explore next year and beyond of how can we move our state to a more nonpartisan, nonlegislative approach. Why? Because term limits obviously have made this process that much more partisan. Ten years ago they had a 4-4-1 split committee, almost unanimous vote on almost all maps. This year it's a sharp contrast. Some of us have simply asked give us rationale. The proponents say we've given you rationale, you just don't like what we're giving you. It's not the fact that we don't like what you're giving us. The fact is you just can't sell what you're giving us. You can't sell us because the fact is it's weak. Saying that something needs to happen simply because it needs to happen, colleagues, that's a weak argument no matter if we're debating redistricting, whether we're debating K-12 education, the budget, you name the issue. Simply saying something has to happen because we tell you is not a good rationale. That's not a good logic. That's not a good argument. It doesn't take a lawyer in Senator Lautenbaugh's argument to determine whether or not something is unconstitutional. I beg to differ. I think we have very talented, very knowledgeable senators in this body who are not attorneys, who have argued valiantly over the last three years on bills that may or may not be constitutional. AM1540 takes that constitutionality out of the picture. It's not a senator saying this is why I did it or another senator saying why did you do it. This is the nonpartisan Legislative Research Office providing us a snapshot of a nonpartisan map. It's worked well in our neighbors to the east. It worked very well this year. There's no reason that AM1540 shouldn't be the most serious considered amendment we have in front of us. Part of the reason if you look at the arguments that Senator Lautenbaugh, Senator Avery, myself, Conrad, others have made, AM1540 actually takes a little bit of both. It takes a little bit of the existing LB704 in regards to some of the movement of districts from the First to the Third as well as taking two counties from the Third and moving into the First. Senator Lautenbaugh and Senator Nelson says, well, we just did it because we had to do it. Well, it's surprisingly the

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Legislative Research Office also made it work out probably based on numbers. The other unique consideration though is the Second Congressional District, that split line of Sarpy County. There was no radical change made in their maps. They simply took the same argument essentially that I've made and others have made on the existing maps which is, when you need to cut 30,000 people from a district, why would you add the whole district first then only to take 30,000 people out? That's a very tough argument to swallow, colleagues, because it just doesn't make sense. And the lone argument we've had is, well, Douglas County is the core of the district so the rest of it is the rest of it. I think anyone of us can openly acknowledge that's a very weak argument no matter what bill we're discussing. When a district needs to lose population you don't need to redraw the district to simply lose the population. If you look at the Legislative Research Office's base map, it doesn't do that. It somewhat follows a similar path and a similar argument that both Senator Lautenbaugh, Senator Nelson, myself, Avery, Conrad, and others have all made while debating LB704. So in the vein of what Senator Karpisek and myself were looking for on General File of looking for a compromise, of not having the Legislature take LB704 to the lowest common partisan denomination, we have that now in front of us. We can cast aside any concerns that may be regarding partisan influence. We can cast aside any perspectives, any self-motives that may be out there of why we did what we did or who did we do it for. We can cast aside secret meetings, secret conversations, arguments that frankly just have not worked on any level of debate and we can adopt something that moves our Legislature forward in the nature of the great nonpartisan Nebraska Legislature that George Norris founded so many years ago, that we can put partisan aspirations aside, partisan characterizations aside and move forward a map that we have very little influence over... [LB704]

SPEAKER FLOOD: One minute. [LB704]

SENATOR MELLO: ...that we all take a leap of faith, all 49 of us say we have seen this work in other states, we feel and trust our own legislative branch to make the best decision possible, and we will vote on AM1540 because it's a nonpartisan map drawn by nonpartisan staff with nonpartisan purposes. The arguments and rationale, simply the map is the map. We move population west. We move two counties east to make it for the population to get the one-person deviation, which Senator Lautenbaugh and others have admitted needs to happen now. Colleagues, this is an opportunity for us as a state to do what's right. There's been no articulation made of why we have to change counties the way we did, why we have to change 12 percent of Nebraskan's congressional districts beyond saying we did it because we had to do it and my definition of "is" is my definition of "is" and my definition of "core" is my definition of core. [LB704]

SPEAKER FLOOD: Thank you, Senator Mello. Time. [LB704]

SENATOR MELLO: Thank you, Mr. President. [LB704]

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SPEAKER FLOOD: Senator Nordquist, you are recognized, followed by Senators: Conrad, Krist, Council, Ken Haar, and Senator Mello. Senator Nordquist, you are recognized. [LB704]

SENATOR NORDQUIST: Thank you, Mr. President and members. Now that we've moved past AM1517 and went through debate on a proposal and voted it down without hearing any rationale for it we'll move on to the next one which, you know, has some good points and some bad points. Certainly AM1540 is an improvement over the underlying LB704 as it stands right now. And I think its strong points are the fact that it was created in a nonpartisan nature by people who aren't looking to maximize gains one way or the other. Certainly our resolution, LR102 lists as one of its guidelines that district boundaries shall not be established with the intention of favoring a political party or any other group or person. You know, I trust the folks in legislative research that they did this with that point in mind. And I don't know how many of you saw the Journal Star this morning but in one of the columns it highlighted the fact that one of the political parties in our state has purchased and is a client of redistricting software. Now I don't know for what other purpose would a political party spend money for redistricting software other than to influence the drawing of maps. Well, everyone who draws these maps before the Legislature is inside this room. So either that political party that is a client of Maptitude Redistricting Software, either that political party wasted its money by purchasing that software or they utilized that software to try to influence the decision making process here. It's one of the two. Either they wasted their money which could be a possibility--maybe they drew maps and just sat them on the shelf to collect dust--or maybe they drew maps and are trying to influence the process. Well this map before us in AM1540 takes that concern out. This was drawn by legislative staffers without any political influence, and it also addresses the other concerns that we've been talking about. Certainly the deviation issue is now down to zero. It's an absolute deviation. That will resolve any concern of a legal challenge to this map. Also it has a significantly less displacement of voters. I don't have the exact number but I believe it's about half, maybe slightly more than half of what's in LB704. So certainly the strength of the proposal in AM1540 are the deviation being gone, the lack...the reduction, and the displacement of voters from one district to the other, and certainly more than anything the fact that it was done in a nonpartisan nature with partisanship not in mind. And Senator Mello handed out articles about the Iowa redistricting process. Certainly read some of the new stories myself. In a legislature that barely could pass any bills this year between the house and their senate were able to pass their redistricting map in very little time at all because they did it in a nonpartisan nature. Certainly I think this is a path that we should look at in the future for our redistricting but we can start down that nonpartisan path right now by adopting AM1540 and the base map that was produced by our good staff in the Legislative Research Office. Thank you, Mr. President. [LB704 LR102]

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SENATOR ADAMS PRESIDING

SENATOR ADAMS: Thank you, Senator Nordquist. Senator Conrad, you're recognized.
[LB704]

SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. I rise in support of AM1540 and I'm glad Senator Mello brought this before the body for consideration. I did ask the Legislative Research Office to formerly construct this map after they had presented it as the base map to the committee because I felt that it was important that we had a nonpartisan perspective on this very difficult and emotional issue as we move forward, and that indeed this map is probably not perfect from either party's perspective but takes a little bit that each party wants and is indeed...could fairly be characterized as a sound compromise and consensus that matches the historical pattern of redistricting in Nebraska which we haven't had a chance to talk about a lot on Select File but we did have some good dialogue about that issue on General File. And why the historical perspective is important is because it goes to determining whether or not there is a rational or legitimate state interest in putting forward these plans. Again, if you look at the maps that we put together and if you listen to the debate that senators talked about, 1971, 1981, 1991, 2001, there's been slight changes shifting eastward amongst the congressional district plans. And in particular in relation to the Second Congressional District, the geography has become more compact and contiguous, it's become a smaller area. Never once in this 40-plus years of redistricting history in the state of Nebraska has the Legislature passed a plan that just flip-flopped certain aspects of geographical districts for partisan purposes as is contained in LB704. And make no mistake about it. We've heard a lot of legitimate concerns surrounding minority voters and their rights as protected through the Civil Rights Act and the Voting Rights Act and the Nebraska and the federal Constitution, but there's also considerations that need to be given to partisan gerrymandering which are far, far less certain in terms of conclusion from the courts but are real nonetheless and, in fact, so real that they make up a whole chapter of the NCSL redistricting materials that were provided to us. Chapter 6 is on partisan gerrymandering, and just the initial definition that they utilize states that partisan or political gerrymandering is the drawing of electoral district lines in a manner that intentionally discriminates against a political party. So take that into account when you realize that the state of Nebraska is turning its back on a 40-year history by allowing this geographical flip-flop which displaces thousands of voters unnecessarily in contravention of our own redistricting principles. And why? The only answer is, is because of partisan advantage. And I want to talk a little bit about the process and how minority partisan interests have really been denied a legitimate and full participation in the creation of this plan. Number 1, there was no...and this comes from me as a member of the Redistricting Committee. If my time line or facts are off I'm sure there will be plenty of members here to correct me. But to begin with, there was no congressional district plans presented to the committee until our very last meeting which was the morning meeting and we discussed that...the plans that were put forward for I think

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about 30 or 35 minutes until the question was called. So we were able to have...
[LB704]

SENATOR ADAMS: One minute, Senator. [LB704]

SENATOR CONRAD: Thank you, Mr. President. We were able to have 35 minutes of debate in the Executive Committee on the Redistricting Committee about whether or not (laugh) we should adopt this congressional plan. I contend that that is not full and fair participation by...allowed or afforded to any member. Put that fact in line with that very same warning when we woke up and read in the Omaha World-Herald Governor Dave Heineman noted that Senator Lautenbaugh's plan was his preferred plan and will be adopted by the Legislature before any member of the Redistricting Committee had even seen the maps formally presented. So juxtapose that as the kind of partisan/political activity that was happening outside of the legislative process. Then take into account what happened at the public hearing where there was a variety of citizens who came...
[LB704]

SENATOR ADAMS: Time, Senator. [LB704]

SENATOR CONRAD: Thank you, Mr. President. [LB704]

SENATOR ADAMS: Thank you, Senator Conrad. The Chair recognizes Senator Krist.
[LB704]

SENATOR KRIST: I yield my time to Senator Lautenbaugh. [LB704]

SENATOR ADAMS: Senator Lautenbaugh. [LB704]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and thank you, Senator Krist. This was particularly timed well because this was a good time to have the time. We've heard a lot about how great 2001 was, that sort of decade of prelapse area and innocence before we found ourselves where we found ourselves today, and that they did a great job with four democrats, four independents, and four republicans on the Redistricting Committee, and everything was good, well, except for all that stuff Senator Karpisek said this morning about Saline being shunted off to the Third District. That was obviously partisanship and it was wrong as wrong can be, but other than that they were fine. Nothing wrong happened in 2001 except for the thing that we spent most of the day talking about. Now let's move on as the other side--as I'm starting to call them with comfort--constantly brings up partisanship. Senator Nordquist just bit on something that was in the paper today about how the state GOP bought some redistricting software and why else would they do that unless they were consulting with us inside the body on redistricting. Well, here's why, Senator Nordquist, that story was false. Some on-line commenter posted it on a Journal Star Web site article. Some columnist from the

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Journal Star picked it up today. And now here we have a letter from the company in question, Maptitude: This is to confirm the Nebraska Republican Party is no longer a client of Caliper Corporation and no longer uses Maptitude for redistricting. The copy you purchased in 2001 expired in 2002. Well, what could they have been doing with that software in the great period of innocence we look back fondly upon known as 2001? Well, there you go. But the truth as we're finding whether we're talking about the law of minority dilution or how important it is that we cure any population deviations, so we're anxious to get to my amendments which, by the way, are still in line and would be heard today if we got to them even though I've said they'll probably be in Final and I'll consent to them on Final if we don't get to them, they could still be heard today. So there you have it. Because of a falsehood that was repeated, you're supposed to infer more partisanship. And it goes beyond that. Senator Nordquist said Senator Avery's map was never even introduced in committee. That is a falsehood or I wouldn't have known about Senator Avery's map if you think about it. It was introduced at the same time as Senator Conrad's was. We talked about it the same day. So to say, well, that map isn't even relevant, no one ever introduced that in committee. Well, someone put an awful lot of work into it and got it down to zero population and let the rest of us know about it in committee, but apparently it didn't happen because Senator Nordquist says so. Make no mistake. There's a point at which this does not turn into a debate and it turns into an attempt to filibuster. Senator Nordquist in his numerous times speaking today lamented the fact that no one was speaking about Senator Karpisek's map. Well, no one was stopping Senator Nordquist, but we had to keep talking about how we weren't talking about it. Now we're talking about false charges of the party buying software and sharing maps with us but I guess we're supposed to be fine with that, too, because we read it in the paper so it must be true. It was true a decade ago, that time we're supposed to look back upon fondly and emulate, except in the case of Saline County where the wheels came off and we have to undo that supposedly. I would hope there's a point at which credibility matters in this debate. I would hope there's a point at which that will happen. But reckless charges made without any attempt... [LB704]

SENATOR ADAMS: One minute, Senator. [LB704]

SENATOR LAUTENBAUGH: I'm sorry, was that one minute, Mr. President...reckless charges without any attempt made to verify the truth thereof simply have no place. There should be a retraction of that comment that was printed in the paper, and we should risk or avoid the risk we take when we read things in the paper and take them at face value and say, well, then it must have happened because I read it somewhere once. Thank you, Mr. President. [LB704]

SENATOR ADAMS: Thank you, Senator Lautenbaugh. The Chair recognizes Senator Council. [LB704]

SENATOR COUNCIL: Thank you very much, Mr. President. And I guess it's fortuitous

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that I was in the queue following Senator Lautenbaugh because after making a couple of points I want to ask if he'd yield to some questions. I'm please to see AM1540. For those of you who were listening last week, I asked the question from what base did the committee begin its deliberations because throughout the discussions that had occurred prior to that inquiry, I heard about Senator Mello's map, I heard about Senator Conrad's map, I heard about Senator Lautenbaugh's map, and I said, well, what was the base map. At least my understanding of how the committee was designed and structured to work, it wasn't that each committee member was charged with coming up with their own map. I had hoped that they were being asked to respond to something that had been prepared in a nonpartisan, very objective manner consistent with the resolution. And it is my understanding that AM1540 does represent what our nonpartisan Legislative Research Office developed. And I think that's significant because just based upon what Senator Lautenbaugh stated in his last series of comments, you know, there are these allegations floating back and forth about partisanship being involved in this process. The paper certainly...the news media has certainly made quite a bit of hay out of that. And just as I have suggested when we were debating the bill about the TERC board to remove all speculation about partisan involvement in this redistricting process, let's look at the base map that was prepared by a nonpartisan body and see what causes heartburn. So if Senator Lautenbaugh would yield to a question please. [LB704]

SENATOR ADAMS: Senator Lautenbaugh, would you yield? [LB704]

SENATOR LAUTENBAUGH: Yes, I will. [LB704]

SENATOR COUNCIL: And when you were presented with what is now 46001, what was it about what is depicted on this map that led you to conclude that the Congressional District 2 had to be reconfigured? [LB704]

SENATOR LAUTENBAUGH: Well, I need to answer that by clarifying a little as to the purpose of base maps, who produced them and why. These were not supposed to be proposals that we went forward with. This was supposed to be something better than a blank sheet of paper to start with. So I don't know what considerations were taken into effect in making this map but we noted at the outset that it pretty clearly divides the cities of Papillion and La Vista for no real rhyme or reason. There were certainly other ways to do it. [LB704]

SENATOR COUNCIL: Okay. So in that...so when you...during the first committee discussion of what the Legislative Research Office presented, it was clear that the cities of Papillion and La Vista were divided. [LB704]

SENATOR LAUTENBAUGH: I don't remember us ever discussing the base map per se until Senator Conrad asked that it be introduced as her proposal. I had a map, Senator Avery had a map, I believe there other maps, and we discussed the merits of each of

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those. The base map was, like I said in my mind, meant to be something slightly better than a blank sheet of paper and, no, we didn't sit around saying, well, the base map says this or the base map said that. It was never seriously considered at all in my mind until Senator Conrad moved it. [LB704]

SENATOR COUNCIL: Okay. So then in your mind in the map that you introduced, what was so compelling to you... [LB704]

SENATOR ADAMS: One minute, Senator. [LB704]

SENATOR COUNCIL: ...was that under the current configuration of the congressional district, Papillion and La Vista were divided. [LB704]

SENATOR LAUTENBAUGH: Well, and honestly it was imperfect so we've had to tweak it to make sure that we accomplished that goal, but the virtues of it in my map as I explained at the time was that it basically united all of Sarpy Counties communities in one district and Bellevue and the air force base were in the right size to be in the other district populationwise for what we needed to make it all balance. [LB704]

SENATOR COUNCIL: Okay. But see my question is, is what prompted that concern? I mean, you don't represent either of those areas, so what was it or who was it that brought to your attention this urgency about Sarpy County? [LB704]

SENATOR LAUTENBAUGH: Well, I wouldn't describe it as an urgency really, it was just a proposal that came forward. But I know that we heard from people in the wake of the 2001 redistricting regarding... [LB704]

SENATOR ADAMS: Time, Senators. Thank you. The Chair recognizes Senator Ken Haar. [LB704]

SENATOR HAAR: Mr. President, members of the body, I'd like to give the rest of my time to Senator Council if she'd wish to continue this line of questioning. [LB704]

SENATOR ADAMS: Senator Council, do you yield? [LB704]

SENATOR COUNCIL: Yes, thank you very much, and...Senator Haar. Oh, I can't yield time but I can still ask Senator Lautenbaugh if he would yield to a question. I think that's in order, Mr. President. [LB704]

SENATOR ADAMS: Senator Lautenbaugh, do you yield? [LB704]

SENATOR LAUTENBAUGH: Yes, I will. [LB704]

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SENATOR COUNCIL: Okay. When you indicated that there were individuals who expressed some concern following the 2001 redistricting, who were those and what were the nature of their concerns? So for the ten years since the last redistricting there were these concerns about how Papillion and La Vista were divided? [LB704]

SENATOR LAUTENBAUGH: Well, and generally all of western Sarpy County which we're having these protracted discussions over whether or not Bellevue has more in common with Douglas County or the rest of Sarpy County has more in common with Douglas County, and I don't know how your answer that question. I think it was important to proceed without dividing communities and that's what we've tried to do here. [LB704]

SENATOR COUNCIL: Okay. Well, I'm just...for my personal edification I'm just curious as to the genesis of the need and the desire to address the issue of dividing Papillion and La Vista away from the remainder of the Second Congressional District. And this gets to my issue with regard to the LB704. Again, we've all had this discussion that the core of the district is whatever the person at the mike believes it to be. But you clearly cannot have a core without people in the core and the core of the district to be preserved would be the people who have been in that district. And I have never quite frankly understood the reason to remove an entire population of individuals who have historically and traditionally been a part of a congressional district, place them in a different congressional district in order to bring people into the district who have never been a part of it. I can't accept...and no one has to disagree with the fact that I can't accept, I can't accept that the desire to maintain Papillion, La Vista whole overrides the interest of Bellevue to stay in the district that they've been in for decades. That disturbs me. And for Senator Lautenbaugh's questions about dilution of racial voting concerns, I think the point that needs to be made is that while we are out here on debate on Select File asking questions, it's not my role to tell the committee what they...where they should have been looking. It's for the committee to have advised this body how they went through the principles set forth in LR102 and determined that the map represented by LB704 complied with all of those principles set out, and one of those principles had to deal with racial dilution. And then to stand here before this body and say, well, you all haven't given us any court or case authority for why we needed to consider racial dilution. I don't need to give you case authority. I need you to comply with the principles set forth in the legislative resolution that we adopted, and it said that the committee was to look at that and consider that and for a member... [LB704 LR102]

SENATOR ADAMS: One minute, Senator. [LB704]

SENATOR COUNCIL: And for a member of that committee to stand before this body and say he had no idea what the racial composition of Sarpy County is, is an indication to me that this committee failed in its duty to consider all of those principles set forth in LR102. And in that regard, Senator Lautenbaugh, Senator Nelson, and others who

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supported LB704, we do need to take into consideration what are referred to as influence districts. Now the Supreme Court in one case held that Section 2 of the Voting Rights Act did not require an influence district to be protected and it said in that case, but in other cases the Supreme Court has held that an influence district needed to be protected. And an influence district is where the... [LB704 LR102]

SENATOR ADAMS: Time, Senator. [LB704]

SENATOR COUNCIL: Thank you. [LB704]

SENATOR ADAMS: The Chair recognizes Senator Mello. [LB704]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. And I'd like to clarify I think a few points of contention I think that was alluded to on the mike by various colleagues. First off, AM1540, the map that you see in front of you, 46001, was never introduced in the Redistricting Committee or voted on. I know Senator Lautenbaugh said it was introduced by Senator Conrad and the committee chose not to...no, the reality is Senator Conrad asked for it to be prepared. The committee never made a motion on it. That's a significantly different perspective and different action than saying someone introduced this proposal and the committee turned it down. Once again, colleagues, with all due respect to Senator Lautenbaugh, I...I heard him engage Senator Nordquist and I've heard him engage other colleagues through General File and Select File in regards to...it appears the inadequacies of other people's arguments against his proposals. And with all due respect the reality is this is your proposal, Senator Lautenbaugh. You were the leader in drafting LB704. It's not my responsibility or anyone else's responsibility for you to attack us or our arguments when we're simply asking questions. Now I understand that we have a general disagreement. We have a disagreement in regards to what "is" is, what "core" is. I can respect that. I noticed once again you tried to use partial arguments that I have made or others have made in other redistricting proposals against us even though it's the foundation of LB704. Senator Lautenbaugh pointed to a Board of Regents map that I put forward. I can explain my...I can explain my rationale on every map that I drafted. The rationale was part of LR102 which said we need to consider municipal boundaries. I drafted a Board of Regents District in Lancaster County that followed almost to a precise T the city of Lincoln's boundaries. Ultimately the committee felt maybe it would be best to go a different approach and follow the core of the prior district which was--get this, colleagues--the existing district boundaries with a slight change because it needed to grow in population. But yet we've heard multiple times when debating LB704 that we don't need to follow existing district boundaries because the core is the core and the core is what I say it is. Colleagues, that's not a good enough argument. That's not a good enough premise in regards to debating what will change 226,000 Nebraskans congressional district. The proposal I bring today simply is another approach, it's another perspective to take. I understand Senator Lautenbaugh has not said a single word about AM1540

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except that essentially it was the starting point and it's pretty much not as good as the paper it's written on because all it is is a starting point. Colleagues, it's a proposal. It might not be better than Senator Lautenbaugh's. It might not be better than the first proposal I put forward. I'm willing to acknowledge that because in this body we have to be willing to acknowledge that things can't be perfect, let alone drawing political boundaries can't be perfect. But to say that this proposal is essentially just scratch paper, that it's not really a real map, it was just something that was put together for us to start considerations. It's funny how most of this map actually is LB704 with the exception that there's obviously political undertones in regards to LB704 that's been reported multiple times in multiple press outlets of why would the eastern part of Sarpy County, the longest, oldest city in the state of Nebraska, the city of Bellevue, why would that be moved to a new congressional district... [LB704 LR102]

SENATOR ADAMS: One minute, Senator. [LB704]

SENATOR MELLO: ...when the county and the Second Congressional District over the last 40 years has done nothing but shrink in geographic size? No one has been able to answer that with the exception Senator Lautenbaugh said, I did this change to keep the cities of Papillion and La Vista whole. But, colleagues, introduced LB704 split Papillion, split Bellevue, passed on General File. LB704 split Papillion, split Bellevue. Now in the third go-around, Senator Lautenbaugh is using the same argument again: well, I'm going to keep Papillion and La Vista whole and I'm going to make sure that Bellevue is not part of the Second Congressional District. You can use the same argument once. You can maybe try to get away with it twice. On the third time, colleagues, you're simply saying things for the sake of saying things and you've lost all credibility. I think Senator Lautenbaugh asked, where...when does credibility matter? Right now... [LB704]

SENATOR ADAMS: Time. [LB704]

SENATOR MELLO: ...credibility matters. Thank you, Mr. President. [LB704]

SENATOR ADAMS: (Visitors introduced.) Senator, Lautenbaugh, you're recognized. [LB704]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I'll be brief because I owe someone some time. Our resolution outlaws illegal racial dilution. Illegal, you can't skip that word. So we don't have a blanket prohibition that says we must always act to avoid any percentage for any other reason that would change the totals. It outlaws or provides that we should not do illegal racial dilution and that matters, that matters quite a bit. And as far as Senator Mello saying they're simply asking questions and hoping for answers, well, that's not what I'm hearing. And saying you read in the paper that this was partisan so it must be so really doesn't make a lot of sense. It kind of comes back to what we said earlier or what I said. You pointed out that

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your regent map follows municipal boundaries. That's what we're doing with my amendment that I hope to discuss. To say that we are creating new people in the district and moving Bellevue out does ignore the substantial number of people in Papillion and La Vista who I think actually matter, by the way, who we are preserving with their communities intact in the Second Congressional District. Now the focus has been on Bellevue. What about Bellevue? What about Bellevue? What about Papillion? What about La Vista? My map as amended preserves Papillion and La Vista in the Second District. La Vista is largely already there. So now if we move them out, would we be hearing: What about La Vista? What about La Vista? Well, that's what this base map does. It splits them more so. That's a problem with the base map. Now I hope you're hearing me when I say that because in a few minutes from now someone will stand up and say we haven't heard anything, so I hope you heard that. That's one of the reasons we did not advance this map, this starting copy presented by the staff, based upon what considerations I don't know. But this isn't the one we went forward with. And that's one of the problems with it is it does split those communities. And if that was important enough to do on Regents map for Senator Mello, I'm assuming it's clear why it's important enough to do here. And I'll yield the rest of my time to Senator Krist. [LB704]

SENATOR ADAMS: Senator Krist, you're...2 minutes, 40 seconds. [LB704]

SENATOR KRIST: That should be plenty. This is the only time I intend to talk for the rest of the day. If we are so concerned about doing what we need to do as a Legislature and making law that we are always constantly looking over our shoulder to make sure that the...it'll be constitutional, that the Supreme Court will not tell us that we have not done a good job, let me remind you, colleagues, in the 19th century, Congress passed a law that said there will be taxes. And within a very short period of time the Supreme Court came back and said that is unconstitutional. Guess what? We still have taxes. There was a legitimate reason for the process, at least they thought so. Not too long after that in the 20th century there was a fair wage and a wage guide and a minimum age to work. And guess what? It was declared unconstitutional by the Supreme Court. And guess what? It is still in standard today. We protect our people with fair wages and with fair work environments. Why do I bring that up? I bring it up because what seems to be missing from all the discussion that I've heard over this subject and others like it is that we don't have a compelling reason to do what we're doing. Well, here, I'm going to give you one. Personal experience. Offutt Air Force Base needs to be brack proof. It is \$26 million-plus (sic) of this state's income and it represents a huge part of the business in this state. They currently have one congressman that's Offutt-smart. [LB704]

SENATOR ADAMS: One minute. [LB704]

SENATOR KRIST: Thank you, Mr. President. My compelling reason for potentially voting for LB704 as it exists is I'm willing to take a small deviation if we actually could charge up Fortenberry and Terry to defend and brack proof Offutt Air Force Base. So

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there's a compelling reason for you. I think the protection of \$20 million...\$20 billion-plus, I'm sorry, \$20 billion-plus is worth a change in this particular area. That, to me, is a compelling argument. Just another little bit to fuel the tank. Thank you, Mr. President. [LB704]

SENATOR ADAMS: Thank you, Senator Krist. The Chair recognizes Senator Nelson. [LB704]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to address a number of things about the base map, some of the things that I understood to be said and represented. First of all, as a member of the nine-person committee I know that we had the base map in front of us. We had a base map on everything and that's just what it was, a base map to start with to see what the possibilities are and what the things are that we didn't like or might have some questions about, nothing that we had to adopt. Now Senator Conrad has brought that forth as AM1540 and adopted it as her own and that's fine, but it's not set in stone. It's a plan that was set forth that met practically all of our requirements but we don't have to accept that. I think Senator Mello talked about how nice it would be if we had our maps drawn by the Research Office and presented to us and that would be in a nonpartisan manner. I question, you know, how you're going to know your office of research is necessarily nonpartisan. I don't know that much about what Iowa does but my understanding is that they research...the research division over there puts the map together and then it comes to both bodies of the Legislature and they can either vote yes or no, we accept this or we will not accept this. And if they vote no, back it goes to research and you come up with something else and you vote it up or down again until you finally get what you want or what the majority feels that they want. We're doing the same thing here except that we've had various senators, various members of the committee bring forth their own maps and we've taken a look at them and we have rejected some, we have supported some, and we brought them out on the floor. And so basically we're doing the same thing here. We're not voting them up or down and out for the research committee to change or come back with another one. We're coming up with the best possibility that we can here, what the majority thinks makes the most sense. I have a question or I'd like to address a question to Senator Mello if he's available. I don't mean Mello. I meant. I'm sorry... [LB704]

SENATOR ADAMS: Senator Mello, would yield for a question? [LB704]

SENATOR NELSON: Sorry, Mr. President, I meant Senator Avery. Sorry. [LB704]

SENATOR ADAMS: Senator Avery, would you yield to a question from Senator Nelson? [LB704]

SENATOR AVERY: Yes, I will. [LB704]

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SENATOR NELSON: Thank you, Senator Avery. On the dilution question you cited I believe a Supreme Court case. Do you have that in front of you? I don't recall the name. Was it Winston or something like that? [LB704]

SENATOR AVERY: No. It wasn't with reference to dilution. It was with reference to the deviation and it was Wesberry v...I forget. [LB704]

SENATOR NELSON: Wesberry. Okay. Could you read that two sentences for me again so I can get them in mind if you have that...? [LB704]

SENATOR AVERY: Yes, I can. [LB704]

SENATOR NELSON: ...that you quoted? [LB704]

SENATOR AVERY: Wesberry v. Sanders, 1964. The court held that the population of a state's congressional districts must be, "as nearly equal in population as practicable," and in subsequent opinions the courts clarified what they mean by, "as nearly equal in population as practicable," to mean absolute mathematical equality. [LB704]

SENATOR NELSON: All right. So that's...those two statements were not all in the same case; they were in different cases. Is that correct? [LB704]

SENATOR AVERY: Well, the first case, Wesberry v. Sanders, is what established, "as nearly equal in population as practicable." Then in subsequent decisions, the court defined more... [LB704]

SENATOR ADAMS: One minute, Senators. [LB704]

SENATOR AVERY: ...more precisely what they mean by as nearly equal as practicable, and that they determined to be absolute population equality, mathematical. [LB704]

SENATOR NELSON: So that would mean...thank you, Mr. President. Was that time? [LB704]

SENATOR ADAMS: Forty-seven seconds. [LB704]

SENATOR NELSON: Oh, thank you, sir. Well, then that means to me if that was the final ruling that you've got to have absolutely zero deviation, is that correct? [LB704]

SENATOR AVERY: That's correct. [LB704]

SENATOR NELSON: How is it that all the others states have then not had a zero deviation but in the numbers of thousands as far as population differences? [LB704]

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SENATOR AVERY: I don't know where you're getting this. I haven't seen that list. But I presume they haven't been challenged. [LB704]

SENATOR NELSON: All right. Do you think we would be challenged then on 229 (sic) people if that still existed, which it doesn't if we take a look at the amendment that Senator Lautenbaugh is going to present? [LB704]

SENATOR AVERY: If his amendment is adopted. If not... [LB704]

SENATOR ADAMS: Time, Senators. [LB704]

SENATOR NELSON: Thank you, Mr. President. [LB704]

SENATOR ADAMS: The Chair recognizes Senator Conrad. [LB704]

SENATOR CONRAD: Thank you, Mr. President. Colleagues, I just wanted to finish up my quick time line of events and then make a few points of clarification for the record. Again, the congressional district plan was...that we have before us now was considered for about 30, 35 minutes at the committee level. The same morning before a vote was taken the Governor had weighed in in the paper saying that this was the appropriate map that the Legislature will and should be adopting, which again I think is questionable in terms of partisan involvement. And then we had a public hearing where there were a variety of citizens who came forward to express their concerns about this congressional district map and none of those concerns were taken to heart or in any way, shape, or form incorporated into some sort of a consensus or compromised proposal by the committee. And I think that's a disservice to our public process. Then on General File Senator Lautenbaugh gave very clear and forceful assurances to this body that this map and its deviations were legally sound and even legally sound according to the Attorney General's Office in an informal meeting or opinion or what have you. But then we find out today that (laugh) Senator Lautenbaugh put in a map to correct the legal problems that do indeed exist, has withdrawn that, and is now refiling it on Final Reading in a strange move because we do have this before us today and members of the minority party can't call cloture and can't in any way stop the debate, so we might as well continue the debate in terms of what we have before us in our work. And a couple of things. I double-checked with committee staff about this because Senator Lautenbaugh seemed to have made a lot of hay about the fact that, oh, Senator Avery had in another plan that did this or didn't do this. There were two formal motions in committee: one in relation to Senator Lautenbaugh's plan; one in relation to Senator to Senator Mello's plan. Every other proposal was never formally moved, discussed, or adopted, or presented. So to say somehow that just because a map exists that then that takes precedence and relevance. I introduce legislation each year that I ultimately decide not to introduce for one reason or the other. How should that play into consideration for

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other things? It shouldn't. Just because people have drafted other things, that doesn't mean that they should be given the same full force and weight as things that were moved for formal adoption. And I do just have to clarify again for the record that seemingly there's a lack of understanding amongst committee members about the differences and distinctions in different redistricting plans. Look no further than our constitution, look no further than LR102. And Senator Lautenbaugh is now trying to make some point about Senator Mello's Regent plan and how it affected municipalities. There are different standards for congressional district plans. (Laugh) It cannot be more clear about that. So to compare a proposed region's plan to a congressional district plan is just irrelevant. And my map which is presented here now which is not my map, it is the Legislative Research Office's map, and to be clear, there's parts of the map that I think are good and there's parts that if I were personally drawing a map I'd draw differently. But knowing how partisan the committee level and process was and knowing how partisan the floor debate on these issues would be, I thought it was... [LB704 LR102]

SENATOR ADAMS: One minute. [LB704]

SENATOR CONRAD: ...I thought it was important--thank you, Mr. President--that we did have a base map to represent compromise and to represent a nonpartisan proposal before us, and that's what you indeed have. The other point is, it's nice to hear Senator Lautenbaugh finally engaging in dialogue on the record. But unfortunately rather than building up the rationale for his plan or pointing out deficiencies in the succeeding plans that have been filed, he instead takes his time to personally attack people like Senator Nordquist and others who want to join into the debate. And I think that that's unfortunate because there's plenty of fodder and plenty of issues to talk about in relation to: which plan is a better plan? Why or why not? Let's hear the pros and cons. How did you come up with this? Why did you turn your back on a 40-year historical precedent? Why did you choose to displace more voters than other plans? Etcetera, etcetera. But we don't get to hear any of... [LB704]

SENATOR ADAMS: Time, Senator. [LB704]

SENATOR CONRAD: Thank you, Mr. President. [LB704]

SENATOR ADAMS: The Chair recognizes Senator Nordquist. [LB704]

SENATOR NORDQUIST: Thank you, Mr. President and members. First, certainly will rise to clarify and to correct the record on a statement about the mapping software. Certainly was listed in the article in the Journal Star this morning that the state Republican Party is listed as a client for Maptitude on that company's Web site. That is a correct statement. But if their Web site is wrong, then I stand corrected and I'm sure that the reporter does as well. But to clarify, it doesn't say that they are a client. It did

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say in the article that they were listed as a client, so...which is in fact a correct statement and we'll leave it at that. But Senator Karpisek or Senator Lautenbaugh said, you know, we're talking about why we're not talking about the solutions. I've been working off the (laugh) essentially the same sheet of paper since General File listing both my concerns on LB704 and the underlying bill and why I thought at that time Senator Karpisek's amendment, AM1517, was a better solution. Again, it gets back to the points of the deviation, the displacement of voters based on an objective measurement and at that point the size of the Third Congressional District. Also Senator Karpisek's amendment addressed the concerns of the people in Platte County. Now the map before us replaces a couple of those. No longer is the size...does this map make us the Third District any smaller and Platte County is in the First Congressional District under this map. But this is another alternative to address the serious issue of the deviation which more than any other issue the U.S. Supreme Court has held as the key issue that we need to be talking about and addressing. And we have alternatives before us, alternatives that will take that deviation down to nothing. Those are the reasons I was laying out for Senator Karpisek's bill and I think I repeated them three times while my light was on three times. And I continue to address those concerns as I did on General File about the underlying bill and LB704. So certainly I don't know that we're just talking about not talking about the solutions but we're talking about the individual points of concern in the plan before us. And also I think as Senator Conrad rightfully pointed out, I'm glad she clarified that as a member of the Redistricting Committee, as I said the Avery plan was never put forth before the committee. Now I don't...in that I meant that it was never voted on or never made a motion before the committee, and Senator Conrad thankfully confirmed that for the record. So, again, I think the discussion we had on that plan is irrelevant and we can set that aside now and move forward looking at the plan before us. Again, I think that ultimately the strong point of this is that it was created kind of behind the veil of ignorance to political parties, political registrations in districts in our state and counties in our state and certainly will come out as good public policy should with that set aside and a plan that adheres to the guidelines laid out in LR102. I know Senator Nelson expressed concern or skepticism about legislative research. Certainly I think that they do a fine job and are nonpartisan in their business, and I think that the map that they laid out before us is in that line as well... [LB704 LR102]

SENATOR ADAMS: One minute, Senator. [LB704]

SENATOR NORDQUIST: ...a nonpartisan approach that hits the guidelines we're talking about, again, with the critical issue of zero deviation. That's the best we can do and I support AM1540 for those reasons. I want to make sure that we're clear on the record that I'm laying out some reasons for my support of this amendment. Again, it's zero deviation and the nonpartisan nature that this was developed. Thank you. [LB704]

SENATOR ADAMS: Thank you, Senator Nordquist. Senator Council, you're recognized. [LB704]

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SENATOR COUNCIL: Thank you very much, Mr. President. Just a couple of points I need to make. And with all due respect to my friend and colleague Senator Krist, his rationale for why Bellevue should be in the congressional...First Congressional District was neither compelling and in fact it was disingenuous. That was the least compelling argument I've ever heard and it was so disingenuous to suggest that the only way we could get Congressman Fortenberry to advocate for Bellevue and Offutt is to switch Bellevue into his congressional district. You know, I'm appalled by that. And I would be embarrassed if Fortenberry was someone I voted for and thought that he was to advocate for Nebraskans and to suggest that the only way that you could get Congressman Fortenberry to work with Congressman Terry on behalf of Bellevue is to flip Bellevue into Fortenberry's district, woe unto us because implicit in that is that somehow Senator...Congressman Terry will continue to advocate to Bellevue although he won't get a vote from that district. Interesting. Number 2, which is it, committee members? Senator Lautenbaugh said the base map wasn't considered until later after other senator's maps were being discussed. Senator Nelson said the base map was there from the beginning. Which is it? Number 3, Senator Lautenbaugh, you're right. The resolution says our redistricting should not result in any illegal dilution of minority representation. Would Senator Lautenbaugh yield to some questions? [LB704]

SENATOR ADAMS: Senator Lautenbaugh, would you yield? Senator Council, Senator Lautenbaugh is not here. You might want to continue to use your time. [LB704]

SENATOR COUNCIL: Okay. Well, I'm going to ask the questions because in order to conclude that there is no illegal dilution of minority representation you had to consider some factors with regard to minority representation. According to Senator Nelson, they didn't even know how many minorities were represented in Sarpy County. So how can you come to a conclusion that this plan does not involve illegal dilution of minority voting strength without being able to outline what process you went through to make sure that there was no such illegal dilution? Instead, you seem to suggest that we should just accept, well, you know, it's out and you all haven't shown that there is illegal dilution. No, folks. You advanced this proposal. You need to present the data, the evidence to demonstrate that not only did you consider that principle in the resolution, that you determined based upon some data that no such illegal dilution of minority voting strength occurred. And for this body to accept a blanket statement that it didn't occur in view of Senator Nelson's statement that they had nothing to tell them what the minority representation was, which is not necessarily true because there have been some data, Senator Langemeier provided me some data that showed percentages. And the last time I checked, the very census that we base these decisions on, ask questions with regard to race, and it's those questions by census track which tells us how our population has shifted and how our minority populations have grown. So help me understand how you can make a blanket statement that there is no illegal dilution... [LB704]

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SENATOR ADAMS: One minute. [LB704]

SENATOR COUNCIL: ...yet you cannot present one iota of data or information that you considered to arrive at that conclusion. And I wanted if Senator Lautenbaugh here because I don't know anything about Bellevue. I don't know anything about Papillion. Would Senator Cornett quickly yield to a question? [LB704]

SENATOR ADAMS: Senator Cornett, would you yield? [LB704]

SENATOR CORNETT: Yes. [LB704]

SENATOR COUNCIL: Senator Cornett, is any part of Bellevue south of 48th Street between Cornhusker and Harrison? [LB704]

SENATOR CORNETT: I'm sorry, south of 48? You'd have to be either east or west. [LB704]

SENATOR COUNCIL: Excuse me, north...excuse me, west of 48th Street between Harrison and Cornhusker, is any portion of that part of the city of Bellevue? [LB704]

SENATOR CORNETT: Yes. [LB704]

SENATOR COUNCIL: So, ladies and gentlemen, even in the map in LB704 it's okay to lop off a part of Bellevue. You're not preserving the entire city of Bellevue. A part of Bellevue is in Congressional District 2 under LB704. [LB704]

SENATOR ADAMS: Time, Senator. [LB704]

SENATOR COUNCIL: Thank you. [LB704]

SENATOR ADAMS: The Chair recognizes Senator Avery. [LB704]

SENATOR AVERY: Thank you, Mr. President. I was glad to hear Senator Council a few minutes ago when she was previously on the microphone refer to influence districts because that is an important legal term that describes a lot of what the courts have done in cases involving the dilution of minority populations in redistricting. So let's talk about influence district a little bit. An influence district is one in which the minority community although not sufficiently large to elect a candidate of its choice, that is to say a minority member, is able to influence the outcome of an election and elect a candidate who will be responsive to the interests and concerns of the minority community. That is an influence district. And I do recall I believe it was Senator Lautenbaugh that said nobody has talked about any Supreme Court cases or any landmark cases to...that talk

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about or rule on dilution. Well, here is one. In Armour v. Ohio the courts ruled that the issue is not whether the minority community is large enough to elect a minority candidate but rather whether they can elect a candidate of their choice that is--and the court further defined this--that the elected officials are forced to be sensitive to the minority population because of the size of the minority population in the district. That is an influence district and the courts have ruled that you cannot dilute these influence districts without running afoul of the constitution. Now what is the proper size of a minority population before it is an influence district? The courts are not entirely clear on this, but they have suggested that the closer the minority population gets to one-third of the population of the district, then the more likely it is to constitute an influence district. The base map that we are talking about here in this current amendment, AM1540, gets CD2 very much closer to the type of district that we can identify as an influence district. If you look at the population totals, that's page 2 of the handout that Senator Mello sent around with the map itself, you see that you have several columns there. If you go to CD2 and you work your way across to the right you will see a pink set of numbers and above that is MINPCT10. That means minority percentage in 2010. You read down and you see that under Senator Mello's proposal, that is the base map, the minority population in CD2 is 27.01 percent. I figured that to be, because we have on the far left here the actual number that that percentage is based on, that's 164,432 minority people. If you go to the population totals that accompany the map under LB704, you see that the minority population is 25.53 and that comes out to be 155,390. Now I don't see how you can not understand... [LB704]

SENATOR ADAMS: One minute, Senator. [LB704]

SENATOR AVERY: ...that what is happening here is a population shift that dilutes a minority population. Now it's not a majority-minority population but it certainly constitutes very close to what would be an influence district. Where they...while they may not be able to elect a Hispanic or an African-American, they could certainly have an influence over who is selected and somebody most likely who would be more sensitive to their interests and their concerns than someone else if they don't have that kind of influence. I think this is a relevant issue to be discussed and I want to challenge my colleagues who disagree with this to answer it. Thank you, Mr. President. [LB704]

SENATOR ADAMS: Thank you, Senator Avery. The Chair recognizes Senator Conrad, and, Senator, this is your third time. [LB704]

SENATOR CONRAD: Thank goodness. (Laugh) No, thank you, Mr. President. I understand that we're going to be wrapping up debate on this amendment. There's others pending that are worthy of consideration and I think the points have been made. I did have a chance, many thanks to Legislative Research Office and to Senator Langemeier's office for assisting me in verifying the committee record in regards to what was formally moved and voted upon in regards to congressional redistricting and what

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was not. And that was Senator Mello's plan and Senator Lautenbaugh's plan, two motions. So I think it...again, we can have disagreements but we should at least be accurate. I wanted to just kind of bring my support for this amendment and the process as we continue through the debate today kind of full circle. Some of the things that I mentioned on General File and I think some of the overriding objectives that myself and others are still seeking at this stage of debate. What are we asking for? Are we asking for a perfect plan or a dream plan for the Democratic Party which I'm not even sure exists with the numbers being what they are and definitely had never been proposed (laugh) or come across my desk? But, no, we're not asking for that. We're asking for something very simple and straightforward and what that is is consensus and compromise. And that is the reason that we are here, to do a job that takes into account different perspectives and that best suits and meets the citizen's needs. And I was talking about how we've really been left out of this process as it's moved through and I...the final piece that I did want to note just kind of time line and for the record was what happened on General File in relation to this very issue. Myself, Senator Avery, Senator Mello, Senator Nordquist, Senator Council, Senator Karpisek, and others were working very, very hard within the rules and our abilities as legislators to seek compromise and to seek consensus and to get the divergent parties to the table which had never before happened. Senator Lautenbaugh agreed to do so with Senator Karpisek at that time, and then we all in a respectful posture were grateful for that opportunity and made a very difficult but very careful decision that we would conclude debate at that point in time, not utilize our abilities under the rules to prolong debate, and allow that good-faith negotiation to happen. Well, it doesn't seem like a lot of that happened. I wasn't in the room, Senator Karpisek, Senator Lautenbaugh were, and I think that they've had a chance to discuss whether or not there was any real attempt at good-faith negotiation. I know that there were different proposals presented among them--some rejected for different reasons, some looked at more seriously than others--but nonetheless here we are today. So I think the process speaks for itself. We didn't really have a chance to achieve any substantive compromise in relation to the issues in the First and Third District and specifically Saline County which Senator Karpisek has been very clear about have been his main objectives. So now we're starting to hear rumblings about four hours into this debate about just give us a vote to advance it to Final Reading, we'll work with you guys, and then we can take it up again off the mike and outside of this debate. Well, gosh, I think we've learned our lesson on that the last go-around. And it's our job to stand here and to continue to talk about the pros and cons of... [LB704]

SENATOR ADAMS: One minute, Senator. [LB704]

SENATOR CONRAD: ...various proposals. Thank you, Senator Adams. Thank you, Mr. President. It's our job to stand here and talk about the pros and cons of various proposals, to bring forward new and different ideas and perspectives, to build a record for the citizens to understand for potential court cases or otherwise, and to continue to ask people to come to the table. We have the time. We should make the time. We do

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this once every ten years. We've afforded this very little debate considering how emotional and difficult these issues are and we should keep working. We should take the time to put forward a consensus plan that would eliminate any acrimony, would eliminate the potential for a special session or potential court cases, and which are ultimately a disservice to our work here and the citizenry of Nebraska because they further partisan acrimony, they cost a great deal of time, a great deal of financial resources, and we have the time and ability now... [LB704]

SENATOR ADAMS: Time, Senator. [LB704]

SENATOR CONRAD: ...to make a consensus map. Thank you, Mr. President. [LB704]

SENATOR ADAMS: The Chair recognizes Senator Council and this, Senator, will be your third time. Senator Council is not present. There is no one left in the queue. So, Senator Mello, you're recognized to close on your amendment. [LB704]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature, and thank you, colleagues, those colleagues who engaged in the nonpartisan debate that is AM1540. Colleagues, we've been presented an opportunity to ensure the democracy moves forward in our state and new political boundaries based on the census that's taken every ten years. Population shifts occur as they have for decades. But through this political process the opportunity that we've been given is the unique nature of the Unicameral, the unique nature of our body where we are not elected by partisan tickets, we are not held to partisan bosses, we try not to operate in a partisan fashion. AM1540 redraws our congressional district boundaries. It does so in the vein of nonpartisanship. It does so utilizing our nonpartisan Legislative Research Office, their effort in creating an initial base map for us to consider amongst ourselves to determine whether or not this appropriate map put forward with no partisan influence, no political influence, no influence exerted by the policy research office, by the Governor's Mansion, by any of our congressional delegation or political parties, that we are given this opportunity to consider if this is the best course for Nebraska, that we're able to look at the rationale that the initial proponents of LB704 have laid out time and time again which is frankly the underlying rationale for AM1540. The explanation of turning the Second Congressional District into a district that encompasses three significant municipalities to changing it to only represent two now has been done in the vein of not wanting to split the cities of Papillion and La Vista and to keep the city of Bellevue into the First District. But in the introduction of LB704, we saw the proponents acknowledge failure that their initial proposal split Papillion and Bellevue. It was raised on General File that the committee amendment also failed and also cut Papillion and Bellevue. It was also acknowledged the question of why would a congressional district that needs to lose 17,000 people, the First Congressional District, why would it pick up two additional counties simply when it needs to lose 17,000 people? Colleagues, these questions have not been answered and the reason they might not have been answered or at least I

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would say they've not been answered to the fullest extent is because at times it's tough to answer difficult questions where the rationale might not be pleasant to explain. The underlying rationale under AM1540 is very simple. We can adopt a very Iowa-specific model that adopts a nonpartisan map drawn by nonpartisan staff. Does it make any of the congressional districts perfect? No. But I've acknowledged that. Senator Karpisek has acknowledged that and others have acknowledged that no map we produce will be perfect. Compromise is never perfect. There will always be someone who is left yearning for more. Colleagues, George Norris when the First Legislature convened said that we're all members of the First Legislature of Nebraska and it's our responsibility to hold our positions without political obligation to any party, any party machine... [LB704]

SENATOR ADAMS: One minute, Senator. [LB704]

SENATOR MELLO: ...any boss, any alleged political leader, that our constituents do not expect perfection. They know that it is human to error but they do expect and have the right to expect absolute honesty, unlimited courage, and a reasonable degree of efficiency and wisdom. Colleagues, I think AM1540 embodies that. There's no partisan overtones. There's no partisan advantage to be gained or lost. But the state of Nebraska and its unique nonpartisan nature has the opportunity to gain by moving forward with a true, nonpartisan map drawn by true nonpartisans, our nonpartisan branch of government. I urge the body to strongly consider and adopt AM1540. With that, Mr. President, I'd like to request a call of the house and a roll call vote in reverse order. [LB704]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Mello. Members, you've heard the closing to AM1540. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB704]

CLERK: 32 ayes, 0 nays, Mr. President, to place the house under call. [LB704]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Members, the house is under call. Senators Heidemann, Pankonin, Lathrop, please check in, return to the Chamber. Senator Mello, all members are present or otherwise accounted for. It is my understanding that you wanted a roll call vote in reverse order. Is that correct? [LB704]

SENATOR MELLO: Yes, Mr. President. [LB704]

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SPEAKER FLOOD: Thank you, Senator Mello. Members, the question before the body is, shall AM1540 be adopted? Mr. Clerk, please read the roll in reverse order. (Gavel) [LB704]

CLERK: (Roll call vote taken, Legislative Journal pages 1750-1751.) 14 ayes, 30 nays on the amendment, Mr. President. [LB704]

SPEAKER FLOOD: AM1540 is not adopted. I do raise the call. Mr. Clerk. [LB704]

CLERK: Mr. President, the next amendment I have, Senator Lautenbaugh, AM1549. (Legislative Journal page 1751.) [LB704]

SPEAKER FLOOD: Senator Lautenbaugh. [LB704]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I didn't think we'd get here today but I'm please we are. What my amendment simply does is address some of the concerns that were raised on...last time we debated this on General File regarding population and equity or deviation I should say. This was a struggle. The original map that we had had a one-person deviation that I put forward. There were concerns addressed regarding Merrick...or expressed, excuse me, regarding Merrick County and the little portion of it that we took off to make it balance, so we put Merrick County back whole. So with that, we created a deviation between the First and Third Districts...well, between all districts really, but it was about 200-and-some people extra in the Third District to be clear about it. We had a vigorous discussion of that on General File and I did not think that would constitutionally infirm because one of the things that we are allowed to articulate as a justification was population changes and population trends, and I think it's indisputable and infinitely demonstrable that population has been moving from the Third to the First and Second. Well, we talked about that for a long time on General File. So between General and Select I decided the thing to do was to create a map that corrected those, and we've done that. This map differs really in two ways from the committee amendment that we advanced last week. You'll see that we make it balance by adding a small portion of Gage County back into the First District. This was done and the rationale was that Gage was previously part of the First and so part of it is staying behind and part of it goes into the Third to make it balance to address the population concerns voiced previously. I guess what I'm saying is I understand the people who wanted to keep all the counties whole to the greatest extent possible. I understand the people who wanted to argue that, well, any deviation was too much deviation. Well, which way do you go? This gives us the opportunity to address the deviation and bring it down to zero. That necessitated making some modest adjustments between the First and Second District maps as well in Sarpy County to basically adjust to make it clear that all of the city of Bellevue is our intent and the base would be put into the First Congressional District and all of the other cities of Sarpy County would be as a whole in the Second Congressional District. That

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is what this amendment does. I believe the maps are being passed out as we speak I think or maybe I didn't label them properly so they're coming to you. Once again, I never thought we would get here today but here we are. So I'd be happy to take any questions you might have and I look forward to, hopefully, getting your green light on this amendment. [LB704]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator McCoy, you're recognized. [LB704]

SENATOR McCOY: Thank you, Mr. President and members. I stand in support of AM1549 and in support of what Senator Lautenbaugh is proposing in this. And, you know, I think this is an important clarification in the process of where we're at. And I think it's important that we move forward with this amendment. And again I support it, and would yield any of my time to Senator Lautenbaugh, if he would so desire. [LB704]

SPEAKER FLOOD: Senator Lautenbaugh, 4 minutes 30 seconds. [LB704]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I do think this amendment is a good amendment and here's why. It is not correct to say that we had discussions on General File and that no one listened. I have taken some shots today from people who said, see, he admits we're right regarding the population deviation and if that's what you need it to be, then fine, we're conceding the point to you. I don't concede the point in my own mind but if it gets us from A to B more quickly, then fine, this is the amendment for you. Similarly, I lament the fact that the line between...that divides Sarpy County is not as clean as was on the committee amendment that we adopted on General File, but again that can't be helped. But this was the next best thing if we're going to make the population actually equal, we're going to follow city and precinct boundaries to make it so. So that doesn't, in an urban area, work out nicely in all circumstances. I believe this is our best effort. This is what we tried to do to address the concerns we heard on General File. I really don't know how to elaborate on it much more than that because I've been kind of discussing it in my own way all day long in bits and pieces here and there. I hope...I see it's making the rounds now, and again I would ask and urge your approval of this amendment. [LB704]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator Mello, you're recognized. [LB704]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Would Senator Lautenbaugh yield to a question? [LB704]

SPEAKER FLOOD: Senator Lautenbaugh, will you yield to a question from Senator Mello? [LB704]

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SENATOR LAUTENBAUGH: Yes, I will. [LB704]

SENATOR MELLO: Senator Lautenbaugh, essentially is it safe to say that AM1549 tries to accomplish or does accomplish, possibly, what you're initial rationale and proposal was under LB704? Would that be correct? [LB704]

SENATOR LAUTENBAUGH: Yes. [LB704]

SENATOR MELLO: And what was that? [LB704]

SENATOR LAUTENBAUGH: Again, an attempt to keep all of the communities, to the extent possible, in Sarpy County together, and in one congressional district with Bellevue and the base for population purposes to make it all balance in a different district as it turns out. [LB704]

SENATOR MELLO: I guess the question I have then, if the rationale under AM1549 was the rationale that was laid out initially when LB704 was introduced, how is it that every time we've debated this bill both in committee, post-committee as we moved the bill forward, and on General File, you've been unwilling to acknowledge the fact that the bill has always had flaws to try to meet your main argument and rationale behind the changes in the Second Congressional District? [LB704]

SENATOR LAUTENBAUGH: Well, honestly, I don't believe that I ever was unwilling to acknowledge. I mean, if you're asking me have I ever said this map was perfect or any map was perfect, surely the answer is no. We brought the committee amendment in that we thought it provided some cleaner lines. We then found there was some area since the maps were certified that was annexed, I believe, by the city of Papillion, which then threw it back on the other side of our clean line that we had previously. So our amended effort to keep all the communities together was, while well-intentioned, that's kind of self-serving to say, but okay, it didn't work because there were some subsequent annexations that took areas into Papillion and/or La Vista, I don't recall which, that we needed to address. But it is very difficult to do this and make everything balance. Well, then we heard concerns about whether or not the lines were clean enough or if voters were going to be confused, so we had the committee amendment which had a very clear line of demarcation but there were issues as well with population variance, and your criticisms about areas outside of Papillion or La Vista that had either Papillion or La Vista mailing addresses even if they weren't within the city, so we addressed them. [LB704]

SENATOR MELLO: How many Nebraskans under this current amendment would be displaced now into a new congressional district? [LB704]

SENATOR LAUTENBAUGH: I don't know the answer to that. [LB704]

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SENATOR MELLO: Is that a number that you could get to us, possibly, on debating AM1549? [LB704]

SENATOR LAUTENBAUGH: I can surely try. I've never...I mean, that really wasn't one of our standards per se so I've never tried to run that on any of the maps, but I can surely see if we can figure it out. [LB704]

SENATOR MELLO: All right. Thank you, Senator Lautenbaugh. Colleagues, unfortunately, to correct, I think, the record, it was part of our standards, I think, in the sense of trying to ensure that voters have clear identifiable districts and that preserves the core of prior districts is the underlying traditional redistricting principle, Senator Lautenbaugh, that I've referring to when we choose to displace 12 percent of our state's population. Colleagues, I'm going to rise...it doesn't matter if I support AM1549 or I oppose it, I question the underlying premise behind it. We were sold that LB704, when it was kicked out of committee, was perfect. That it accomplished these main goals. It didn't split cities in the Second Congressional District. And the numbers just worked out because they just worked out. Disregard the fact that we moved counties in the third district into the First, and that we had a deviation problem that rose from when we initially had a proposal that had a one-person deviation. Colleagues, I at least respect the fact that Senator Lautenbaugh is acknowledging that the mean rationale that was used to sell LB704 to this body, if you want to consider to use the word sell, that he's now trying to at least clean it up to make it so that it will be more difficult to be challenged in court because of the deviation, and that cities now for all practical purposes are not being split even though one could always argue that moving one community to another congressional district when it's been the base of that congressional district and it's the core of the prior district, whether or not that actually would be challengeable, which I believe it would be. But I think, unfortunately, with the last vote of AM1540, a nonpartisan map drawn by a nonpartisan office with nonpartisan intentions, that the body overwhelmingly... [LB704]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Mello. Senator Council, you're recognized. [LB704]

SENATOR COUNCIL: Yes, thank you, Mr. President. Would Senator Lautenbaugh yield to some questions? [LB704]

SPEAKER FLOOD: Senator Lautenbaugh, will you yield to a question from Senator Council? [LB704]

SENATOR LAUTENBAUGH: Yes, I will. [LB704]

SENATOR COUNCIL: Thank you, because you were out of the Chambers when I

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asked the question and Senator Cornett responded and AM1549, in fact, acknowledges the fact that was brought out during that question and answer, and it's true that under AM1549 that as compared to LB704 as amended, under AM1549 all of the city of Bellevue is now in the...proposed to be in the First Congressional District. [LB704]

SENATOR LAUTENBAUGH: Yes. [LB704]

SENATOR COUNCIL: And under LB704, as previously amended, portions of Bellevue were going to stay in CD2. [LB704]

SENATOR LAUTENBAUGH: Very small to make it balance, but yes. [LB704]

SENATOR COUNCIL: But, nevertheless, a portion of Bellevue is going to be in CD2. [LB704]

SENATOR LAUTENBAUGH: Yes. [LB704]

SENATOR COUNCIL: And do you have the total population numbers, because while there are those who refrain from using the descriptor of a flip-flop, this is indeed a flip-flop. But do you know what the total population is of the area that is Bellevue? For purposes of these discussions, it's the section that's shown on 18005-1A, what is the total population in that area? [LB704]

SENATOR LAUTENBAUGH: I'm sorry, Senator, in which area? [LB704]

SENATOR COUNCIL: The total population of what was in CD2 and now is going to CD1. [LB704]

SENATOR LAUTENBAUGH: As drawn now, the actual total population of that area, I don't know the answer to that. [LB704]

SENATOR COUNCIL: Okay. [LB704]

SENATOR LAUTENBAUGH: I know the districtwide population but I can't tell you specifically what the Sarpy Second Congressional District portion is. [LB704]

SENATOR COUNCIL: Okay, because I would...if we could get that information, I think it's important for the body to know if those populations are comparable and I would expect that they are close to equal, again someone has to provide compelling rationale as to why you move people from a district that they've been in for 40 years into a different district and move residents into a district that they haven't been a part of for 40 years if the numbers would allow us to achieve zero deviation by keeping them where they are. And I'm talking about keeping them where they are with the core of AM1549,

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since admittedly, admittedly now, it does keep Bellevue together, the city, and so...which refutes the point that was made in support of the amendment and against all of the other amendments that have come forward that those split up Papillion and La Vista. Well, the original LB704, and as amended, split up Bellevue. AM1549 retains Bellevue in its entirety, but my question is, what are those respective total populations because if the total population of the area that's now being shifted into CD1 is equal to the portion of Sarpy County that's being moved into CD2, somebody has to present a compelling argument for that shift, because I maintain that that is an absolute contradiction to one of our legislative principles, which is to preserve the core of the district. And, like I say, everybody disagrees but I don't know how you cannot concede that at a minimum the core of the district is comprised of the people of the district. And these people in Bellevue have been a part of CD2 for over 40 years. And to move them out, and to shift in their place residents who have been a part of CD1 for that same period of time, makes absolutely no logical sense. And I was trained that if there's no logical reason, there must be an illogical reason, and the illogical reason that surfaces is partisanship. [LB704]

SPEAKER FLOOD: Time, Senator. [LB704]

SENATOR COUNCIL: Thank you. [LB704]

SPEAKER FLOOD: Thank you, Senator Council. Senator Karpisek, you're recognized. [LB704]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. Again I am glad we got to Senator Lautenbaugh's amendment, was never my intention not to. It is still my intention to filibuster, however, but to try to get the bill in the best shape that it can be. Senator Lautenbaugh did hear the other day all about that it had to be zero percent, so that's where he has it and I will vote for this amendment. But that doesn't mean that I like the whole idea. However, it's better than where LB704 is right now. What I got to...trying to get to earlier is the people that didn't like my first map because it split a county, now where are you? Now what do you do? Now you're splitting a county. Now is splitting a county this way better than the way I was splitting a county? I have a notion to say that it's probably going to be for some reason or another. Would Senator Nelson yield, please? [LB704]

SPEAKER FLOOD: Senator Nelson, will you yield to a question? [LB704]

SENATOR NELSON: Yes, I will. [LB704]

SENATOR KARPISEK: Thank you, Senator Nelson. I know on my map the other night you didn't like my map because it split Colfax County. Is that correct? [LB704]

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SENATOR NELSON: Yes, I thought that was a disadvantage that it did split the county. [LB704]

SENATOR KARPISEK: Okay. Now what do you think about this amendment that Senator Lautenbaugh has brought that has to split Gage County? [LB704]

SENATOR NELSON: Well, I'll be frank, I don't like it but sometimes, as Senator Lautenbaugh said, it's just necessary to do that and I think in this map it's done to a very small degree. It puts a little bit back in, but we just had to make that adjustment because of what we did up in Merrick County. [LB704]

SENATOR KARPISEK: And so a smaller number to displace is better? [LB704]

SENATOR NELSON: I'd say if we can keep it at a minimum, that's less disruptive. [LB704]

SENATOR KARPISEK: So what if we can move less people from district to district in another map? [LB704]

SENATOR NELSON: Could you give me an example of what you mean, less... [LB704]

SENATOR KARPISEK: Well, the map that I had before that you voted against that moved about half the amount of people from one district to another. [LB704]

SENATOR NELSON: That...there again, that's a matter of drawing the map and what the population is in each of the counties, if I understand you, to... [LB704]

SENATOR KARPISEK: Well, correct. My map only moved about half the people that this map does. But now you think that this is better to split a county because of fewer people. [LB704]

SENATOR NELSON: I think we're comparing apples and oranges here. I...we're not moving a massive part of Gage County. I think it's probably something like 200 people at most. [LB704]

SENATOR KARPISEK: Okay, but in my map before, I moved 120-some thousand and this map moves 240-some. Is that...? [LB704]

SENATOR NELSON: Well, the...yeah, I mean, I'm not going to argue with your figures but I made the point before that...I can't think of the term right now, but the displacement is not a factor that we necessarily have to take into consideration. That isn't something that our committee looked at from the very get-go, the displacement. It's only been brought up on the floor as an argument against some of the various maps. [LB704]

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SENATOR KARPISEK: But you like this way to split a county compared to my way because it displaces less people? [LB704]

SENATOR NELSON: Well, you weren't splitting Saline County, if I understand your question. You were moving the whole county into another district. [LB704]

SENATOR KARPISEK: I was and I was splitting Colfax County. [LB704]

SENATOR NELSON: Well, okay, all right, and you were splitting it just about in half. [LB704]

SPEAKER FLOOD: Forty-five seconds. [LB704]

SENATOR KARPISEK: No, it was about...well, populationwise it was about 8,000 to 2,000. Thank you, Senator Nelson. I think I have what I want. Anyway, I do want to thank Senator Lautenbaugh for coming and amending it this way. And what I have to say is, he's done what he heard needed to be done and I will be supporting this map, but I will be bringing another map after this. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Karpisek. Senator Hadley, you are recognized. [LB704]

SENATOR HADLEY: Mr. Speaker, members of the body. It seems like years ago I spoke on this. I went back and reread. This is strikingly similar to 2001 and what we went through there so we're not breaking a lot of new ground. I guess...I went back and read the LR102 about the creation of compact districts, the preservation of municipal boundaries, preservation of the core of prior districts, and this says, whenever there is presented to the Legislature more than one plan that will substantially vindicate the above objectives, preference will be given to the plan that provides the greatest degree of population equality. I guess I stand in favor of this amendment because I think Senator Lautenbaugh has done that. He's got it down to zero. So basically, from my understanding, there can't be a court challenge at this point in time on the deviation. So I don't know what the court challenge would be on this particular map because the deviation is down to zero. Maybe somebody can help me with that later, but I'm impressed with this map that a lot of the rhetoric we've heard before has been the problems with the population deviation. This map takes care of that. Mr. Speaker, with that, I will yield the remainder of my time to Senator Lautenbaugh. [LB704 LR102]

SPEAKER FLOOD: Senator Lautenbaugh, you're recognized: 3 minutes 29 seconds. [LB704]

SENATOR LAUTENBAUGH: Thank you, Mr. President and thank you, Senator Hadley,

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for yielding the time. I do want to do something to clear up a certain amount of confusion here. The maps that we circulated around for your review are the correct maps but they have been renumbered because of...well, a convention, I guess, in how we're doing things when we produce new maps. So the numbers set forth for the corresponding maps and the amendment are incorrect, so I would move to substitute AM1564, which is on your gadget, for the pending amendment, AM1549, to clarify that the maps you've all been given are also the same as the ones we're referencing in the amendment. [LB704]

SPEAKER FLOOD: Any objections? So ordered. Mr. Clerk. [LB704]

CLERK: Senator Lautenbaugh, I have AM1564 in front of me. (Legislative Journal page 1751.) [LB704]

SPEAKER FLOOD: Senator Lautenbaugh. [LB704]

SENATOR LAUTENBAUGH: Thank you, Mr. Clerk. And Mr. President, how much time do I have? [LB704]

SPEAKER FLOOD: You have 2 minutes 25 seconds. We're on AM1564. [LB704]

SENATOR LAUTENBAUGH: Thank you, Mr. President. I do want to address some things that have been said here, specifically that we have to have a compelling basis or compelling argument to do what we're doing here in Sarpy County. Well, let me be clear, I believe we do. It was just represented that we are moving people who have been in the district, District 2, specifically the city of Bellevue out, and we're moving in a bunch of people who have been in District 1 for the same amount of time, which I believe was referenced to be 40 or 50 years. Well, that is simply not the case. The people of La Vista, the people of Papillion, many of them are currently in the Second Congressional District. This map reunites those communities and puts them in the Second Congressional District. The whole of Sarpy County was the western portion was only taken out of the Second District ten years ago, ten short years ago, which as we know in the life of Saline County, has been, you know, what it has been. So it is not correct to say that we are putting a bunch of people who are completely alien to the Second District in there, and moving the city of Bellevue and the base out, far from it. We are preserving the communities in central Sarpy County... [LB704]

SPEAKER FLOOD: One minute. [LB704]

SENATOR LAUTENBAUGH: ...thank you, Mr. President...Papillion, La Vista, making them whole, and to make the numbers match, the area that's being moved is Bellevue and the base, and there you go. I don't know how to make this any plainer than that, and I'm anxious to correct the record on this because it is not correct, the implication

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that somehow we are doing some sort of sea change here in Sarpy County and just flipping it on an axis. The difference is in the middle. The difference is in Papillion and La Vista, and they are not insubstantial communities and they should not be split to justify someone else's personal preference. So the choice has to be made and we made it with this map. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator Burke Harr, you are recognized. [LB704]

SENATOR HARR: Sorry about that, Mr. President. Mr. Speaker, I apologize, and sorry for being away from my mike. There's been a lot of talk today and I've learned a lot today and what I've learned is, there's a lot of rhetoric involved. And so what I think was really important in this, is to look at what we've done in the past as a guide to how we should go forward in the future. I have some misgivings with this map in that we want to be as compact as possible and this congressional district has us going from basically Harrison down to Rulo, 613 driving miles according to MapQuest. And that's a long, long, long, long way and it's asking a lot for a Congressman to cover that long of a distance, driving that's obviously, well, approximately ten hours. And I think this displaces, still displaces 12 percent of our population or 226,000 people. And I think we have to find a better way, guys. This isn't a...well, hopefully, this isn't a completely partisan issue. What we have to look at is some of the factors that don't need to be partisan and try to figure out how we can come together and find a reasonable compromise on this that goes to compactness, that goes to displacing the least amount of people as possible. These are at the end of the day that we are moving our people and they're losing their representatives and they have to start over from scratch. I've heard comments, well, you know, for instance in this First and the Second, moving Offutt is good because then we'll have two representatives who are familiar with Offutt. Well, that's good, well, and true until we don't, and then we only have one. So if the reason for moving is that, it's a temporary fix. I've also heard, in the next ten years when we redistrict again, which, hopefully, none of us will have to live through, or be here for. I shouldn't say, hopefully, we all live to but that a lot of that area is going to go back and so these people are flip-flopping and they can't really develop a relationship with their congressperson. And I think that's important. So what we want to do is, hopefully, we can take some of the partisan bickering out of this, stand back, make consistent compact districts in which we move the least amount of people, and allow the most amount of people to stay with their congressman as long as possible. So I'd encourage everyone to come together in the spirit of Senator Karpisek and let's really work for a compromise. Thank you very much. Appreciate it. [LB704]

SPEAKER FLOOD: Thank you, Senator Burke Harr. Senator Lautenbaugh, you are recognized. Senator Lautenbaugh waives his opportunity to speak. Senator Council, you are recognized. [LB704]

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SENATOR COUNCIL: Thank you, Mr. President. And I will begin by standing corrected. I didn't mean to say that all of Papillion and La Vista is being flipped, but a substantial portion of Papillion and La Vista that has not been in the Second Congressional District is now being placed in the Second Congressional District. And while Senator Lautenbaugh says that Papillion and La Vista are not insubstantial communities, neither is the city of Bellevue. It is not an insubstantial community, and that community has historically been in Congressional District 2. And the question I have is, who is exercising the judgment that it's more important to bring Papillion and La Vista together than to maintain Bellevue in the Second Congressional District? Now I'll hear you say, well, we don't want to divide communities. Well, they're currently divided and when we look at what the legislative guidelines were, and I must note that while Senator Hadley referred to his rhetoric the discussions about the constitutionality of getting as close to equal...absolute equal equality in population, it wasn't rhetoric, it is a statement of the law, a statement of the law that, obviously, by virtue of the introduction of AM1564 has been acknowledged by Senator Lautenbaugh. Now the question becomes...Senator Hadley is right. We now have a map that's close to zero, what is that zero deviation? It, in my count, thus far, is the third such map that has been at zero deviation. So clearly, LB704 as originally introduced with the amendment did not satisfy constitutional requirements, so those maps should be forever off the table, LB704 and the map as it was amended by the amendment that has been adopted. But the question still remains, and if Senator Lautenbaugh would add to...would yield to a question. [LB704]

SENATOR LAUTENBAUGH: Yes, I will. [LB704]

SPEAKER FLOOD: Senator Lautenbaugh, will you yield to a question from Senator Council? [LB704]

SENATOR COUNCIL: Under AM1564 there's this little section of Gage County that is now in Congressional District 1. Is there anything...any factor other than the population of that little square that is the cause of it being added to Congressional District 1? [LB704]

SENATOR LAUTENBAUGH: Yes. [LB704]

SENATOR COUNCIL: And what is that? [LB704]

SENATOR LAUTENBAUGH: It was previously part of the First District and since we had to put something back, we instead of moving all of Gage to the Third, we left that part behind to make it balance. [LB704]

SENATOR COUNCIL: Okay. So under the current congressional redistricting, just that little corner of Gage is in CD1 or is all of Gage in CD1? [LB704]

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SENATOR LAUTENBAUGH: Are you saying under this amendment? [LB704]

SENATOR COUNCIL: No, no, under the...as I just understood your answer to my question, you said, this little corner of Gage is in Congressional District 1 because it used to be in Congressional District 1. Or did I misunderstand you? [LB704]

SENATOR LAUTENBAUGH: No, what I was saying was since under the unamended committee amendment, if you will, all of Gage moved to the Third District. In order to address the population concerns expressed, we then left a little of it behind in the First to make it balance. [LB704]

SENATOR COUNCIL: Okay, but that's the only reason? I mean, there's no special community of interest between this little corner of Gage County, it's just the numbers? [LB704]

SENATOR LAUTENBAUGH: I believe so, certainly. I don't have any other reason that I can come up with, no. [LB704]

SENATOR COUNCIL: Okay. So you could have gone, potentially...let's look at Wayne County. Could a sliver of Wayne County gone into Congressional District 1 to achieve those...the number balance? [LB704]

SENATOR LAUTENBAUGH: Theoretically, certainly. [LB704]

SENATOR COUNCIL: Okay. So... [LB704]

SENATOR LAUTENBAUGH: I'll be honest at one point I had a map that didn't balance and I offered to take a little sliver of Lancaster corner or Lancaster County to make it balance. [LB704]

SPEAKER FLOOD: Time, Senators. [LB704]

SENATOR COUNCIL: Okay. Thank you. [LB704]

SPEAKER FLOOD: Senator Wallman, you are recognized. [LB704]

SENATOR WALLMAN: Thank you, Mr. President. I, too, do appreciate what Senator Lautenbaugh has been working on but, of course, it's not to my liking. And would Senator Lautenbaugh yield to a question? [LB704]

SPEAKER FLOOD: Senator Lautenbaugh, will you yield? [LB704]

SENATOR LAUTENBAUGH: Yes, I will. [LB704]

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SENATOR WALLMAN: Thank you, Senator. Do you know how long Gage County has been in District 1? [LB704]

SENATOR LAUTENBAUGH: Off the top of my head, I do not. [LB704]

SENATOR WALLMAN: It's been quite a while but part of the south, I think, used to be in CD3. But, you know, I look at this and I appreciate...I know how hard this is but there's Thurston County up there, you know, and some of those counties and you have to wonder what the population difference is. I should have studied this more myself, but as it is now, I'm sorry, I can't support this amendment. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Senator Wallman, do you want to ask Senator Lautenbaugh a question? [LB704]

SENATOR WALLMAN: No, he answered my question. [LB704]

SPEAKER FLOOD: Okay. Senator Mello, you're recognized. [LB704]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I find some of the dialogue I've heard regarding the rationale or logic behind the dramatic change in the Second Congressional District from Senator Lautenbaugh and Senator Nelson a bit...a bit to stomach in the sense that there has been other proposals put forward that we've yet to even discuss. Senator Lautenbaugh has stated that the lone rationale behind changing the current district boundaries, changing the current core of the district was to keep two cities from being split up at all, which is Papillion and La Vista. I've yet to hear whether or not there's been a proposal considered that would maybe split and put maybe just the city of Papillion in the First District keeping Chalco, La Vista, and the city of Bellevue and Offutt Air Force Base in the Second Congressional District. I hope we get to that because there's a way to do that to keep those three areas whole, which actually Senator Burke Harr has an amendment that does that, removes the city of Papillion out of the Second Congressional District, puts it in the First and keeps the city of La Vista, Bellevue, and the Chalco area all in the Second District, which pretty much makes the map look very similar to what the current congressional district boundaries look like. And the reason I bring that up, colleagues, is because there are multiple ways and reasons to go about drafting congressional district maps. Senator Lautenbaugh has given the rationale of his lone reason why he's done what he's done is to keep these two cities from being split, but there's more logic and rationale ways to shrink the Second Congressional District, which is what needs to happen, it needs to get smaller, not get larger, by exactly what actually Senator Burke Harr's proposal does. Moves the city of Papillion, the entire district boundary, municipal boundary, and puts it in the First Congressional District, which is a novel concept, I think, knowing that the entire rationale of why we're doing what we're doing under

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AM1564 is to make up for the past two mistakes we've had debating LB704, of making this logic and rationale work out. But yet there's been proven, not just with the proposal I put forth last week where almost 98 percent of the city of Papillion, La Vista, and Bellevue all stay in the Second Congressional District, but now Senator Harr's got actually a fairly innovative proposal that does that by keeping three areas whole and moving one of those municipalities to the First District, the city of Papillion. I think that's a novel concept we should get to debate I think a little bit because it accomplishes in theory the same argument or same logic or rationale that Senator Lautenbaugh has discussed. But I think the unique thing, and Senator Council has raised this issue very well which is, history should preface some of what we've done before. And Senator Lautenbaugh has even acknowledged that the Second Congressional District has shrunk, geographically has shrunk over the last 40 years. Previously incorporated Washington County, Douglas County, Sarpy County, and Cass County. Every census, that geographic area has shrunk to make up for what has been seen as a growing population in Douglas County. Senator Lautenbaugh's argument is, well, we moved those people in west Sarpy County to the First District ten years ago and we've got to right a wrong in theory. Well, no, I think we all acknowledge that the geographic boundaries of the Second District has shrunk for 40-plus years. We're keeping inconsistent in contact with the compact and contiguous traditional redistricting principle. That's why we have the current district boundaries the way we do. With the proposal I put forward, Senator Karpisek backed that proposal up, the base map from the nonpartisan Legislative Research Office had a very similar proposal. Senator Harr's got a new approach to this as well which shrinks the geographic boundaries which makes it more compact and contiguous. Be it the lone rationale that we have been continually been told is what we've got to keep these two cities from being split. [LB704]

SPEAKER FLOOD: Forty-four seconds. [LB704]

SENATOR MELLO: Oh, and by the way, we've got to add back an area that ten years ago was put into another district because the area needed to shrink. Colleagues, the rationale and logic has been very thin from the git-go, whether it was in committee or whether it's been on the floor. Senator Harr provided another example of the flawed logic and rationale of why you would move the oldest city in the state, that the compact and contiguous nature of that area of the district, the core boundaries of that district, why you would eliminate that and move it to another congressional district. There's many ways to cut a ham, so to speak. Unfortunately, we're only given one option from Senator Lautenbaugh. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Mello. Senator Pankonin, you're recognized. [LB704]

SENATOR PANKONIN: Thank you, Mr. President. Just a couple brief comments. Agree with Senator Mello's history in that I'm old enough to remember when the Second

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District did have Washington and Cass County and I can also tell you from knowing that history since I live right on the border of Sarpy County, that western Sarpy County has been in times before part of the Second District and I've had people...because I represent that area in my legislative district that are...you know, I've had people from both sides, but the majority have been happy to go back into the Second District. But I also can tell you over those 40 years when Cass County was part of Cass County, all of Cass County was in the Second Congressional District, then part of Cass County, then none of Cass County, and then there's been these changes. And I can also tell you that Senator Krist had a good point about Offutt and STRATCOM and how having the interest of a couple congresspersons isn't all bad. I think that is valid. If you live in our area, that base and what it means to the area is important for all of us here in this body as well as Congress. But my last comment is, having had personally been in both the Second and now the First Congressional District knowing that western Sarpy area has had similar experience. If you have an event and you have some people come, that congressperson will come. And you have an event and that congressperson is going to get a check, they're going to come, no matter which district. That's been my experience. Thank you, Mr. President. [LB704]

SPEAKER FLOOD: Thank you, Senator Pankonin. Mr. Clerk. [LB704]

CLERK: Mr. President, I have a priority motion. Senator Langemeier, as Chair of the committee, would move to invoke cloture pursuant to Rule 7, Section 10. [LB704]

SPEAKER FLOOD: It is the ruling of the Chair that there's been full and fair debate afforded to LB704. Senator Langemeier, for what purpose do you rise? [LB704]

SENATOR LANGEMEIER: I would at this time ask for a call of the house and invoke cloture on the process of moving LB704 forward. [LB704]

SPEAKER FLOOD: Did you want a roll call vote? [LB704]

SENATOR LANGEMEIER: Roll call vote in regular order. [LB704]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB704]

CLERK: 33 ayes, 0 nays, Mr. President, to place the house under call. [LB704]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Coash, Pahls, Wallman, Krist, Avery, Loudon, Pirsch, Fischer,

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Conrad, Wightman, and Burke Harr, please check in. The house is under call. Senators Avery, Krist, Wightman, please return to the Chamber and record your presence. The house is under call. Senator Avery, Senator Louden, Senator Wightman, please return to the Chamber and record your presence. The house is under call. Senator Langemeier, all senators are present or otherwise accounted for. Members, the first vote is the motion to invoke cloture. Mr. Clerk, please read the roll in regular order. [LB704]

CLERK: (Roll call vote taken, Legislative Journal pages 1751-1752.) 33 ayes, 15 nays on the motion to invoke cloture. [LB704]

SPEAKER FLOOD: Cloture is invoked. Members, the next vote is on the adoption of AM1564 to LB704. All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? [LB704]

SENATOR MELLO: Record vote. [LB704]

SPEAKER FLOOD: A record vote has been requested. Mr. Clerk, please record. [LB704]

CLERK: (Record vote read, Legislative Journal page 1752.) 36 ayes, 10 nays on the amendment. [LB704]

SPEAKER FLOOD: AM1564 is adopted. Mr. Clerk, we now proceed to the vote on LB704. The question is, shall LB704 advance to E&R for engrossing? Senator Larson for a motion. Senator Mello, for what purpose do you rise? [LB704]

SENATOR MELLO: I'd like to request a roll call vote in reverse order, please. [LB704]

SPEAKER FLOOD: Senator Larson, for what purpose do you rise? [LB704]

SENATOR LARSON: Mr. President, I move that LB704 be advanced to E&R for engrossing. [LB704]

SPEAKER FLOOD: Members, you've heard the motion. The question is, shall LB704 advance to E&R for engrossing? A roll call vote in reverse order has been requested, is that correct, Senator Mello? [LB704]

SENATOR MELLO: Correct. [LB704]

SPEAKER FLOOD: Mr. Clerk, please read the roll in reverse order. [LB704]

CLERK: (Roll call vote taken, Legislative Journal pages 1752-1753.) 34 ayes, 14 nays

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on the advancement. [LB704]

SPEAKER FLOOD: LB704 advances to E&R for engrossing. Members, I am going to modify the agenda. After Senator Sullivan's LB629, we're going to take up LB390 and LB390A and then proceed to LB690 this evening. This is a late night. I do raise the call. Mr. Clerk, items. [LB704]

CLERK: Mr. President, resolutions: LR339, Senator Hadley; Senator Fulton, LR340 and LR341 and LR342 and LR343. That's all that I have. (Legislative Journal pages 1753-1756.) [LR339 LR340 LR341 LR342 LR343]

SPEAKER FLOOD: Thank you, Mr. Clerk. We now proceed to LB629. [LB629]

CLERK: LB629, Senator, E&R amendments. (ER140, Legislative Journal page 1700.) [LB629]

SPEAKER FLOOD: Senator Larson for a motion. [LB629]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB629 be adopted. [LB629]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. [LB629]

CLERK: I have nothing further on that bill, Mr. President. [LB629]

SPEAKER FLOOD: Senator Larson for a motion. [LB629]

SENATOR LARSON: Mr. President, I move that LB629 be advanced to E&R for engrossing. [LB629]

SPEAKER FLOOD: Members, you've heard the motion. The queue was not cleared from the last bill. Senator Lautenbaugh, do you intend to speak on LB629? Senator Lautenbaugh waives. Senator Council, do you intend to speak on LB629? Senator Council? Senator Council waives. Senator Sullivan, you are recognized. [LB629]

SENATOR SULLIVAN: Thank you, Mr. President. And of course I stand in strong support of the advancement of LB629, but I just wanted to more than anything for the record provide a little clarification for one of the sections, specifically Section 6. The first sentence of that section reads, "The Oil Pipeline Reclamation Act provides the minimum standards to be met by a pipeline carrier." That's the important thing in that. It goes on to mention that a landowner contracting with the pipeline carrier might possibly and be free to have stronger or more specific reclamation standards included in their contract

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language. And this act in no way interferes with such a contract. However, the other thing that this statute in this act would guarantee is that there's a basic level of reclamation standards, minimum standards in Nebraska. [LB629]

SPEAKER FLOOD: (Gavel) [LB629]

SENATOR SULLIVAN: That's all I have to say for this. Thank you, Mr. President. [LB629]

SPEAKER FLOOD: Thank you, Senator Sullivan. Senator Ken Haar, you are recognized. [LB629]

SENATOR HAAR: Mr. President, members of the body, I rise in strong support of LB629, Senator Sullivan's bill. It's been a long time in coming and this has been a long year in terms of the Keystone Pipeline. The one thing I want to reiterate is we have a long way to go in terms of pipeline regulation. Senator Sullivan's bill talks about reclamation, a very important part as the pipeline begins to be built. But, again, I want to go back to the statement, trust but verify. Trust but verify. Ronald Reagan used this term again and again--trust but verify. So the bill is reclamation and I strongly support LB629 for that purpose. But I want you know it is not a siting bill even though we have since learned that the state of Nebraska has the ability to do siting. Montana, North Dakota, and South Dakota all have some form of siting or routing in law and we need to put something in law. It's not about liability. We need to tackle that issue. It's not about eminent domain. And, again, I truly believe that the use of eminent domain has been misused by Keystone Pipeline, threatening the use of eminent domain when they don't even have the ability...they don't even have siting permission. And it's not about permitting, it's not about regulation, and the very good piece that Senator Dubas put out with her staff showing that the natural gas pipelines have all kinds of regulation primarily by the federal government covering everything from preconstruction through construction through abandonment and operation. We have none of those things in place except for the reclamation that LB629 covers. So I would urge us strongly to know that we're not done here. There's some other things that will be coming to this state pretty soon and I think we need to work on those as well. One is fracking, the process of taking natural gas out of the ground that's becoming more and more used, and we have almost no regulation around that. In-situ mining, we have in-situ mining in terms of uranium mining but very few laws that go along with it. So we have our work cut out for us. I believe that Senator Dubas is going to have a letter to Senator...I'm sorry, to Secretary Clinton for the public segment period which ends on June 6. I'm also going to circulate a letter to Secretary Clinton asking that she delay the siting for one more year to give Nebraska the opportunity to put the kind of regulation in place that we need to have to protect our state. It will talk particularly about siting through the Sandhills which remains an area for which we don't have a lot of answers. So, again, I rise in strong support of LB629. I appreciate Senator Sullivan sticking with this through the whole

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legislative session and even before. And I will be circulating a letter and I hope some of you will agree that it's needed. Thank you very much. [LB629]

SPEAKER FLOOD: Thank you, Senator Haar. There are no other lights on. Members, you've heard the motion. The question is, shall LB629 advance to E&R engrossing? All those in favor say aye. Those opposed say nay. LB629 advances to E&R for engrossing. Mr. Clerk, pursuant to the agenda modification, we now proceed to LB390. [LB629 LB390]

CLERK: LB390, Mr. President. It's on General File, originally introduced by Senator Ashford. (Read title.) Bill was introduced on January 13, referred to the Judiciary Committee. The bill was advanced to General File. I do have Judiciary Committee amendments, Mr. President. (AM1537, Legislative Journal page 1724.) [LB390]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Ashford, you're recognized to open on LB390. [LB390]

SENATOR ASHFORD: Thank you, Mr. Speaker. This bill and the amendments that come with it represent the work of many individuals over the last few years to try to come up with a way of moving forward to implement the community corrections policy into the future. For a number of years, the Community Corrections Council served a valid and valuable role in creating the community corrections initiative that was started by this Legislature six, seven years ago, and they have done a laudable job. Senator Council and Senator Pirsch in this body have served on that council. Now it is the...this bill will, I think, move the community corrections initiative to where it belongs as part of an office, an implementation office to carry on the goals of the community corrections initiative. What this bill is not is an effort to take money, either General Fund or cash funds, and take them away from community corrections. In fact, what the bill does with the committee amendments that follow is to ensure that the cost funds, that are cash funds that have been accumulated from the fees and paid by offenders, it makes certain that those dollars will go into community corrections projects. As you recall, this body last year, two years ago, allowed the courts, during the time of economic uncertainty in the last couple of years, did allow the courts the opportunity to utilize those funds, those cash funds for other courts' purposes. The courts did not do that, in fact, and the money remains and will be used, continue to be used for community corrections projects. The office that has run the community corrections initiative will remain intact and it will come under the...will go into or be part of the Crime Commission, as is the Office of Violence Prevention, another office that was created by this Legislature a few years ago. This office will continue working with probation and parole to effectively, in my view, divert people, offenders, out of increased or increased incarceration and find alternatives for them. Again, I want to say, as we discuss this, that the community corrections effort in this state, with the six reporting centers throughout the state and the drug courts and other specialty courts that have been created with the General Fund appropriations,

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have been a significant advancement for our state. With that, Mr. Speaker, I will close on the...on my open. [LB390]

SPEAKER FLOOD: Thank you, Senator Ashford. As the Clerk has stated, there are Judiciary Committee amendments. Senator Ashford, you're recognized to open on AM1537. [LB390]

SENATOR ASHFORD: Thank you, Mr. Speaker. AM1537 does eliminate, as I suggested, the Crime Commission...the council, Community Corrections Council, and it also eliminates the duty of the Crime Commission to publish an annual homicide study due to the fact those studies are being performed by other agencies of government. AM1537 incorporates provisions...also provisions of LB300, which bill amends the sections of statute which provide for the creation and regulation of the Community Trust. And as the body will recall, this...with the Von Maur shootings, the Community Trust legislation was passed at the request of the United Way, and this amendment does make some changes to that, that legislation, that are primarily technical in nature. Finally, AM1537 provides that correctional facilities that are accredited by a nationally recognized correctional association shall not be subject to the authority of the Jail Standards Board. At this point, that's Douglas County only. The other counties in the state will continue to be accredited and come under the authority of the Jail Standards Board. There will be an amendment on Select File which makes clear that if a county decides to be, in fact, be recognized by a national organization, I've sent around information on the American Correctional Association accreditation process which is the...the American Correctional Association is the only other accreditation, national accreditation association in the country and it is well-recognized and certainly is. We work with them in the state correctional system. And as I suggested, Douglas County is desirous of coming under the authority of that association and so they would no longer become...come under the authority of the Jail Standards Board. The Jail Standard Boards would continue on as it has with the other 92 counties. So that would be...that would...AM1537 would...that's the extent of AM1537. Thank you, Mr. President. [LB390 LB300]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Ashford. Mr. Clerk, there is an amendment to the committee amendments? [LB390]

ASSISTANT CLERK: Mr. President, Senator Ashford would offer AM1542 to the committee amendments. (Legislative Journal pages 1756-1759.) [LB390]

SENATOR GLOOR: Senator Ashford, you're recognized to open on your amendment to the committee amendments. [LB390]

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SENATOR ASHFORD: Thank you. AM1542 amends the A bill into LB390. It would be transfer the General Fund dollars or authority for those dollars to go to the Community Corrections Council. So those dollars that have been appropriated in this budget will go to the community corrections program within the Crime Commission, again, to be administered and run by the same individuals who are running it now in the Community Corrections Council. So that would simply be a change in the recipient of those General Fund dollars, and that's AM1542. [LB390]

SENATOR GLOOR: Thank you, Senator Ashford. We now move to floor debate. Senator Harms, you're recognized. [LB390]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Ashford, could you...would you yield for a few questions on AM1537? [LB390]

SENATOR ASHFORD: Yes. [LB390]

SENATOR HARMS: Page 31, you talk about a "Community Trust shall be governed by a board of directors." [LB390]

SENATOR ASHFORD: Yes. [LB390]

SENATOR HARMS: How do we determine who's going to be on that? And then how many actual board members would there be and what credentials do they have to have in order to serve on that board? [LB390]

SENATOR ASHFORD: Let me check. Thank you, and I didn't have that information in front of me, Senator Harms, but the...what is required is that there be a representative of a nonprofit organization and a member of...well, there had to be a certified public accountant on the board. What had happened here is that the trust did not have specific direction on the board of directors and that's why this is added. [LB390]

SENATOR HARMS: Senator, will this be spelled out so that there's no question about who's going to be on that board? [LB390]

SENATOR ASHFORD: Yes, and it is not specifically spelled out other than that it must include a CPA and a member of a nonprofit board, but I can sit down with you and go over with you those provisions and see if we may need to add to those on Select File. [LB390]

SENATOR HARMS: Okay. One other question, Senator: Even though the money comes in there for a short period of time, will that money be invested? [LB390]

SENATOR ASHFORD: No. [LB390]

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SENATOR HARMS: And why is that? [LB390]

SENATOR ASHFORD: It goes in and comes out. It is not invested. There is no investment authority. It simply would come in and then go back out. This is...would be a means of making...what was happening, Senator Harms, was that the United Way was having difficulty in making these determinations as to who gets what in that, and you remember that,... [LB390]

SENATOR HARMS: Yeah. [LB390]

SENATOR ASHFORD: ...that discussion, and this board of directors would act as a...sort of a gatekeeper for ensuring that the money is fairly and equitably disbursed. But the funds would not be invested. [LB390]

SENATOR HARMS: Okay. In regard to the Community Trust, 10 percent of the amount could be charged for administrative cost. How did we determine the 10 percent? Is that basically the going cost? [LB390]

SENATOR ASHFORD: It's 10 percent of the corpus of the money that's distributed and the agency, you know, normally an agency will ask for the State Risk Assessment Office and others that would need the administration costs, and it's put in at 10 percent. It may not be that much, but that's the amount that they gave us though, which is the normal, you know, as you well...of course you know from being on the Appropriations Committee, the normal amount that's put into these kinds of funds. But it's 10 percent. It maybe less. [LB390]

SENATOR HARMS: On page 32, Senator, again on the AM1537 amendment, on item line 17, we talk about this money could be transferred for a period of time to a nonprofit organization. How do we...I guess what I'm after, how do we choose and making sure that's the right nonprofit organization and what kind of controls do we have over that? [LB390]

SENATOR GLOOR: One minute, Senators. [LB390]

SENATOR HARMS: Thank you, Mr. President. [LB390]

SENATOR ASHFORD: Okay, and LaMont is helping me with this. This just came...this was just put in today or last Friday and I'm sorry I did not have the answers on the top of my tongue here, but basically this is for...this would go to nonprofits that would be working in the same area, small amounts of money that would...it would be inefficient for this fund to administer and it would go to a nonprofit for the same purposes that are addressed in the application in the first place. [LB390]

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SENATOR HARMS: With the nonprofit corporation, will there be any administrative cost? [LB390]

SENATOR GLOOR: Time, Senators. [LB390]

SENATOR HARMS: Oh, thank you, Mr. President. [LB390]

SENATOR GLOOR: Thank you, Senator Harms and Senator Ashford. Senator Howard, you are recognized. [LB390]

SENATOR HOWARD: Thank you, Mr. President and members of the body. If Senator Ashford would yield for questions. [LB390]

SENATOR GLOOR: Senator Ashford, would you yield to a question from Senator Howard? [LB390]

SENATOR ASHFORD: Yes. [LB390]

SENATOR HOWARD: Thank you. In looking at the committee statement, I see there were a dozen people that came in and testified in opposition to this and many of them were from...were sheriffs or from sheriffs' offices. Can you give me some idea of what their concerns were? [LB390]

SENATOR ASHFORD: Yes. And getting back to that portion of the bill dealing with the jail standards, most of the county sheriffs were opposed to...the original bill, as introduced, abolished the Jail Standards Board and the committee did not feel that was an appropriate direction and so it did not go that way. And with the change in this committee amendment, there is...the Jail Standards Board remains intact and administers jail standards for 92 of the 93 counties. So it removed any objection from the county sheriffs. [LB390]

SENATOR HOWARD: Well, that's helpful to know because that was actually going to be my next question and I understand that the standards, if I could call them the state standards, would be removed for Douglas County, but does the bill require that Douglas County continue with the national accreditation? [LB390]

SENATOR ASHFORD: Yes, they have to choose one or the other and in this case they have indicated that they're going to come under and already work with this national organization that would accredit them if we pass this bill. [LB390]

SENATOR HOWARD: Well, that's helpful to know that that's their intention to remain with that. And they have a clear understanding that that's required of them? [LB390]

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SENATOR ASHFORD: Yes, they do, and they've requested that that be the case. [LB390]

SENATOR HOWARD: Then... [LB390]

SENATOR ASHFORD: The county, Douglas County, has requested that. [LB390]

SENATOR HOWARD: Douglas County, and that's really the only one that this applies to, if I understand correctly. [LB390]

SENATOR ASHFORD: That's correct. [LB390]

SENATOR HOWARD: Then what will the funds...we were discussing the funds and what are they primarily used toward or what's the purpose of this? And I understand you said the United Way has had a lot of difficulty in deciding who to award this money to, so can you go into that a little more in depth? [LB390]

SENATOR ASHFORD: Yes. The money doesn't remain...good question and I apologize to Senator Harms for fumbling with the answers. But basically, the money...the idea here is the money for victims of a particular event, such as Von Maur, those dollars would come in, would be donated into the fund and then distributed out. They would not remain in the fund and so that they wouldn't be accumulating interest and would not be invested. [LB390]

SENATOR HOWARD: But they would be...who would they be distributed to? [LB390]

SENATOR ASHFORD: They would be...well, in the Von Maur case, had this trust been in effect, it would have gone to the families of the victims of the Von Maur shootings. [LB390]

SENATOR HOWARD: So this is in anticipation of something of a similar... [LB390]

SENATOR ASHFORD: Correct. [LB390]

SENATOR HOWARD: ...catastrophe as that one? [LB390]

SENATOR ASHFORD: Right. The victims of those tragedies would receive the benefit of those donations. [LB390]

SENATOR HOWARD: Well, hopefully that's not an occurrence that would be...that we'd anticipate on a regular basis. What happens to the funding while it's not being awarded? [LB390]

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SENATOR ASHFORD: I'm sorry, was that a question? I apologize, Senator Howard. [LB390]

SENATOR HOWARD: That was a question. [LB390]

SENATOR ASHFORD: I didn't get it then. [LB390]

SENATOR HOWARD: (Laugh) Well, if the funds are used for families that are...suffer such tragedies as Von Maur, and that was, what, two, three years go, in the meantime where has the remaining money gone? [LB390]

SENATOR ASHFORD: Yes. I mean, yes, to answer your question. Maybe I'm not following the question. [LB390]

SENATOR HOWARD: The yes? No, the question is where has the money gone since that time. [LB390]

SENATOR ASHFORD: The money through the United Way money was distributed. [LB390]

SENATOR HOWARD: So there is no money in the fund at this time. [LB390]

SENATOR ASHFORD: Correct, there is no money. [LB390]

SENATOR HOWARD: That would be the answer I'd be looking for. [LB390]

SENATOR ASHFORD: Okay. [LB390]

SENATOR HOWARD: I offer... [LB390]

SENATOR GLOOR: One minute. [LB390]

SENATOR HOWARD: ...the remainder of my time to Senator Harms. [LB390]

SENATOR GLOOR: Senator Harms, 57 seconds. [LB390]

SENATOR HARMS: Oh, thank you, Senator Howard. I think I'll waive. Thank you. [LB390]

SENATOR GLOOR: Thank you, Senator Howard, Senator Harms, Senator Ashford. Senator Campbell, you are recognized. [LB390]

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SENATOR CAMPBELL: Thank you, Mr. President, and good evening to everyone. Would Senator Ashford entertain a question? [LB390]

SENATOR ASHFORD: Yes. [LB390]

SENATOR CAMPBELL: Senator Ashford, my question has to do somewhat with the same vein as Senator Howard's, and I noticed a lot of folks on that list from Lancaster County and I don't have any, you know, follow-up letters. Can you give me just some idea? I'm assuming the amendments took care of their... [LB390]

SENATOR ASHFORD: The Lancaster County Sheriff was...did not support, nor did many of the other county sheriffs in this state, the abolition of the Jail Standards Board, and nor did the Judiciary Committee, which we support that board. So that board remains intact and they will be administering and certifying those county jails that remain within the jail standards process. It's only Douglas County at this point that has asked to be certified under this national association which certifies the correctional facilities in the state. [LB390]

SENATOR CAMPBELL: Okay. I would like to echo the support for the Jail Standards Board. In the number of years that I served on the board, I thought that there were oftentimes they made comments to the counties about particularly overcrowding, as we dealt with it in Lancaster at one point. But those are items that the counties need to hear and communities need to know, and it often takes a separate board to make us all aware of what we should be looking for in the conditions as we run jails across the state. Thank you, Mr. President, and thank you, Senator Ashford. [LB390]

SENATOR GLOOR: Thank you, Senator Campbell. Senator Harms, you're recognized. [LB390]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Ashford, would you yield to a couple more questions? [LB390]

SENATOR GLOOR: Senator Ashford, would you yield? [LB390]

SENATOR ASHFORD: Yes, most certainly. [LB390]

SENATOR HARMS: Senator Ashford, I want to go back to go back to the question originally that, when we were visiting earlier, didn't quite have enough time. In regard to the nonprofit organizations that are...we're going to transfer some of these dollars to, are there going to be any administrative costs charged by those nonprofit corporations to handle this money? [LB390]

SENATOR ASHFORD: Are they going to be charged? Are they... [LB390]

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SENATOR HARMS: Yeah, the nonprofit, will there be any administrative costs? [LB390]

SENATOR ASHFORD: There is no provision for that to happen. [LB390]

SENATOR HARMS: Okay. Would you also clarify for me again, this would not have any impact on where I live, for example, the county jails and that sort of thing I mean in regard to the standards? I'm struggling a little bit with this. [LB390]

SENATOR ASHFORD: It would not. And, Senator Harms, I'm going to...I really apologize, this amendment on the Community Trust issue is separate and distinct from the jail standards, and I...this is confusing and I did not present it very well. The Community Trust money, the money that would be given out to victims of natural tragedies or natural events or things like the Von Maur shooting, would have this nonprofit person and a CPA on the board. They would have the Crime Victim's Reparations group would be administering or looking over the fund as well. That is a separate initiative that we passed a couple years ago to deal with the Von Maur shooting. The jail standards issue is different and in Scotts Bluff County, that county sheriff and the county jail in Scotts Bluff County would be certified by the jail standards group, the group that Senator Campbell was a member of, and that would continue to be the case. The only thing that is changing in the...currently, though, Scotts Bluff could elect to be certified by this national association, but the only change we're making that would happen right now with the passage of this bill would be Douglas County would come under the national association and not the Jail Standards Board. [LB390]

SENATOR HARMS: Oh, thank you. That answers my question. Thank you, Mr. President. [LB390]

SENATOR GLOOR: Thank you, Senator Harms. Senator Council, you are recognized. [LB390]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in support of LB390, the committee amendments, as well as AM1542. As one of the legislators, legislative representatives on the Community Corrections Council, I initially had concerns about the bill as originally introduced, which called for the elimination of the Community Corrections Council because of my concern that the work that's been done thus far would not move forward in the manner in which it has these preceding years. And with the Judiciary Committee amendments, as well as some discussions that have been occurring that Senator Pirsch and I have been involved in to ensure that the Community Corrections Council staff, which is maintained under LB390 with the amendments, although maintained under the renamed Crime Commission, that it continues to do the type of work that needs to be done in this area. And in addition to the items that are currently enumerated in the statute as to the services to be performed and the

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responsibilities to be carried out by now the staff, which had been the council's responsibility, I want to emphasize that looking to assure that the council staff looks at performing necessary research, conducting necessary evaluations, providing program and cost-effectiveness information to the Legislature through the annual report that is currently provided for in the statute and will remain an obligation of the Community Corrections staff as they are now comprised under the bill as the Community Corrections Division. I also want to rise in support of the Judiciary's amendment which retains the Jail Standards Board. And as has been discussed, originally LB390 called for the elimination of the Jail Standards Board and that's where the bulk of the opposition that you see in the committee statement was addressing. And with the amendment, we retain the Jail Standards Board but provide communities the option to either comply with the Jail Standards Board or the national accreditation board, and currently Douglas County is the only county that is accredited under that national body. There's nothing in the amendment that prevents any other community from deciding to elect to comply with the higher accreditation standards. It will be a question of cost. And that's one of the issues that was affecting Douglas County in if it were to continue to maintain its accreditation, many of those accreditation standards are in conflict with our local jail standards in areas that really don't have that dramatic an impact on the delivery of services. So with that explanation, I would urge the body to support AM1542, the Judiciary Committee amendment, AM1537, and the underlying bill, LB390. [LB390]

SENATOR GLOOR: Thank you, Senator Council. Seeing no further senators in the speaking queue, Senator Ashford, you're recognized to close on your amendment to the committee amendments. [LB390]

SENATOR ASHFORD: Thank you, Mr. President, and thank you for the question. Senator Council has served on the council and it is critical, as she suggests, that these efforts continue. And I think I am convinced in talking to the Chief Justice, to Bob Houston with Department of Corrections, and the probation and parole offices that this effort will not be abated in any way and it will continue on. Again, to make absolutely clear to the body and for the record, the \$8 million in cash funds that have been accumulated in the Community Corrections Council Cash Fund will continue to be used only for community corrections purposes, and the change in the law that we made two years ago regarding utilization of that fund by the courts would no longer be in effect. So the \$8 million is available for reporting centers or other activities that are deemed appropriate. The General Fund appropriation to the Community Corrections Council will go to the Crime Commission for the administration of programs across the state, the day reporting centers and the specialty courts, and will be part of that effort unabated. And the office, the executive director and the general counsel and administrative staff of the Community Corrections Council, will continue in the office under the Crime Commission administration. And with that, Mr. President, I would move AM1542 to AM1537 and AM1537. Thank you. [LB390]

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SENATOR GLOOR: Thank you, Senator Ashford. Members, you've heard the close. The question is, shall the amendment to the committee amendment to LB390 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB390]

CLERK: 28 ayes, 0 nays on adoption of the amendment. [LB390]

SENATOR GLOOR: The amendment is adopted. There are no senators in the speaking queue. Senator Ashford, you're recognized to close on the committee amendments. Senator Ashford waives. Members, the question is, shall the committee amendments to LB390 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB390]

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB390]

SENATOR GLOOR: The amendment is adopted. We return to discussion on the advancement of LB390 to E&R Initial. There are no senators in the speaking queue. Senator Ashford waives closing. The question is the advancement of LB390 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB390]

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of LB390. [LB390]

SENATOR GLOOR: The bill advances. Items for the record? [LB390]

CLERK: I do, Mr. President. I have an amendment by Senator Ashford to LB390 to be printed; Senator Karpisek and Senator Burke Harr, amendments to LB704, those to be printed as well. That's all that I have, Mr. President. (Legislative Journal page 1760.) [LB390 LB704]

SENATOR GLOOR: Thank you, Mr. Clerk. We continue with the agenda, LB390A. The body will stand at ease. [LB390A]

EASE

SENATOR GLOOR: Members, we now continue with the agenda. General File, LB390A. [LB390A]

CLERK: Mr. President, LB390A, a bill originally introduced by Senator Ashford. (Read title.) I do have a motion to indefinitely postpone the bill, Mr. President, offered by Senator Flood. [LB390A]

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SENATOR GLOOR: Senator Flood, you are recognized to open on your motion to indefinitely postpone. [LB390A]

SPEAKER FLOOD: Thank you, members, good evening. This is more than a motion, this could be considered a major announcement as it relates to the balance of our legislative session. I've had an opportunity to speak with several of you. Having moved the congressional redistricting map today and then taking up LB390, you'll note that on General File Senator Ashford addressed the fiscal note aspects of what would otherwise be LB398 inside a substantive bill and it's not a General Fund reduction. For that reason, I'm moving to indefinitely postpone LB390A as it is not needed or necessary, in hopes of structuring the rest of the week in such a way to allow for a sine die adjournment on Thursday of this week, which would be essentially three days early. Now I know several of you have matters pending before the Legislature. There is a pathway, a very real pathway to adjourning the Legislature early this session and specifically a sine die adjournment on Thursday. Tomorrow would essentially be treated as the eighty-eighth day. And I've talked to Senator Conrad and Senator Council and Senator Harr and Senator Lathrop and others as it relates to some of the issues on congressional redistricting, understanding there was some discussion on that. And we have found a way forward as it relates to LB704. So essentially, as we move forward, we're going to have some late nights this week as Bill Drafters works to get things done and get bills returned to the floor for consideration in a timely manner. But we are right now on a flight path toward sine die adjournment Thursday. If you have an objection or a concern regarding such a plan, please visit with me. Ultimately, the entire Legislature will determine whether we adjourn for the year on that time, at that time on Thursday. But I'm going to structure the agenda in such a way to get there. And if I have not visited with somebody out here that has a real concern about that, please come see me. And, I believe, that we are and will be in a position to handle Governor's vetoes, but I want to reassure you of that in the morning after I have a chance to visit with the executive branch as it relates to vetoes. Please know that we will not adjourn if an individual member or a committee bill or whatever the case may be has been vetoed and you have not been given an opportunity to override the veto. That is central to the case that I will make with the executive branch. And with their cooperation, we certainly can adjourn Thursday. It's not set in stone, I just want to make you aware of it. And I would ask you to indefinitely postpone LB390A. [LB390A LB390 LB398]

SENATOR GLOOR: Members, you've heard the opening on the motion to indefinitely postpone. Are there senators who wish to speak? Seeing none, Senator Flood, you're recognized to close. Senator Flood waives. Members, the question is, shall LB390A be indefinitely postponed? All in favor signify by voting aye; all opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB390A]

CLERK: 26 ayes, 0 nays to indefinitely postpone LB390A. [LB390A]

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SENATOR GLOOR: LB390A is indefinitely postponed. Mr. Clerk. [LB390A]

CLERK: Mr. President, LB690, I have Enrollment and Review amendments. (ER139, Legislative Journal page 1700.) [LB690]

SENATOR GLOOR: Senator McCoy for a motion. [LB690]

SENATOR McCOY: Mr. President, I would move that the E&R amendments to LB690 be advanced. [LB690]

SENATOR GLOOR: Question is the adoption of the E&R amendments to LB690. All those in favor say aye. All those opposed say nay. The amendments are adopted. [LB690]

CLERK: Mr. President, I now have amendments to the bill, but I also have a priority motions. Senator Conrad would move, this is the first priority motion. Senator Conrad would move to recommit LB690 to committee. [LB690]

SENATOR GLOOR: Senator Conrad, you're recognized to open on your motion. [LB690]

SENATOR CONRAD: Thank you, Mr. President. And before I get started, I just wanted to clarify for my own knowledge, do I have ten minutes to open this motion? [LB690]

SENATOR GLOOR: Correct. [LB690]

SENATOR CONRAD: Okay, thank you very much. Good evening, colleagues. I urge you give careful consideration to the motion that is before you, which is to recommit LB690 to committee. We had an invigorated dialogue on General File about some of the legal, policy, and practical considerations, concerns and problems with LB690. It seems that there is definitely a clear and strong consensus within this body to turn our statutes from a decades-old policy, which has served us well, of parental notification when it comes to abortion care for minors, to that of parental consent. That being said, as I noted on General File, just because we may have different philosophical viewpoints as to the soundness of that policy change, we still have an obligation to ensure that we have a technically appropriate bill moving through the process, regardless of again one's personal feelings on the issues, which are quite emotional, surrounding reproductive health. There are a variety of questions that came up in relation to this legislation that have not been addressed from General to Select File. And because each of our committees jurisdictional have an opportunity to develop expertise on the subject area that is before them, I really feel that the most appropriate move at this point in the session is to not kill the bill, to not IPP the bill, to not file 80 different substantive amendments to try and draw out debate, but to just say simply, let's wait a minute, let's

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take this very difficult and emotional issue, let's recommit it to committee and let's have some additional consideration at that level. I think that is appropriate not only because of the concerns that were brought forward on General File but also because of some of the concerns about how LB690 came out of the committee process. And it would seem that that would be the best way to remedy some of those process considerations that exist as well. Of course, you know my perspective and others in terms of the underlying substantive nature of LB690. And I have a very strong belief, based on the experience of other states, that rather than encouraging parental involvement and protecting young women, a switch from parental notification to parental consent, providing veto power to one parent or legal guardian of that young woman will indeed force more women into the court system, into the judicial bypass system and will remove the parents from the equation almost in their entirety. And that would definitely be an unintended consequence that, I think, we would all want to avoid if possible. Additionally, there are problems with LB690 when it comes to again not per se HIPAA violations but privacy issues and in particular medical privacy issues. By requiring a notary to effectuate the document the consent document that's a prerequisite to obtaining the medical procedure, you're bringing in an outsider into that family's medical decision making. And unfortunately, proponents contend that this will solve the problem of people who pretend to be a minor's parent. Well, number one, the record is very clear. That is not an ongoing problem in Nebraska. There has been one instance brought forward, almost nine, ten years ago, where that was the case. And that perpetrator was brought to justice in the criminal court system. So, number one, we don't have a significant policy problem with parents posing or imposters posing as parents in the notification context. But even if we did, the notary component won't fix that. The notary cannot establish a familial relationship, it simply cannot. Under our current set of statutes, as set out in Nebraska Revised Statutes, Chapter 64, which govern the parameters that notaries public operate in, in Nebraska, they can confirm identity based on personal knowledge or based on government identification that is issued and presented to them. They cannot, however, confirm or establish familial relationship or paternity in any way, shape or form. The other problem with bringing in the notary is that then, looking at the current definition of the legislation, the notary is going to have a very clear understanding of why the parents and the minor are before them. And under current law, there is no cause of action or no penalty for a notary who discloses that private information to anyone in a public manner. There is no protection for the family or for the minor about how that notary is going to utilize that information. And think about it in particular in the context of what that's like in a small town and what impacts that will have not only for the young woman but her family who are with her at that very, very difficult time. There are additional technical and substantive problems in relation to Senator Brasch's original legislation in terms of providing presumptive eligibility for certain minors who are subject to abuse that Senator Campbell and others brought forward on General File that have failed to be addressed in a substantive manner. Finally, colleagues, there are a variety of other issues contained in LB690, protection for the judges, discussions about filing fees for the minors who utilize judicial bypass, the time frame for judicial bypass

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decision-making, all of these different components are technical in some respects but substantive in others and really are the province of the Judiciary Committee and belong within the jurisdiction of the committee level for full and fair consideration. So with that, I'd ask that you give careful, careful, consideration to this motion to recommit for those reasons and others which debate will have a chance to delineate further. And to be clear, colleagues, because some of you may not be privy to private conversations that are happening, I am trying to work with proponents to see if we can't find a pathway forward, to use the terminology from our good Speaker, tonight and for the rest of the session. I think that there are probably some livable ways to do that. And if we have to move forward with LB690 in its current form, that is preferable to the consideration of some of the pending amendments which, in my opinion, make a very, very bad bill even worse. If we are able to find that consensus, I am willing to vitiate my right to pursue this motion strategy so that we can find that pathway forward. And I wanted to be very straightforward and honest and clear about that so everybody was on the same page. If there are questions, feel free to ask me off the mike or others. As always, happy to visit with anybody about the technical or substantive nature of this legislation or the process as we move forward. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Conrad. There are senators wishing to speak. Senator Burke Harr, you're recognized. [LB690]

SENATOR HARR: Thank you, Mr. President. LB690 is...the concept in the bill, I think, is probably pretty good, going from notification to consent. But we are raising the burden, there's no if, ands or buts. We're giving parents a veto power, which again isn't necessarily bad. These are young people. And, hopefully, if you vote for...realize this, you also voted for Senator Council's bill on youth who commit crimes, because the brain isn't fully developed. And that is right and that is correct. Where I have problems with this is there are a bunch of little Christmas trees put...or ornaments put on this bill. And it probably needs some more talking to and talking about. There's an amendment that will be introduced by Senator Brasch, which goes completely against what was talked about in committee as far as this is aimed at 18 and under, that makes it emancipated. There's a question, is the language little bit vague? Are judges protected or are we going to pick on judges? There's...I question on notary, how do we go about doing that properly? There was some good conversation about this. Even if a person signs it who says that they are who they are, it doesn't assert the truth of the matter asserted above. It just says the person who signs this is that person. And then there's also the privacy issue. Hopefully, we're going to hear an amendment on that. I have an amendment where I question, well, my amendment is clearly constitutional. It puts this language in clear constitutional land. Senator Brasch's and the Judiciary's is questionable. I'm not saying it is unconstitutional, but I'm saying it has never been tested by the Supreme Court. I'd like to see a clean bill that is a simple and free of litigation as possible. And so, I think, we need to really home in what the purpose of this bill is. And that is to parental consent from notification, upping the ante there. And then it's also bringing our statute

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into compliance with Supreme Court language. With that, I think, it's a good bill. It's...I think we can really go do some great things there. But there are too many little questions that we have on this bill. Now we can stay here all night and debate them, but, I think, it's probably best that, we've been debating all day long, all a little tired, all a little frayed, to take it back to the committee where you have individuals who this is what the...this is the committee's job is to really examine these closely. And let's take out the rhetoric and really look. We can confront the issues and the challenges and not each other. I think that's why we can have a sound, logical debate. Whether your pro-life or pro-choice, it doesn't matter. What's important is, is this a good bill? And that's what we really need to look at, does it do what we want it to do? And you can be in the pro-life camp and have honest disagreements. That doesn't make you pro-choice, doesn't make you automatically pro-life, I guess. There are those who will question if you're really pro-life if you don't put on your blinders and gallop forward. [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR HARR: Well, I think, it's time we have some reasoned debate and really look at what do we want to do and how do we...how do we want this bill to look. If this is a parental consent bill, then let's strip everything off of it and make it a parental consent bill and let's go with what the Supreme Court says parental consent should look like. And so for that reason, I would ask that this be...encourage you to vote to recommit this to committee. Thank you very much. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. Senators wishing to be recognized: Coash, Cook, and Brasch. Senator Coash, you're recognized. [LB690]

SENATOR COASH: Thank you, Mr. President. Good evening, members. I am going to stand up in opposition to the motion to recommit. Judiciary Committee did work on this and between General and Select Senator Brasch has brought us an amendment that addresses some of these issues. But unfortunately, we have three priority motions in front, and I don't know if or when we will get to them in order to discuss these issues. I will tell you that there are many folks sitting here, myself and my staff included, taking notes and listening to debate on General File and trying to address some of the concerns and clarify some of the issues that were brought up on General File. And those are represented in an amendment that I would like to get to. In addition, I believe, Senator Harr has an amendment and others as well that do warrant some debate. And I would encourage the body to reject the recommit motion and the other motions and take a look at the substantive matters that have come before us. And we can talk about those and talk about the technical issues. But, you know, right now we're talking about sending it back to the committee. As a member of the committee I can tell you we talked about this a lot. And we went back and forth, I was part of that. And we have a bill in front of us, as amended on General File and has potentially amended on Select File, I believe does move this bill in a better way and make it a more technically sound bill.

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And I hope that we can get to those. To address one of the things I did hear Senator Harr talk about with, Senator Burke Harr talk about with the constitutionality of this particular bill, here's what I've learned in my time on Judiciary. Just because a piece of legislation hasn't been tested in the Supreme Court doesn't mean it's unconstitutional. So I would encourage the body to assist in making this the best bill possible and consider the amendments that are to follow the three motions in front of us. And I'd be glad to talk about the particular technicalities of it. I do understand where Senator Conrad is coming from, send this back to the committee. I can tell you that we held it a long time to work on these issues. And what you see before you in the amended form of LB690 is the result of that. And so I will hope the body would indulge the technical amendments that are pending so that we could have a discussion on those. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Coash. Senator Cook, you are recognized. [LB690]

SENATOR COOK: Thank you, Mr. President. And good evening, colleagues. Understanding that there is a compromise or a series of compromises in the works, I rise at this time to stand in support of the recommit motion. And as I've mentioned in my previous testimony on the bill, my issues with the bill kind of relate to a general philosophical different belief from one that Senator Brasch has expressed as her reasoning for bringing the bill forward. I haven't observed many parents, parents of young people, parents of people my age, which are middle, old people or parents of old people who were really all that interested in engaging their children in a conversation about sex on an ongoing basis or even to initiate a dialogue. I also wanted to reemphasize that while it is not reflected in terms of the number of people in this body who might oppose this bill or other bills that, in my opinion, seek to limit a woman's access to a safe and legal abortion, can I get a gavel, please. [LB690]

SENATOR GLOOR: (Gavel) [LB690]

SENATOR COOK: ...while it is not reflected in this particular room, it is more reflected in the state of Nebraska and certainly across the United States and the world. And with that, I wanted to read a letter from a constituent. I've heard from several constituents who are in opposition to LB690 in the form that they are able to read it. And again, I understand that there are conversations in the works. I won't read it to you in its entirety, but the second paragraph begins, Most minors seeking abortion care actively involve at least one parent in the decision-making process. By giving parents veto power over a young woman's decision, this could encourage her to seek a judicial bypass rather than involve her family in the process. And this works against the intent of the legislation. Moving forward, fear of being...of repeat abuse, retaliation, being thrown out of the house, parents with substance abuse problems or incidence of rape and incest are just some of the reasons a young woman may choose not to involve her parents. LB690 will

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have the unintended consequences of inflaming these situations and potentially placing a young woman's life at risk. Thank you, Mr. President. I yield the rest of my time back to the Chair. [LB690]

SENATOR GLOOR: Thank you, Senator Cook. Senator Brasch, you are recognized. [LB690]

SENATOR BRASCH: Thank you, Chairman, thank you body. I stand opposed in recommitting LB690 back to committee. This bill has had a full and complete hearing. Proponents of the bill have worked tirelessly with members of the committee on numerous questions and we have worked diligently with others to address those. The Attorney General's Office has reviewed the bill and has issued an opinion as to the constitutionality of LB690. LB690 is grounded upon parental consent laws from 24 states, drafted to take into account Supreme Court precedent. The Chairman of the Judiciary Committee voted to advance the bill and stated affirmatively as to his belief that it is constitutional. In 1992, a plurality of the U.S. Supreme Court ruled that a state may constitutionally require a minor seeking an abortion to obtain the consent of a parent or guardian. Specifically the court held that certain provisions, such as required...reflect...a required reflection period and a chance for parents to privately discuss with their daughter's the values and moral principles of the situation that they carry a particular force with respect to minors. Respectfully to my good neighbor and colleague here, observing parenting is much different than being a parent. I am a parent. I am a grandparent. Yesterday, someone brought to me an analogy of just going and sitting in church doesn't make you a good Christian, like going and standing in a car...or standing in a garage, excuse me, does not make you a car, a friend shared that. And I believe observing parenting does not make you a parent. But we do need to remember that, as others have stated, that young women, their brains aren't fully formed yet. That argument came up repeatedly, several times. And several colleagues, you know, we questioned the ability to make decisions that are going to change ones life. The judges anonymity has been brought up. And all the court proceedings are held in confidentiality. And reporting elements in LB690 are relevant to the physician and Health and Human Services and not to the judges. It currently does not disclose the judges anonymity. I believe that LB690 has had a full and complete hearing. We have worked with many senators to create the amendments that we would like to bring forward. I would ask senators to please support having LB690 move forward. Thank you. [LB690]

SENATOR GLOOR: Thank you, Senator Brasch. Senator Council, you are recognized. [LB690]

SENATOR COUNCIL: Thank you, Mr. President. I rise in strong support of the motion to recommit to committee. As a member of the Judiciary Committee, I can tell you that, yes, there was a lot of time spent on trying to address some of the flaws in this bill. But

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the bulk of the time was spent in the attempted negotiations that Senator Harr referred to when the bill was first introduced on General...on Select File to address who could give the consent. And, I think, in all candor, colleagues on the Judiciary Committee who supported advancing this bill to General File know that that's what the bulk of the time of the committee was spent on, waiting for the competing parties to come to some agreement as to who would be allowed to give the consent in the case where a young woman alleged sexual abuse, child abuse or child neglect by one of her parents. There was the haste, there was always the haste to get this bill out without having any full and fair discussion of the other aspects of the bill. Now mind you, I didn't support the bill nor do I believe it's my responsibility during the Judiciary Committee to try to point out every place where this bill needed to have some work. That the proponent, the introducer of the bill should be looking at those issues. But just by way of example as to why this needs to go back, if you look at the bill, if a young woman just seeks to have the abortion and is not alleging sexual abuse, child abuse or child neglect, the bill says she shall obtain written, notarized written consent. Doesn't say anywhere that she has to provide that notarized statement to anyone. The only time the physician is obligated to receive a notarized written consent is in the case where the young woman has alleged sexual abuse, child abuse or child neglect. At that point in time the bill specifically says that the physician shall obtain the notarized written consent. But otherwise, the young woman gets the written consent, she doesn't have to give it to anyone. And there's nothing in the bill that says she has to give it to anyone. You point those things out and it's like, oh, well, you're opposed to the bill, we don't want to listen to you. Well, let's go on. I introduced an amendment to eliminate a problem with the bill. The bill says that if a young woman wants to proceed with having the child, you know, she, I guess, apparently in that situation she hasn't asked for her parents consent. I guess, that's what we're to assume because it says if a child decides not to have an abortion, which means apparently she's decided not to get her parents consent, that if her parents decide to withhold financial support, she is deemed emancipated and then eligible for public assistance. Well, allow me to remind you again, colleagues, what you did last year. What you did last year that said if you're a pregnant woman under the age of 18, living at home with your parents, you cannot receive public assistance unless your parents meet the eligibility guidelines of Medicaid. So if your parents don't meet the eligibility requirements of Medicaid, and you're a pregnant young woman under age 18, you are barred by our action last year from receiving public assistance. And principally, that public assistance comes in the form of prenatal care and... [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR COUNCIL: ...SNAP benefits. So when I raised that question, I asked the question, why isn't there a fiscal note associated with this legislation because under Section 5 we're granting a benefit that this body took away from pregnant teens last year. So where's the fiscal note? There was the issue about immigration status. I suggested deleting the section that said all of the procedures and requirements of this

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bill apply whether you are a resident of the state or not. You all defeated it. So does that mean if I'm not a resident of the state of Nebraska that I can get all of these benefits that are set forth in this bill as it stands now? I submit to you, you can. And finally, the notarized written statement that is required here does nothing, nothing to evidence a parental consent. It does nothing to address... [LB690]

SENATOR GLOOR: Time, Senator. [LB690]

SENATOR COUNCIL: Thank you. [LB690]

SENATOR GLOOR: Thank you, Senator Council. Senators in the speaking queue: Burke Harr, Ken Haar, McGill, Cook, Brasch, Bloomfield, and Council. Senator Burke Harr, you're recognized. [LB690]

SENATOR HARR: Thank you, Mr. President. So on General File we were given an Attorney General's Opinion. Now it's informal. And as we know, we voted on, not we, this body last year voted on a bill based on an informal opinion from the Attorney General. Now he later did not stand...well, later on the bill was passed and the state chose not to defend it. But I would like to, if you still have it, I'd like for you to evaluate and look at it. It's very interesting. It talks about the constitutionality of judicial bypass in light of Bellotti v. Board of Education, under LB...or as found in, excuse me, Bellotti v. Baird, getting tired, in light of LB690 as was at that time. Now it talks about the fact that the language in Bellotti has constantly been upheld. As a matter of fact, it cites to 16 cases, excuse me, statutes and about 4 cases. And they're exactly right. The problem is that language is the language I would have liked to have use. It wasn't a broken car, rather it was the language in Bellotti. Now this goes on to make a conclusion, and I could attack that or say what, I think, is wrong with it. However, the conclusion in this is completely irrelevant. What? It's irrelevant, why is that? Well, because the question that was asked in this Attorney General Opinion is not what is in the bill now. We have a different definition. So while it has a lot in here, it's irrelevant. It goes...it's asking if notification, we're doing consent of the parent. And, ladies and gentlemen, there's a big difference. That's what the whole purpose of this bill is. So this is, while it has some nice words in it and a lot of hard work went into it, it is unfortunately irrelevant. It does say one nice thing, though, that is interesting. It says, the combination of LB690 is written notification and bypass language has never been subject to a court challenge, never been subject to a court challenge. Does that mean it's unconstitutional? No. But again, the language I wanted to use clearly, clearly constitutional. As a matter of fact, that's what it was based upon. Now as you can tell a large amount of time was spent on this. And it's something that I feel very strongly about. And that's where the time was spent. It wasn't spent looking at all the other issues in this bill. Once that was passed, well, and we had agreement on it. I think that's no secret we had an agreement. And once we had agreement on that then I kind of, I'll be honest, I switched off. Well, that agreement was also broken. So what...the majority of the time spent on talking about didn't even occur.

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There's no agreement. So when you talk about a lot of time being spent on it, that was just spinning wheels in the mud. Now again, this is a very good bill. It does a lot of good things. But we need to do this in a careful, conscience way and reason. Another issue I have, and this just, when Senator Council was speaking the definition... [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR HARR: ...of coercion, thank you, Mr. President, the definition of coercion is coercion means restraining or dominating the choice of a minor female by force, threat of force or deprivation of food and shelter. Well, isn't that what she was just talking about, deprivation of food and shelter? Is the state going to be coercive in this issue? I don't know, but, I think, we should spend some time really examining that. And again, we're introducing a lot of new concepts in this bill. And we want to narrow it down and really make the subject of this bill about parental consent, then it's a great bill. It's not a good bill, it's a great bill. If we want to update the language to make it consistent with the Supreme Court so that when you read the statute you know it's really the law, not having to then turn to common law, it's a great bill. But once we get beyond that then we start running into problems. Thank you very much. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. Senator Ken Haar, you're recognized. [LB690]

SENATOR HAAR: Mr. President, members of the body, on the General File reading of the bill I expressed my concern with all privacy issues. The idea that you had to go to a notary and have this statement signed, and we were told that a notary, all they have to do is verify the signature. But if you read the notary book, the notary guide from the Secretary of State's Office, it said that they have to look over the document to make sure there are no blank spaces and that sort of thing. So I find it really difficult to believe that a notary, especially in a small community where everybody knows everybody, wouldn't pick up on what's happening very quickly. Now I did talk with Senator Brasch about the issue and we made some suggestions. But again, we didn't come to an agreement on that. She feels that what I had suggested would not be appropriate. So as far as I'm concerned the issue of privacy is still a big one. Certainly if the purpose of this bill is to promote communication between parents and children and when you have a 12- or a 13- or a 14-year-old, it's really children having children. To introduce the whole thing of embarrassment and privacy from the community into that, I feel, is an undue burden. And, I think, another thing the bill has said and I suspect it would still say that even though there are the amendments to it, that the decision by the parents has to be made in the best interest of the child, of the child who is pregnant. And I would suggest that community embarrassment might become a big factor. And that certainly isn't in the best interest of the child. So I support the recommit to committee. I'm also concerned, I listened to my colleague talk about the constitutionality of the law and the ambiguity. And although I wouldn't vote for this bill, I believe that it should be very clear and

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concise. I expect the bill will pass the Legislature. And so, I think, it has to be very clear and concise because in that time, when the child becomes pregnant and goes to talk to her parents, there shouldn't be any delay by, well, what does the law mean, and will we get in trouble if we don't do this or that? So I, too, am one who believes that if this comes out of the Legislature it has got to be very clear and concise so that it doesn't...so that the bill itself, the law itself in its ambiguity doesn't add to the confusion of a very difficult situation, the very difficult decisions that are going to have to be made by the pregnant child and her parents. And so once again, I would favor recommitting to committee. I'll vote for that. Thank you very much. [LB690]

SENATOR GLOOR: Thank you, Senator Haar. Senators in the queue: McGill, Cook, Brasch, Bloomfield, and Council. Senator McGill, you're recognized. [LB690]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I rise to talk a little bit while I believe there are other things in the works going on to hopefully get us out of here in less than four hours of debate. But I rise to talk a little bit about my own decisions and concerns right now. I've actually not voted on the advancement of this bill out of committee and then on the first round because I don't have a strong opposition to the consent portion of this bill. But in committee I said there were two concerns of mine and why I couldn't support it at the time. The first being that I had a problem with the notary part. And in a small town who notarizes? Is word going to get around what girl is going to get an abortion and it has been approved by her parents? But my actual larger concern was that the bill would be amended on the floor for the worse. I was pretty content, relatively content with the form of the bill as it came out of committee. But I expressed to all of my colleagues that I was afraid the bill would come out and be altered in a way that would make the bill worse. And, I think, that right now we have an amendment pending that would make the bill worse. And folks are working right now to change that. My primary concern deals with the age addressed in the bill. Currently, the law is under the age of 18. And this bill tries to...gets rid of the age and makes things a little less clear, certainly going up to under the age of 19. And, I think, that conflicts with some of the other things we've done relative to women's health even this session. LB479 talked about sexual assaults and girls, particularly once they've gone off to college and they're on their own and for a number of reasons may not want to tell their parents that they've been sexually assaulted. And I would like to make sure that this bill is still treating those girls on that cusp of being on their own and being in college as...in a way that is sensitive to their needs in that unique environment and what they want their parents to know or not know about, whatever they are choosing to do in their college lives or the activities that they are a part of. So in keeping with consistency with a bill we already passed dealing with women's health and sexual health, I think, it's very important that we stick with that under the age of 18. Now I hope that we can get something worked out here to at least deal with that particular concern. And then my other concern about this amendment is the part that takes out the language about benefits. As everyone remembers, it was less than a week ago that I was up talking

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about how we need to be extending prenatal care to all teenagers who want to have their children, and how there are women right now, undocumented women, who are not getting prenatal care and having to make very difficult decisions about the health of that child, even whether they want the child or not. And, I think, that benefits is key. And I would hate to see that removed...what is in the bill removed to the bill. So I hope that we can still maintain that. I thought it was interesting that this bill came up again so soon. I know there's been some talk in the paper and I even printed some of my comments from last week about how important, I think, it is for us to come back next year and deal with that prenatal issue so that we are not only introducing bills like this, but dealing with women's health and pregnancy in a more comprehensive way that supports women and supports the life of a child, if that is the decision of the mother. Thank you, Mr. President. [LB690 LB479]

SENATOR GLOOR: Thank you, Senator McGill. Senator Cook, you're recognized. [LB690]

SENATOR COOK: Thank you, Mr. President. Good evening again, colleagues. I'd like to continue on my thread of offering an alternative perspective that reflects the varying attitudes about abortion in general and access to abortion in particular, and even more specifically opposition to LB690 in its current form. I will do my very, very best to protect the anonymity of the person that sent me this. But I do want to pick out a few points from his or her communication that reinforce this idea. This person says that she grew up in a small town of 300 people here in the state of Nebraska. And, I think, we learned earlier in the session, from Jerry Deichert, that that is a pretty typical number, that is, I understand, the median population number for a political subdivision in this state. This person grew up in a town of 300 and could not think of any notary closer than a half hours travel away. And at that point the person would have to go to the courthouse as well. Also, she or he says that the state is a state of very small towns and the idea of keeping medical confidentiality would be nearly impossible now that this very personal medical procedure, and one that is federally legal, is up to the courts and the parents or grandparents or legal guardian, etcetera, and potentially up to someone who is a notary in the community or in a community nearby. We've talked back and forth about when the brain matures. And I imagine we'll get to the conversation a little bit later, but the bill in its current form and also with the amendment doesn't quite address, okay, how the judge can look at the young woman, the child and determine that she is emancipated or that she is able to make this very difficult and permanent decision. There's no such thing as kind of a passport that someone gets once they are emancipated, unless, of course, they receive a marriage license. What is the standard of judging whether or not somebody is mature enough? And it would be on a judge by judge situation. So with that, this person even brings in something that we have talked about a little bit earlier in the session, about gas prices. As you know, and I've mentioned several times I'm very proud of my car, her name is Mini-me, and she is a 2005 Mini Cooper with a 15-gallon tank. I have put \$250 worth of gas in Mini-me (laugh), which is a gigantic line-item in my

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budget. Think about gas prices and how applying the cost of the gas to get the notary, and to travel back and forth to access the procedure, if they are still interested in following through. I believe, this and other things make it an undue burden for someone who's already made a very, very difficult decision to not continue a pregnancy, to not parent a child at this time. And with that, I would yield the rest of my time to the Chair. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Cook. Senator Brasch, you are recognized. Not seeing Senator Brasch. Senator Bloomfield, you are recognized. [LB690]

SENATOR BLOOMFIELD: Thank you, Mr. President, colleagues. I stand in opposition to this motion to recall. We have been kind of led down a little bit of a trail here that only this body is opposed to abortion. And we've been read some information of people who have had input. And I just happen to pull a couple e-mails of my own here that I'd like to read. I fully support LB690 and the parental consent is a necessity in deciding on abortion. I thank God that my daughter, who has given us beautiful twin granddaughters, did not take it upon herself to consider abortion. When I was told by my daughter that she was pregnant, I could only say God does not make mistakes. Thank you. I ask that you support LB690 for all the beautiful babies. Another one, I strongly urge you to support LB690, Senator Brasch's bill regarding parental consent. It is vital that parents be involved in their children's lives and should know and consent to all medical procedures performed on their children. Thank you for your consideration. There is not a hue and cry in outstate Nebraska against LB690 that I have found anywhere. I would also...I'd like to ask Senator Council a question, if I could, please. [LB690]

SENATOR GLOOR: Senator Council, would you yield for a question? [LB690]

SENATOR COUNCIL: Certainly, sir. [LB690]

SENATOR BLOOMFIELD: Thank you, Senator Council. Earlier, you were talking about if a minor opted to go ahead and have the pregnancy that she may not qualify for state assistance. [LB690]

SENATOR COUNCIL: Correct. [LB690]

SENATOR BLOOMFIELD: Okay. If she is living with a parent, would not that parent's insurance cover that minor child? My policy always did. I don't know if that's standard or not. I just assumed... [LB690]

SENATOR COUNCIL: You're making the assumption that the parents have insurance. [LB690]

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SENATOR BLOOMFIELD: Yes, I am. [LB690]

SENATOR COUNCIL: And the bill talks about public assistance, which assumes that the parents don't have insurance. [LB690]

SENATOR BLOOMFIELD: Okay, so if the parents are poor enough or have chosen not to have insurance, would you think maybe they were on public assistance already, because most of the folks I know that aren't on public assistance have some kind of insurance through their job or something. [LB690]

SENATOR COUNCIL: Surprisingly you don't know the statistics for it in Nebraska, the number of uninsured in Nebraska, and not all uninsured are Medicaid eligible. We have a lot of working poor families in Nebraska whose jobs don't provide health insurance or they provide it at a level that they can't afford, but they make more than the income guidelines for eligibility for Medicaid. So we have a big gap. And those are the people who are normally served by our federally-qualified public health clinics. [LB690]

SENATOR BLOOMFIELD: Okay, thank you, Senator. [LB690]

SENATOR COUNCIL: Um-hum. [LB690]

SENATOR GLOOR: Thank you, Senator Council and Senator Bloomfield. Senator Council, you are next in the queue. [LB690]

SENATOR COUNCIL: Thank you very much, Mr. President. And again, I mean, those are some of the issues that I don't believe have been fully and thoroughly addressed. Remember, the purpose, at least the stated and articulated purpose for this piece of legislation, at least my recollection at the hearing before the Judiciary Committee, and there was an example given, an anecdotal example of some older gentleman, 36 years old, who represented that he was the pregnant woman's parent and an abortion was obtained. I ask you to look at LB690 in its current form, look at it with all of the pending amendments, and tell me how it alters that situation. There is nothing in this bill that would ensure, even if they could fix the notarized written statement component, which they can't and they haven't in the pending bill, even if they fix that, there is still nothing that would prevent someone from stating or declaring that they were the young woman's parent and obtaining an abortion. As Senator Burke Harr stated, that person would be liable for prosecution for fraud, but they'd be liable for prosecution for fraud under this bill if it's passed as well. That's the penalty. There's nothing in this bill that ensures that those kinds of situations don't occur. The other problem with this bill in terms of where we are and where the bill is trying to get us. There was documentation distributed to the committee that showed how many states have notification statutes and how many states have consent statutes. There was no data presented to the committee or to the full body as to how many states started with notification and moved to consent, because

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that's what you are being asked to do here. And I maintain that from a constitutional perspective we have to show some greater state interest that requires us to move from notification to consent. It's kind of like the bill that was passed with we increased the distance that protestors at funerals. We had to make a case on this body as to why we needed to go from 300 feet to 500 feet, because we enacted legislation that said 300 feet was sufficient. And then we decided that we needed to go to 500 feet. And we had to overcome our constitutional requirements to satisfy them, because it's a strict scrutiny standard, we had to present evidence through the form of floor debate and data that showed why we needed to go from 300 to 500. Here we're trying to go from notification to consent. And, colleagues, there was nothing, no data, nothing to indicate that was introduced that showed that there was some compelling reason for this state to move from notification to consent. Senator Brasch provided data that shows that notification states generally experience a 5 percent reduction in teen abortions, and that consent states ordinarily see an 18 percent reduction. I asked the question and it has yet to be answered, what rate of decrease in... [LB690]

SENATOR GLOOR: One minute, Senator. [LB690]

SENATOR COUNCIL: ...teen abortions did we see and have we seen since the notification legislation was enacted? We don't know. To our knowledge we may have experienced an 18 percent reduction in teen pregnancies after our notification bill went into effect. But there was no data to support, to confirm or deny that fact. But yet we're prepared to move from notification to consent because someone says, well, we need to be at consent. Well, since we're talking about a woman's constitutional right, there has to be some state interest that's being advanced. And that has not been presented here. We have a notification statute. With that one exception, there was no evidence presented that it's not working, that young women aren't going to their parents, involving them in this very serious, life-altering decision. [LB690]

SENATOR GLOOR: Time, Senator. [LB690]

SENATOR COUNCIL: Thank you. [LB690]

SENATOR GLOOR: Thank you, Senator Council. Senators in the speaking queue: Conrad, Ken Haar, Brasch, and Council. Senator Conrad, you are recognized. [LB690]

SENATOR CONRAD: Thank you, Mr. President. Good evening, colleagues. Boy, what a whirlwind the last almost hour has been. And just before I jump into some of the substantive issues that I still want to visit about, I did want to just give a quick update to members. Had a chance to discuss with many of you off the mike and hadn't had a chance to get around to everybody. But I want to thank Senator Brasch, Senator Coash, Senator Ashford, and representatives from a variety of interest groups on both sides of this issue who really have been working tirelessly over the last hour and beyond to try

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and continue this pathway forward in terms of some of the issues that remain unresolved. It feels that at this point in time we are very, very close to an agreement in spirit for sure. In letter, we are waiting for the modified agreed-upon amendment to come down from Bill Drafters. And once we all have a chance to review that and sign off on that, I think, then we'll be able to withdraw the motion strategy and move to the substantive amendments that are pending. And again, I do want to thank Senator Brasch and others for their willingness to work through some of these very difficult issues. And, I think, we are making what I consider to be a bad bill, what Senator Brasch considers to be a good bill, I think, we're making it better at the end of the day. And that's a good thing for Nebraskans and it's a good thing for our process. So I did just briefly, briefly want to...before I get back into the mix of negotiation, just a couple of questions for the record to put out there. When I was reading through the bill and the amendment there is a reference to where we're defining doctors in the bill. There's a specific reference to the inclusion of those who practice osteopathy, I hope I'm saying that right. And I just was not clear. I'm looking at page 4, line 18 of the E&R amendment. And I just wasn't sure why that specific language was included, physician includes a person who practices osteopathy. I didn't know if that was based on some of our licensing or rules and regulations or other statutory considerations. I did just want to put that out there as a question. If anybody did want to answer that later that would be fine, if not maybe it's just part of the model bill and that is what it is. The other issue that I wanted to talk about a little bit were the differences in the severability clause. There is the original language as was proposed. There is a change to that in the committee amendment. And I was hoping that maybe somebody on the committee could talk about the distinctions about why that language was changed and why, in fact, it differs from the typical severability language that we utilize in other aspects of Nebraska law. Those are just other questions that I wanted to put on the record. Maybe we'll have a chance to visit more about off mike and get some information or background from Judiciary Committee staff or members about those issues. And the final issue I wanted to bring up was more substantive rather than technical. And one of my concerns about LB690 is for the specific carve-out and exemption in relation to those young women who are indeed subject to abuse. I commend Senator Brasch and others for trying to find... [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR CONRAD: ...someone...thank you, Mr. President, trying to find some family member that they could rely upon in that very, very desperate situation when there is serious instances of abuse present, to help them navigate through that process. The only questions I have is...are in terms of unintended consequences that might come from that utilization of that option. For example, under current Nebraska law, all of us, indeed, it's a very broad standard, have a duty to report child abuse and neglect. And I'm wondering if there is child abuse and neglect in the home that precipitates the young woman seeking out here grandparent for the consent component then, and then it

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requires the doctor to report that abuse. Are those grandparents going to have any liability at that point either? That's something I'm wondering about because... [LB690]

SENATOR GLOOR: Time, Senator. [LB690]

SENATOR CONRAD: Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Conrad. Senator Ken Haar, you're recognized. [LB690]

SENATOR HAAR: Mr. President, members of the body, I would like to, I guess, explore a couple questions with Senator Council, if she'd be willing to talk with me. [LB690]

SENATOR GLOOR: Senator Council, would you yield to questions from Senator Haar? [LB690]

SENATOR COUNCIL: Yes. [LB690]

SENATOR HAAR: Senator Council, I have gotten the impression from listening to you that you've had quite a bit of experience dealing with children's issues and stuff. The law that requires reporting of abuse of children, who does...I mean, I know that applies to teachers and doctors, correct? [LB690]

SENATOR COUNCIL: Yes. [LB690]

SENATOR HAAR: Would that apply to somebody like a notary, if a notary, and again, I think, it's really unclear whether the notary is going to discover, by looking over the document, which they have a right to do, that an abortion is happening, that this is about an abortion. So if a notary suspected that there is abuse going on, would they be liable to report it or not? [LB690]

SENATOR COUNCIL: No, the statute, Senator Haar, is very clear and states specifically who has a liability associated with their failure to report. Like you or I, for example, we could suspect it as individuals... [LB690]

SENATOR HAAR: Um-hum. [LB690]

SENATOR COUNCIL: ...and we would not be subject to any civil or criminal liability if we failed to report that. The statute specifies who has a duty. And to my knowledge a notary doesn't fall within that statute. [LB690]

SENATOR HAAR: Okay. And then there comes a question, and sometimes I wish I were a lawyer, (laugh) but on the whole issue of constitutionality, Roe v. Wade, for

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example, gives the right to an abortion up to a certain...up to the time of viability. Is that age specific, I mean, does... [LB690]

SENATOR COUNCIL: No. [LB690]

SENATOR HAAR: So if you have...all these various laws don't have a certain age limit connected with them? [LB690]

SENATOR COUNCIL: No, but what the Supreme Court has held is that states do have an interest in preserving life and that they can impose certain restrictions up to a certain...after a certain point. And see, if we're talking about, now we're talking first trimester, that's the time that...where the states have the least ability to impose a number of restrictions. But when it comes to minor children, the Supreme Court has said they've approved notification statutes and there's question on consent statutes. We don't have a lot of consent statutes that are pending in state courts. But, I think, there's a case where the Supreme Court...the Supreme Court has also ruled on consent. So the Supreme Court has said it's reasonable for a state to impose that kind of restriction on a woman, and in that case a minor woman's right to an abortion. [LB690]

SENATOR HAAR: Okay. And excuse me for tying up your time here, but... [LB690]

SENATOR COUNCIL: No, it's your time. I'm answering your questions. (Laugh) [LB690]

SENATOR HAAR: Okay, that's true, that's true. Last week we discussed telemedicine, but it sort of centered around RU-486. [LB690]

SENATOR COUNCIL: Yes. [LB690]

SENATOR HAAR: Would that be covered, in your opinion, by this bill, the use of RU-486 or not? [LB690]

SENATOR COUNCIL: Yes, if you look at the definition of abortion, it says, by prescription, I can't remember it in its entirety. [LB690]

SENATOR HAAR: Right. [LB690]

SENATOR COUNCIL: But the way abortion is defined in LB690, I think, it would cover... [LB690]

SENATOR GLOOR: One minute, Senators. [LB690]

SENATOR COUNCIL: ...telemedicine. [LB690]

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SENATOR HAAR: Okay. Well, again, from somebody who is not a lawyer, I appreciate that information. Thank you very much. [LB690]

SENATOR COUNCIL: All right. [LB690]

SENATOR GLOOR: Thank you, Senator Haar and Senator Council. Senator Brasch, you are recognized. [LB690]

SENATOR BRASCH: Thank you, Mr. President. And thank you, colleagues. We have been working very closely with Senator Conrad and her...the concerns and items expressed. As she mentioned earlier, we have submitted to the Bill Drafter recommended changes. And I believe we'll be able to bring those forward after consulting again with Senator Conrad. And again, this bill has had a full hearing and a complete hearing. But we are also listening to our colleagues, looking after our young women, our minors, teenagers in the state and also parents. Parents do have a constitutional right in raising their children. This is a responsibility that we need to hold greater priority to and encourage and help parents nurture their children if we're called upon as observers. There are many different situations, it is an unusual world. The concerns about a notary, perhaps that would be another hearing at some point on those laws and those requirements. We would like to bring that forward with our amendment. What we have found through visiting with the Secretary of State's Office, with bankers and with other individuals, we do appreciate the spirit of cooperation and understanding and moving forward. As soon as the bill is brought forward I will stand again. Thank you, colleagues. And thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Brasch. Senators in the speaking queue: Coash and Conrad. Senator Coash, you are recognized. [LB690]

SENATOR COASH: Thank you, Mr. President. Thank you, members of the body. I've been kind of in and out, working on some of this...the revised amendment that we should have coming shortly. But I did hear a few of the questions that Senator Conrad had regarding the bill and she wanted some clarification. I didn't hear all of her questions, but I did hear one that I thought I could answer for the record, hopefully, to her satisfaction. But it had to do with the severability clause that we did put in this bill. If you looked at the original severability clause in LB690 and then a subsequent version that was adopted by the committee but not ultimately adopted, there were two sections of that severability. And Senator Council pointed out that because of that piece of severability, if there were portions of LB690 that were ultimately found by a court to be unconstitutional, you could find yourself in a situation where you have a combination of both consent and notification. And so if you think about it linearly, colleagues, if a woman were to go through this process, and let's say and find herself into the judicial bypass language, if, for example, the bypass language was the part that was found unconstitutional, that would revert back to notification. So you might start with consent,

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find yourself in notification, and all of a sudden you've got a hodgepodge of two different approaches here, which is obviously not the committee's intent. And as we work with the Bill Drafters on this, and I'll be clear with you, colleagues, is it likely that the court would strike down part of it and, I'm sorry. If the court struck down part of it, is it likely that they would strike down just part or all of it? And the answer was, well, they could strike part of it and then that would leave you with a hodgepodge. It's not likely, if they struck down something, that they would just do part of it. They would likely say, the whole portion of LB690 is found unconstitutional and, therefore, revert back to notification. And it was important that we cleanup the severability language for that purpose, so that we did not have a situation where you had a combination of consent and notification. And we actually took, as we looked at how to model our severability language, we actually took the language directly from Senator Flood's bill last year, which was a bill, as many of you remember, on fetal pain. And there was a severability clause in there. That bill has been on the books for a little over a year. It has not been challenged. And so we felt that that was a good model piece of language to follow with regards to severability language. So, I hope that answers Senator Conrad's questions with regard to that piece of the bill. And I stand by to try to answer any other questions. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Coash. Senator Conrad, you are recognized. [LB690]

SENATOR CONRAD: Thank you, Mr. President. And thank you to Senator Coash for the clarification on the terminology changes from the introduced bill to what came out of the committee in relation to the severability clause. That does clarify, I guess, why we have a different standard from other instances in Nebraska law. It's modeled after LB1103, fair enough. Also, I want to thank Senator Hadley who did respond to my questions off the mike in relation to what osteopathy is. And with his experience in his community, he let me know that there are indeed different schools and different degrees and different practices for medical doctors, M.D.s, and I hope I'm getting it right, Senator Hadley, ODs, osteopathic...D.O., doctors of osteopathy. Thank you, thank you. I knew there was enough expertise in this body to get those, what were meant to be straightforward clarifying questions answered. So I appreciate the response from Senator Coash and from Senator Hadley. I did want to continue, though, in regards to the very last point I made about the narrow application and exceptions and options available to a young woman who would be subject to abuse and neglect in her home, subject to abuse and neglect by her parent or legal guardian. Recognizing that that is indeed a very sad and unfortunate but very real possibility that exists in family dynamics, Senator Coash, Senator Brasch and others have provided this kind of default option for abused minors who are in this situation who maybe don't want to pursue judicial bypass, to then reach out to their grandparents to effectuate the consent form. I'm guessing, reading the committee testimony and the committee transcript and other things we've heard during the course of the debate, that is to continue the purported

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objective of ensuring that somebody is watching and monitoring the young woman for any potential negative effects if she does move forward and choose to pursue her options that are legally available to her in relation to reproductive health. Okay. So that's the big picture. But my question is, how does that interface with what Nebraska has as...and is a very arguably broad standard in terms of child abuse reporting? And, I know, I heard Senator Haar and Senator Council visiting about it briefly and how that would apply to the notary. And I've been working with staff, and the pages are making a copy of that section of Nebraska Revised Statute so that we can pass it around for consideration. But the duty does apply very broadly. It specifies that it applies to certain medical personnel, and certain school professionals, and others. And, of course, you're seeing this in the news in regards to a situation that happened at OPS right now, how this duty to report affects schools and teachers, and teachers accused of wrongdoing. But then the language says, or any other person with reason to believe. So my question is, grandma and grandpa go with the minor because they know there's abuse and neglect in the home. And this isn't a trick, this is a real question. They fill out the notarized affidavit or form or whatever that says, because there is abuse in the home that my grandchild lives in, I'm going to fill out the consent form. Then under LB690, of course, and reinforcing Nebraska law, the doctor then who receives that document has to report that to authorities. [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR CONRAD: During the course, thank you, during the course of that investigation then there's going to be proof, there's going to be evidence by grandma and grandpa signing that affidavit that they had knowledge of abuse and didn't report it. So what kind of liability does that create for grandma and grandpa? And what kind of situation does that create for the young woman who's in an abusive household, who now seeks an abortion, who now has grandma and grandpa tied in with the child welfare system, and most likely mom and dad? That seems to be, I know it's complicated, and hopefully rare. But that seems to be a problem. And I don't know if proponents could address it. Thank you. [LB690]

SENATOR GLOOR: Thank you, Senator Conrad. Senator Brasch, you are recognized. And this is your third time, Senator. [LB690]

SENATOR BRASCH: Thank you, Mr. President. And thank you, colleagues. And thank you to the Bill Drafter, who has just given us a draft that I have asked Senator Conrad to review and we are considering at this point. Some--every senator here, thank you for the time you've taken to review and your thoughtful consideration. We, again, we with others have spent many hours, talked with many people, and believe that LB690 is a bill that would help young women. And in the concerns addressed--parenting, abusive parents--I believe those are also considered. That is something that as good citizens, good neighbors, and good parents, that we can also work as a state, a community, a

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district, you know, to help our families that are in need and help our young ladies in need. At this point I would like to thank you. And I will be visiting with Senator Conrad. Thanks. [LB690]

SENATOR GLOOR: Thank you, Senator Brasch. Senators remaining in the queue: Burke Harr and Coash. Senator Harr, you're recognized. And this is your third time, Senator. [LB690]

SENATOR HARR: Thank you, Mr. President. Well, I appreciate the comments of Senator Brasch, talking about this helps young girls. There is--there's a work on a great compromise, and I think there's some good in it. Just--I still have one concern. And that is, where we started, and that's on notaries. We want to help young girls. The last thing we want is if they do decide, heaven forbid, to have the abortion, that they get the consent of their parent--which is what we want; we want the family involved. We don't want judicial bypass if we can avoid it. So Mom, Dad, whomever, either or, hopefully both, agree to it, fill out a consent form, and take it down to the corner notary. And that notary sees this, which is, you know, I'm sure in any situation like this a lot of tears are shed; it's very sensitive. And the notary sees what's written on there. And it's salacious gossip; let's admit it. It's salacious gossip; we all want to know about every neighbor's sex life. Why is it such a big deal that the ex-governor of California...? Because it's salacious. So now what happens? She goes and blabs and tells, or he, and tells everybody. And now what was a very personal, a very private procedure everybody in the town knows about. And that's what we need to avoid. So what I'd like to see is an amendment, and this is what we talked about, the notary, earlier. And it's a very simple, common-sense solution, in my humble opinion. And what it does is, it says: Notary, in this situation you have a confidentiality; there is a privilege; you can't go and blab to the world what's going on. I presented this amendment, and what it does, then, if you do and we can prove it, it's a Class III misdemeanor, which is exactly the other penalties that are contained in LB690. Went and talked to people outside the glass about this, said, hey, what do you guys think? Their response, it's too late in the evening; we don't have time; we don't know; we need more time. Guess what, that is why we have the motion to recommit to committee. This is being forced too quickly, too rapidly, and without proper thought. As this bill is being addressed and reviewed line by line, as we pull on the threads, a lot more seems to unravel, a new issue comes up. I want to support this bill. Let me reiterate that: I want to support this bill. I think it's good that a parent can consent and have veto power, because this is a very important decision. It's a scary decision. And it's one that a young woman shouldn't have to face alone. But we still have to respect that young woman. And we have to make sure, if they do decide to have this procedure, that they are properly protected. And that's what my amendment that I'm talking about, that Senator Council, I believe, is bringing forward, will do. But unfortunately, we can't have a talk about it because we don't know how the, or, well, the opposition to that is--and I hate to use that term. But the people outside the glass, we don't know if they're for or against it, because they haven't made a decision on it,

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because it's too new. [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR HARR: That's why I think it's important that we, again, address this in a calm, rational manner, a commitment to confront the issues and challenges and, again, not each other. And so I would ask that this be recommitted, unless, of course, we can determine that this is, in fact, a good solution. So thank you very much. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. Senators in the speaking queue: Coash, Fulton, and Schumacher. Senator Coash. This is your third time, Senator. [LB690]

SENATOR COASH: Thank you, Mr. President. Thank you, colleagues. I wanted to address one of the questions that Senator Conrad was asking on her last time at the mike, and--because she brought up some legitimate questions that I think deserve answered, not only answered but on the record. And that has to do with the liability of a grandparent should that rare situation occur that she described, where the young woman decided that notifying her parents was not--or, I'm sorry, asking consent from her parent was not what she wanted to do but wanted to take advantage of the provision in LB690 which said a grandparent could provide the needed consent. Senator Conrad's question was, what does that do for the liability of the grandparents? And so I've done some work in this area, and I--and it's an area called the mandatory reporting statutes. And we--and they're--if you work in certain fields or perform certain functions for people, such as doctors or judges, you are responsible for being a mandatory reporter. And I decided to go double-check with my good friend Senator Howard, as a former social worker. And she confirmed for me--and I'm going to turn some of my time back over to her to let her explain this in her own words--that when it comes to children, minors, we are all mandatory reporters. We are all under a duty to report to law enforcement any time we suspect a child has been abused or neglected. We have to. That's what the law says is our duty as adults. And so that duty for grandparents...as Senator Conrad was asking, what is their liability? Their liability is to comply with the law just as we are all to comply with the law. And should we choose not to, we are out of compliance with the law, and there are penalties for that. And with that, Mr. President, I would yield the remainder of my time to Senator Howard. [LB690]

SENATOR GLOOR: Senator Howard, 2 minutes 36 seconds, Senator. [LB690]

SENATOR HOWARD: Thank you, Mr. President. And thank you, Senator Coash. As Senator Coash said, he came over to me and asked if, in my experience, if my understanding was that everyone is, in fact, a mandatory reporter. Which, I would say to you, is true. When you see bruises on a child, when there are reasons to suspect that child is being mistreated or maltreated, everyone has the duty and responsibility to report that. And it's a very simple process. We have an 800 number that is staffed 24/7.

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There are trained individuals at that 800 number, the child abuse number, who will take the call, will talk to the person reporting, and have the ability to weed out, say, neighborhood squabbles or custody sorts of disputes, who will accept the information. And the thing to remember, too, is that when a call is made, whether it's by a grandparent, a concerned citizen, someone who's witnessed something in a grocery store and they're concerned about it and they happen to know the people involved, is that that information--the reporter is not disclosed when the investigation is made. So Senator Coash is correct that everyone has a responsibility; that includes all of us. There is somewhat of a higher standard for, say, teachers, a public school system such as Omaha Public Schools to report this. It's not their job to investigate; it's simply their job to report and make sure that investigation is done. And once they do that report... [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR HOWARD: ...it's handled. Is that time? [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR HOWARD: Thank you. I think we all need to recognize this and respect this process. This is so important in keeping children safe. When a school fails to report abuse, they're contributing to the problem; they're not being a part of the solution. And that also applies to each and every one of us. If you suspect a child is mistreated, maltreated, abused, neglected, the sooner you call so that that can be investigated, the better. And if you feel, for any reason, that this isn't addressed through the 800 child protection hot line, the quickest and easiest thing to do is to call the police. So thank you, and I hope this is helpful information. [LB690]

SENATOR GLOOR: Thank you, Senator Howard. Senator Fulton, you are recognized. [LB690]

SENATOR FULTON: Thank you, Mr. President, members of the body. Have not engaged in this, have not been able to engage in this, have been talking with...I'll speak in complete sentences. I have been talking with Senator Harr. And I'm just going to bring up a point here. I understand that there is something being negotiated even as we speak. And so for those who may be looking at this record, this is an attempt to kill a little bit of time but at the same time a point to be made. The question...I'm from a small town, and when it's brought up...what Senator Harr's argument is, is that we don't want to create a policy within our statutes that allow for--that allows for gossip to be used to humiliate a young woman who is in a vulnerable situation. That's a legitimate point. What the question I bring here is, let's say that we pass this law...what I have just pulled off of the Web site from Dr. Carhart here in the Bellevue clinic is a form that requires a notary. And so it seems to me that if we were to go forward with this bill and we required

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a notary, that a way to avoid the salacious gossip, as Senator Harr termed it, would be to use that which exists right now. And that is this form that you can--that--it's on their Web site. I assume that when a young woman goes to the clinic for parental notification, that she's filling out this form that requires a notary. Why would it be any different if we are looking for parental consent? And so I submit that to you, that while it is--it's a good argument, it certainly is something to consider, this is a consideration, I think, that has already been made even by the abortion clinic, at least in Bellevue. And, like I said, I've not been engaged in this debate forcefully, just for--I've got my own bills, and I was on another pro-life bill as well as the CIR while we were doing this on General File. But if I'm able to pull this up off the Web site, my guess is that there have been a lot of people, including Senator Brasch and others, who have given some thought to this. If it exists right now, this requirement of a notary--or not even requirement, the utilization of a notary by this clinic in Bellevue, it seems to me that by passing this bill doesn't really change anything. So I...if--maybe Senator Harr wants to respond to that, and if he did, I'd yield him the remainder of my time to respond. If he's not here, then I think I will just close with that and stand in support of Senator Brasch's bill. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Fulton. Chair recognizes Senator Schumacher. [LB690]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Members of the body, it seems like the only hang-up, assuming they've got everything else figured out and are working on that, is the notary. Then there's a pretty easy way to get around it. The reason for the notary appears in page 5, line 14-ish, when it says that the person who is going to perform the abortion first obtain the notarized written statement of the pregnant woman and one of the parents. Well, all through our laws we have provisions that allow people to take oaths--or administer oaths and take affirmations. That's the function of a notary. It's somebody who says, do you swear, or is this your free and voluntary act? And then puts a little stamp along it and signs it, because they see nobody is holding a gun to the person's head, and they want the penalties of perjury to apply to it if it's a sworn statement. Well, we have coroners, which are not notaries, which are authorized to take oaths. We have judges who are authorized to take--or administer oaths and affirmations. We have clerks of the district court and county clerks and a whole bunch of people who aren't notaries, who can perform that function. Why don't we just put a one-liner in here and say that the physician is authorized, for purposes of this act, to administer an oath or take an affirmation? And then it never gets outside of the clinic, and privileges of doctor privilege (sic) apply. And since the physician, according to this law, has got to go seek out the parent and get his or her statement and the minor's statement, we do it in a very simple line that says: For purposes of this law, the physician may administer the oath or take the affirmation required. And we completely circumvent all the additional hassle, perhaps even make it more constitutional, because we take away a hassle factor that otherwise would exist. And we get what we seem to

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want, and that's a statement that's made to someone who's empowered to take oaths and administer affirmations, or vice versa, I guess. Thank you. [LB690]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Price, you're recognized. [LB690]

SENATOR PRICE: Thank you, Mr. President and members. I haven't risen and spoken on this subject yet. I do rise in support of LB690. And I do appreciate the level of effort by all the parties involved here. I know that this can be and has been a, potentially, a contentious issue. And to see all the sides working towards a resolution is very heartening. And with that, I'll speak for a minute or two more because I was going to yield some time to Senator Brasch, but she's submitting some things right now even as we speak. But again, I do support what we're doing in LB690, and it is my sincere hope that we can continue to move forward. And with that, Mr. President, I would yield the balance of my time to Senator Brasch, if she should like to use it. [LB690]

SENATOR GLOOR: Senator Brasch, 4 minutes 4 seconds. [LB690]

SENATOR BRASCH: Thank you, Senator Price. And thank you, Mr. President. And thank you, Danielle--Senator Conrad, excuse me. I just informed her that I am neighbors to all her constituents. And we have reached a good agreement here. We have worked with Senator Conrad and those that she has worked with who had concerns. So I have filed an amendment. As to the notary question, there are 34,000 of them in the state of Nebraska. They are readily available. And I live in a small town. I don't know, in Bancroft, you know, maybe we've, you know, on a busy day on Main Street, we could have a couple dozen vehicles, at the most, to five vehicles. I could probably find at least a dozen notaries in Bancroft, even on a Sunday afternoon. And I do trust their confidentiality. But for now, the discussion...and I did want to thank Senator Conrad again for offering input and suggestions and the compromise. Thank you, Mr. President. And thank you, body. [LB690]

SENATOR GLOOR: Thank you, Senator Brasch. Chair recognizes Senator Nelson. [LB690]

SENATOR NELSON: Do you need more time? Thank you. I guess I was going to read something into the record about notary publics. Thank you, Mr. President. There's still misinformation out there. I've read through the statutes twice. The handbook put out by the Secretary of State may say--or infer that you can read the document, but there's nothing in the statute about that. The notary has to pass an exam, which consists of questions relating to the laws, procedures, and ethics for notaries public. Has to post a \$15,000 bond. And there's also, I think, in 64-109 it provides civil liability on the part of a notary public who would be guilty of ethical provisions such as relaying information about the people that came before him and their purpose. Once again, I think I said this

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earlier on the floor, you have no authorization whatsoever to read the contents of a document. You don't need to. You're only certifying and identifying the people that sign it. And they say under oath that they are who they are. They provide you with, perhaps, an ID or something like that that verifies that that's their name. That's the extent of what the notary public should do. Now, notaries public can--they can take depositions and things like that. That's a little different matter; there they might be required to look at the document. But not when we're coming forward with a consent form or perhaps a parent who wants to authorize someone else to make medical decisions for their child while they happen to be gone for a period of six weeks or something like that. So, once again, let's not add to the duties of a notary public that is not contained within the statute. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Nelson. Senator Council, you're recognized. [LB690]

SENATOR COUNCIL: Thank you, Mr. President. As I have stated before, the principal basis of my opposition to this piece of legislation is I don't believe it's necessary. I don't think there is a problem with minor pregnant women obtaining abortions without the involvement of their parents. And interestingly enough, I want to thank Senator Fulton for taking the extra step to do a little research on what's being done now under our notification statute. Because I would commit to you, those of you who are supportive of LB690 and this amendment that is being drafted that I've had a opportunity just to hear about, which I continue to maintain doesn't achieve the stated objective--but Senator Fulton made mention of the document that is used by Dr. Carhart and his Abortion and Contraception Clinic. And it's very interesting, because if you read what that clinic requires in the case of a minor, it goes light-years beyond what this bill--which is drafted as a consent bill--does. There is a "Nebraska Parental Notification Affidavit" which is executed in the physician's office at the clinic by a person who is swearing under oath that he or she is the parent or legal guardian of the child. The notification form goes on to explain what termination--what an abortion means and what it doesn't mean. It requires the person signing it to provide their Social Security number, their relationship, the date they sign it and then certifies under oath, Senator Schumacher, in the presence of a notary in the clinic office. Okay? So I would submit to you that no parent who is not consenting to that procedure is going to go to the clinic and sign this document. They're not going to do it. And without this document, this clinic is not performing any abortions on that minor child. So again I ask the question, what are we gaining by LB690 other than we can poke our chest out and say: Okay, we got the state of Nebraska to pass a minor consent bill too. Which does nothing--nothing to ensure parental involvement beyond what you've got now under parental notification. And, in fact, with the amendments I've seen, and with all due respect to my colleagues who have been assisting in trying to make this work, the amendment doesn't go as far as this goes--not at all--and doesn't address the purported reason for consent, which is people who aren't parents claiming they've been notified. [LB690]

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SENATOR GLOOR: One minute. [LB690]

SENATOR COUNCIL: Under this bill, you're going to have people who are not parents claiming they gave consent. What's the difference? And what is the practical impact on reducing abortions among minor women in this state? There was no evidence presented that this would have any measurable impact--zero. But, again, I should make enough--have the pages make enough copies for everybody to see this, because it's--it goes farther than LB690. [LB690]

SENATOR GLOOR: Thank you, Senator Council. There are no senators waiting to be recognized. Senator Conrad, you're recognized to close on your motion to recommit. [LB690]

SENATOR CONRAD: Thank you, Mr. President. And thank you, colleagues, for your time, attention, and excellent debate this evening. Because of that time and consideration, Senator Brasch, myself, Senator Ashford, Senator Coash, interested parties represented very divergent groups on each side of this issue. We were able to come together and find some common ground, which is, as you well know, particularly rare in this emotional political battlefield which is reproductive health. To be clear, and in deference to my personal values and beliefs and my good friend Senator Council, the amendment that we've agreed upon and you will have before you later tonight is not perfect. And there are still very real and very grave concerns contained with the amendment and contained with LB690. But in great deference to the work of Senator Brasch and others who were willing to come to the table and discuss the original amendment, we were able to make some substantive changes that I believe will indeed make this legislation a bit more manageable and practical as we move forward. It does indeed ensure that we have access to public benefits for the most vulnerable citizens who may need them. It does ensure that we provide some modicum of privacy in the consent definition and document that will be effectuated throughout this process. And those are important. Those are important achievements that we were able to find common ground on. As true to my word, I will be withdrawing this motion and the other motions that I have filed in relation to this bill. Other senators, of course, have other substantive amendments pending. And those deserve full and fair debate, and I look forward to that full and fair debate. So, again, many thanks to Senator Brasch and others. And I do urge your consideration of the Brasch amendment, when it comes up later, to try and find some common ground and improve a bill that I still consider to be deeply flawed. And we were going to have a sincere difference of opinion about those issues. But we did important work tonight, and that's because people like Senator Brasch, a new member of this body, was really acting in a manner befitting of a state legislator. So thank you. With that, Mr. President, I would like to withdraw the motion to recommit to committee and the other pending amendments--motions. [LB690]

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SENATOR GLOOR: Thank you, Senator Conrad. So ordered. [LB690]

CLERK: Mr. President, then the next amendment I have--Senator Brasch, AM1520--was filed earlier today. Senator, I understand you want to offer as a substitute AM1571. (Legislative Journal page 1762.) [LB690]

SENATOR GLOOR: If no objection, so ordered. [LB690]

CLERK: Senator Brasch, I have AM1571. [LB690]

SENATOR GLOOR: Senator Brasch, you're recognized to open on your amendment. [LB690]

SENATOR BRASCH: Thank you, Mr. President. And thank you, colleagues. I thank you for the opportunity to stand before you again following such a thorough debate and to bring forward a new amendment. LB690 is prepared to now become law. During General File, the colleagues that raised questions--we respectfully worked with them. And we worked closely and examined carefully all items considered. I brought the amendment forward to address this. And from previous remarks, the new amendment now filed is a good compromise and addresses technical changes. The intent of LB690 is the same. I firmly believe that requiring consent rather than notification is necessary for most pregnant minor girls. Indeed there are exceptions. We live in a challenging and very complicated world; those exceptions are provided for in LB690. And the fact remains unchanged that when facing such an important decision with overwhelming emotional angst that does affect a young girl and the life of an unborn child or certainly and an abortion, our laws should help direct a girl, where possible, to her parents, when possible, to be involved and prepared moving forward. Again I will point out that we expect and our laws reflect that parental involvement and consent be required when their daughters get other procedures. They get a tattoo, they require consent, piercing--or has any other invasive surgical procedure. Surely there's no reason to treat this differently. I was very moved reading these words from respected late Senator Bernice Labeledz from Omaha. Some here in this body may remember her; she served District 5. These are her words as she testified before the Judiciary Committee on behalf of the predecessor to consent. Senator Labeledz stated: Without the advice and the counsel of their parents, without the proper medical history often needed, and without the love and guidance of family members, children today are often at risk of exploitation. And I would like to mention a few phone calls that I have had in the last few years. I remember receiving a letter from South Dakota and calls from Scottsbluff, Grand Island, Kearney where a minor went to Omaha, obtained an abortion. And in three cases that I know of very serious complications set in while the minor and her companion were departing for home. One of the young girls actually came to Omaha on a motorcycle, got as far as Grand Island, started hemorrhaging. And the doctor had to call the parent to notify them that the young girl would have to have a D and C because

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she was hemorrhaging badly, and it was, in fact, an incomplete abortion. And they even did sign a letter--the parents--telling me of the complications and of the horror that they went through, knowing that without their knowledge, their young teenage daughter went to Omaha to have an abortion--and in some cases traveling 300 or 400 miles. And that has been my main concern on abortion for the many, many years. That's from Senator Labeledz. I believe this makes it very clear the need to involve parents in our daughters' decisions, and the impetus behind LB690 and parental consent is real. Parental consent laws have been tested by 24 other states currently and have these laws in effect. We are not introducing a new concept with notarization. We are not navigating into uncharted legislation. AM1571 is the result of consulting with senators and Bill Drafting, the Secretary of State's Office, among many others. It addresses privacy concerns by referencing only the statute, making no requirements to include terms such as "abortion" or even using the word "medical." The amendment makes change to use uniform language pertaining to notaries. For harmonizing purposes, all references to "minor" are replaced with "pregnant woman" as it is defined. Also we are inserting a statutory reference to adult abuse to ensure that all pregnant women who are victims of abuse have the same rights under this bill. I encourage your adoption of AM1571 to LB690, a conscientious and good-will response to your concerns raised on General File. Thank you, Mr. President. And thank you, colleagues. [LB690]

SENATOR GLOOR: Thank you, Senator Brasch. Members, we now move to discussion. Senator Burke Harr, you're recognized. [LB690]

SENATOR HARR: Thank you, Mr. President. And thank you, Senator Brasch, for that nice opening. And she has been working diligently with those who have concerns, not--again, not with the underlying bill but with the language in it. There are 24 states--actually, I think it might even be more than that--that have parental consent. And some have consent and notification. I think that gets you--I might think we're up to 36. And maybe that is just notification. But the fact of the matter is some of these issues are addressed. And I think, you know, as we learned with CIR, we can always--there's the Nebraska way, and that's better, hopefully, than the rest. Of those states that do have consent, a lot of them don't have the language that we're using here today, so it's--to a certain degree, we're comparing apples to oranges. We aren't taking a model law from another state that's based on a Supreme Court opinion or anything like that and then applying here. What we are doing is a Nebraska bill. And that's good. But I think we can do better. I am working to come up with an amendment on the notary. Yes, it is done in other states. And other states do it differently than we do. Some require nothing. Some require a lot more than what I am recommending and suggesting. But at the end of the day, we're there for the girl. And let's not forget; keep our eye on the prize: who are we concerned about? And that's that young girl who is going through a very traumatic point in her life. Whether she decides to have an abortion or to keep that baby, her life is never going to be the same. And as a result, we want to protect that young woman as much as we can. And we don't want them to become part of ridicule and scorn if they do

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decide to have the abortion. We want to protect her. And we're having her talk to her parent, and that's good. But we're also opening it up to a third party. We can control our parents--or at least we hope we can, because they're looking out for our best interests. Third parties are not necessarily looking out for the girl's best interests. There may be a lot of notaries, but that just tells you there are probably a lot of good ones and a lot of bad ones. And the problem is you may not know a good one from a bad one until it's too late. There's civil liability out there if they do violate that trust, currently. The problem with civil liability is the truth is an absolute defense. That young woman is having an abortion, so there are no damages. What I would like to see is something that protects that young woman, that says: Notary, this is pretty salacious, it's pretty personal, keep your mouth shut; you're a third party, you have no interest; but now we're giving you an interest. And that interest is a civil liability. And what that civil liability does is it says: You will lose your notary; if this is your livelihood, you lose your livelihood; you lose your privilege, you lose your right. It's not a criminal penalty; it's a civil penalty. It's very simple, but it strikes at what affects people the most, and that's their pocketbook. So I would like to see that protection put in there so that this young woman who is, heaven forbid, going through an awful, traumatic period in her life--to help make her life maybe just a little better. So I'm working on an amendment. I hope to have it pretty soon. I want to thank Senator Brasch for including some of--a lot of my concerns, actually... [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR HARR: ...and being very reasonable and willing to work with us on this bill. And hopefully, we can still get out of here at a decent hour tonight. Thank you very much. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. Senator Schumacher, you're recognized. [LB690]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. I'm still a bit troubled by the definition of "consent" in this particular amendment. The law says that "no person shall perform an abortion upon a pregnant woman unless, in the case of a woman who is less than 18 years of age, he or she first obtains the notarized written consent"--that's the word, consent--"of both the pregnant woman and one of her parents or a legal guardian," etcetera. So what does "consent" mean? So I pull up the definition of "consent." And it seems to be half of the definition. Because remember, we're requiring the consent from the pregnant woman and from parent. So what does "consent" mean? "Consent means a declaration acknowledged before a notary public and signed by a parent or legal guardian of the pregnant woman or an alternate person" as defined in Section 4 of this act "declaring that the principal"--that means the signer--"has been informed that the pregnant woman intends to undergo a procedure pursuant to subdivision (1) of Section 71-6901 and that the principal consents to the procedure." Well, does that definition of "consent" also apply to the consent of the

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minor? Because it only appears to be half of what we're requiring. But it also, in that definition, says, "the pregnant woman intends to undergo a procedure pursuant to" subsection (1) of Section 71-6901. Would Senator Brasch yield to a question? [LB690]

SENATOR GLOOR: Senator Brasch, would you yield? [LB690]

SENATOR BRASCH: Yes. [LB690]

SENATOR SCHUMACHER: Senator, that particular--(1) of Section 71-6901 is a definition. It is not a procedure. It is just simply a definition of "abortion." Do you mean, by the word "pursuant," "defined in?" [LB690]

SENATOR BRASCH: "Defined in?" [LB690]

SENATOR SCHUMACHER: ...in that subdivision. [LB690]

SENATOR BRASCH: On...and I do apologize. Are you questioning the language, the bill drafting? You believe it's a typo? [LB690]

SENATOR SCHUMACHER: No. [LB690]

SENATOR BRASCH: I mean, the definition is just a definition. It doesn't require anything. The operative part of the bill requires the notarized consent of both the minor and her parent and guardian, as defined on page 4. Does that answer your question? [LB690]

SENATOR SCHUMACHER: No, it does not. [LB690]

SENATOR BRASCH: Okay. [LB690]

SENATOR SCHUMACHER: It's--this particular definition, forgetting about the point I raised a little bit ago about it not addressing consent of the minor in the context of the defined word "consent"--it says "the pregnant woman intends to undergo a procedure pursuant to subdivision (1)." Subdivision (1) is a definition. It says, "abortion" is thus and so. One does not undergo a procedure pursuant to a definition. And so my question is very simply, did you mean to say "a procedure defined"--in other words, abortion--in subdivision (1)? [LB690]

SENATOR BRASCH: I need to take a look at that. I apologize. [LB690]

SENATOR SCHUMACHER: Okay. Well...because if "defined in" is a better word, we could clear that up with a floor amendment really quick. If you meant "pursuant to," I have a hard time making sense of the sentence. And I guess you don't have to address

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the question at this particular point, but I put it in the record. I think it--that is not the proper word there, because one does not do something pursuant to a definition. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Council, you are recognized. [LB690]

SENATOR COUNCIL: Thank you, Mr. President. And to make it clear, I appreciate the efforts that various members of this body are undertaking in an attempt to salvage LB690. And that's what you're trying to do is to salvage a poorly drafted bill from the outset. And I maintained--and I trust that you all have received a copy of the Nebraska Parental Notification Affidavit that Senator Fulton pulled up off of the abortion clinic's Web site, which is Dr. LeRoy Carhart and the Abortion and Contraception Clinic of Nebraska. And I trust that you have read this document. Because this document confirms the point that I've made from the outset on LB690, is that LB690 does nothing to change the situation with regard to minors in obtaining abortions. I know that much has been said about the need for parental consent. But, colleagues, after reading this Nebraska Parental Notification Affidavit, which, I understand from Senator Fulton's comments, is a document that is executed in the clinic offices before a notary that is at the clinic, which means that that parent or that legal guardian has to present his- or herself at that clinic and sign this document. And note what this document contains that there's nowhere present in LB690, and which was purportedly the reason for LB690, is--first and foremost, in this notification affidavit is a statement, "Comes now" blank, "who states, under oath, that he or she is the natural parent or court-appointed legal guardian of" insert name of minor pregnant woman. This parent or guardian "further states, under oath, that he or she has been informed that" Dr. Carhart "will perform an abortion upon her/his daughter and she or he is aware that this abortion will terminate their daughter's pregnancy and that the abortion process is not able to be stopped or reversed once the abortion has been started." The document goes on to ask for that person's signature, their Social Security number, their relationship, the date. It's signed in front of a notary. Now how many of you believe that a parent who signs this document at an abortion clinic is not giving consent? If they're not consenting, they're not signing. And if they're not signing, under our current notification law, that abortion cannot be performed. LB690 doesn't get close to where the evil abortion clinics are now in terms of involving parents in this very difficult decision. Senator Brasch herself conceded that Planned Parenthood advised that over 90 percent of the... [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR COUNCIL: ...abortions performed on minor children through their clinics--those young women are accompanied by a parent. What problem are we seeking to rectify? I submit to you that there is no problem. I submit to you again, this is a part of some national agenda so that somebody can say, we added Nebraska to the

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consent side of the ledger on minors and abortion, period. That's it. Because the bill in its current form--the bill with AM1571 doesn't even come close to what's occurring right now in Nebraska with our parental notification requirements. And for those reasons, ladies and gentlemen, I urge you to oppose AM1571 and to not advance LB690. The best we could do... [LB690]

SENATOR GLOOR: Time, Senator. [LB690]

SENATOR COUNCIL: ...is recommit it. [LB690]

SENATOR GLOOR: Thank you, Senator Council. There are no senators remaining in the queue. Senator Brasch, you're recognized to close on your amendment. [LB690]

SENATOR BRASCH: Thank you, Mr. President. Thank you, colleagues. And thank you to those who have spoken so clearly. I do believe that there is...I'm not an attorney--there's many attorneys here. But I do read a dictionary, and I think the word "notice" versus the word "consent"--"notice", "I'm going to give notice" or "I'm going to give consent." I believe Webster's would say there's a difference there. And I do believe that parents have the right to be involved, to give consent to their daughter on such an important decision or to move forward in assisting the young lady, their daughter, a teenager, to raise a child. It involves the parent. We've been here debating bills in education on parental involvement in schools. And we've discussed truancy. We've covered many, many subjects where parents literally need to be involved with their children. This is another case where children should have the consent from a parent on such an important decision. And I again would like to thank Senator Conrad and others. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Brasch. Members, the question is, shall the amendment to LB690 be adopted? Those in favor, vote aye; those opposed, vote nay. Have all voted who care to? Record, Mr. Clerk. [LB690]

CLERK: 31 ayes, 2 nays, Mr. President, on the adoption of the amendment. [LB690]

SENATOR GLOOR: The amendment is adopted. Mr. Clerk. [LB690]

CLERK: Mr. President, the next amendment I have to the bill: Senator Cook, AM1529. (Legislative Journal page 1762.) [LB690]

SENATOR GLOOR: Senator Cook, you're recognized to open on your amendment. [LB690]

SENATOR COOK: Thank you, Mr. President. And good evening, colleagues. I introduce AM1529 to LB690 as a way to amend the judicial bypass provision presented in the bill.

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Under the current language of the bill, a young woman may bypass the parental consent requirement if she can show to a judge, by clear and convincing evidence, that she is sufficiently mature and well informed to make the decision to not become a parent. Under the current language of the bill, the court is required to rule on the young woman's plea within seven calendar days from the time that the petition is filed in court. AM1529 amends that language to require that a ruling be made by the court within 48 hours of the filing of the petition for judicial bypass. Here's why I introduced this amendment. Under current Nebraska law, a woman must make the decision to end her pregnancy within 20 weeks of becoming pregnant. In many instances, a young woman will most likely not discover her pregnancy until at least 4 weeks from conception, and often longer. Additionally, especially in cases of a teenager, the young woman may be in a state of denial and fear, which will delay the acknowledgement of a pregnancy. Then factor in the time that a young woman deliberates about whether she is ready for the responsibility of parenthood. We can all agree that the decision whether or not to become a parent is one which should not be taken lightly. In the unfortunate circumstance where a woman decides not to continue her pregnancy, this decision should be deliberative. For this reason, LB690 should be amended to mandate that the court should rule on the judicial bypass to parental consent within 48 hours of the filing of the petition and not one week. Thank you for your serious consideration of AM1529. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Cook. Mr. Clerk, for announcements? [LB690]

CLERK: I have a couple of items, Mr. President, thank you. An amendment by Senator Krist to LB703 and two new resolutions--Senator Council: LR344 and LR345. Both will be laid over. It's all that I have. Thank you. (Legislative Journal pages 1762-1764.) [LB703 LR344 LR345]

SENATOR GLOOR: Thank you, Mr. Clerk. Members, we now move to floor discussion. Senator Conrad, you are recognized. [LB690]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Cook, for bringing forward this amendment. I think this is an important amendment for a variety of reasons. Let's just start by acknowledging that LB690 has been talked about a lot in media reports and on this floor primarily as a bill changing from a system of parental notification to parental consent. There, that is a key component of this legislation. But make no mistake that LB690 also represents a significant change in our judicial bypass system and changes the system and the standards in significant ways. And as a by-product of those changes in opening up that process, I think Senator Cook has really focused in on a very specific, a very small but a very significant change that should be given fair consideration. As she noted eloquently in her opening, time is of the essence in this dynamic. And we know from the research and from common sense that minors in particular have difficulties in identifying their pregnancy as early as more mature women

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do, sometimes because of the irregularity of their menstrual periods during that time in their life and for a variety of other things--reasons, including--which comes with a lack of maturity--a strong sense of denial that may be at play as well. So we know that not only is there prohibition in Nebraska law for women of any age to access reproductive healthcare options past the 20-week, 22-week mark, there's also significant policy and practical reasons to help women of any age access safe reproductive healthcare earlier in their pregnancies. We know from patient satisfaction surveys, we know from medical research and evaluation that surgical abortions versus medical abortions carry different risks with them. And certain types of abortions are only available at certain stages of pregnancy. This issue came up somewhat in regards to Senator Fulton's bill about--he called it webcam abortions, I guess--LB521. But it didn't have a lot of discussion. And the point is simply--again, common sense and science backs this up--that the earlier a pregnancy can be identified and the earlier a young woman in this instance, in consultation and with agreement of her parents, or, if that option is not available because of abuse, neglect, or other reasons, has to pursue a judicial bypass and go before an impartial arbiter, a judge, we have to be very cognizant of the fact that time is still of the essence. And by erecting artificial barriers such as the seven-day limitation or condition on the decision-making there, that's nothing more than just that--an arbitrary time limit. By hastening the period to a 48-hour period, taking into account the practicalities involved in holidays and weekends, I think... [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR CONRAD: ...thank you...I think Senator Cook has provided a clearer standard for the judiciary, a quicker turnaround time in decision-making for the young woman. And, hopefully, it will ensure that more young women can pursue procedures that carry less risks and that are safer and that are easier to access and that will preserve indeed this young woman's health. So thank you, Senator Cook and colleagues. I hope that you do give favorable consideration to this important amendment. [LB690]

SENATOR GLOOR: Thank you, Senator Conrad. Chair recognizes Senator Brasch. [LB690]

SENATOR BRASCH: Thank you, Mr. Speaker. Thank you, colleagues. And thank you, Senator Cook. Regarding the time requirement, LB690 does not require that the proceeding and ruling takes the full seven days, only up to seven days. This proceeding is already given precedence above any other matters. Current law and LB690 reads: Proceedings in court pursuant to this section shall be given such precedence over pending matters so that the court may reach a decision promptly and without delay to serve the best interests of the pregnant woman. In no case the court shall fail to rule within seven calendar days from the time the petition is filed. "If the court fails to rule within the required time period, the pregnant woman may file an application for a writ of

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mandamus with the Supreme Court. If cause for a writ of mandamus exists, the writ shall be issued within three days." She can immediately file for an appeal after the ruling. The right of an expedited appeal is given to her. The Supreme Court should hear the appeal and issue a written decision to be provided immediately to the pregnant woman. The court shall rule within seven days of the time of the docketing and filing of the appeal. The maximum time that can pass before she gets a final ruling is a total of 14 days. Again, the purpose behind parental involvement is clear. Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences. Yet the medical, emotional, and psychological consequences of an abortion would call for counsel and support to be given, particularly when the patient is immature. We are talking about a young woman, a minor. And to rush this decision for the minor and her parent to a 48-hour period--I don't believe it is fair. And again, they have the right to act within the 48 hours; seven days is the maximum amount. I am not in favor. I'm asking you to vote red on AM1529 and to vote for LB690. Thank you, Mr. President. And thank you, body. [LB690]

SENATOR GLOOR: Thank you, Senator Brasch. Senator Conrad, you are recognized. [LB690]

SENATOR CONRAD: Thank you, Mr. President. I see Senator Ashford is here. And I hate to catch him off guard; I hadn't had a chance to visit with him about this topic off mike. But we were just discussing a technical issue related to court fees, and since this is within the jurisdiction of the Judiciary Committee, I was hoping that maybe he'd yield to a question or two. [LB690]

SENATOR GLOOR: Senator Ashford, would you yield? [LB690]

SENATOR ASHFORD: Sure. [LB690]

SENATOR CONRAD: Thank you, Senator Ashford. And if you don't know off the top of your head--I'm sorry to spring this on you, and we can, I'm sure, have time to--I see committee counsel is up here--visit with them as well. But somebody... [LB690]

SENATOR ASHFORD: Well, Senator Harms has already gotten me good tonight, so... [LB690]

SENATOR CONRAD: Oh, okay. [LB690]

SENATOR ASHFORD: ...I'm conditioned for it. [LB690]

SENATOR CONRAD: All right. I knew you could take it. And, again, if you don't know the answer, then that's fine, and we can find another source. But you were in my line of sight, so unlucky you. Senator Ashford, do you know, in the current judicial bypass

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process, it's been conveyed to me that the filing fee for this action is waived... [LB690]

SENATOR ASHFORD: I believe that's correct. [LB690]

SENATOR CONRAD: ...for the young woman. Is that correct? [LB690]

SENATOR ASHFORD: Yes, I believe that's... [LB690]

SENATOR CONRAD: And do you know if that's by statute or if that's by practice? I don't know the answer to the question. We can... [LB690]

SENATOR ASHFORD: I think it's by statute, but I'm looking at Stacey. There is no filing fee, you're absolutely correct. Let me just...we'll look and get... [LB690]

SENATOR CONRAD: Okay. [LB690]

SENATOR ASHFORD: ...that answer for you... [LB690]

SENATOR CONRAD: No... [LB690]

SENATOR ASHFORD: ...Senator... [LB690]

SENATOR CONRAD: ...that would be great. And... [LB690]

SENATOR ASHFORD: But I agree with you that it's not--there is no... [LB690]

SENATOR CONRAD: Right. [LB690]

SENATOR ASHFORD: ...fee. [LB690]

SENATOR CONRAD: That seems to be the understanding amongst parties on both sides of this issue in the lobby, that there is no existing filing fee. But we didn't know if that was just based on practice of the courts or if that was based on statute. And I'm guessing, of course, these minor women would easily qualify, without substantial income of their own, under the in forma pauperis standard. [LB690]

SENATOR ASHFORD: But I don't think they have to file that. I... [LB690]

SENATOR CONRAD: Okay. [LB690]

SENATOR ASHFORD: No, they don't, by statute, Stacey is telling me, Senator. [LB690]

SENATOR CONRAD: Oh, okay. Well, that's very helpful, because that was the--the

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next question was, what's the existing standard? And then, under this change in LB690, whether or not we needed to ensure that there was a specific exemption for the filing fee for young women as we change this process and procedure. No need, Senator Ashford, for any more questions. I just wanted to make sure to get that out on the mike and into the record so that we could discuss that. Because even though it may seem like a technicality for some folks, of course, when it comes to erecting barriers and recognizing the financial and emotional situation that these young women may be in, we want to ensure that we are not providing an additional barrier with a filing fee. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Conrad. Chair recognizes Senator Burke Harr. [LB690]

SENATOR HARR: Thank you, Mr. President. So we're worried about rushing a decision--rush to decision. I've done a lot of work on this bill, ladies and gentlemen. And let me tell you what happens in Douglas County. In Douglas County, you file the petition, and it is free. And you file it in the clerk's office. And immediately someone from the clerk's office calls around to one of the district court judges, finds out if anyone is available, because there is a emphasis on expediency in this case. And generally it's heard, well, it is heard while the girl is there. So the 48-hour rule doesn't really apply to Douglas County. And so they wait...and then before the girl leaves, there's a ruling. Now, I can't speak to rural Nebraska, greater Nebraska. All I can speak to is what happens in Omaha and Douglas County. There's a concern that there's a rush to judgment by the girl, that she's young. Well, all this does--it doesn't give the girl--actually, this bill gives the girl more power, because she can delay that hearing as long as she wants; that's in the amendment. Right now, it's seven days, hell or high water. And it's not in the statute that she can continue it. This allows her to continue it if she does have second thoughts or questions. But it provides a degree of certainty. And that's really what we're looking for here, folks. This is, you know, I think we're all in agreement this is not a fun situation to talk about. I know when I go to cocktail parties and I try to describe what I'm doing and I have to bring this up, boy, it gets pretty cold pretty quickly. And so what we're trying for is certainty here, so that there's clarity within the law, so that once a decision is made, we can go forward. And I think that's what we all want. Forty-eight hours...again, I have 36 statutes here; I can tell you the vast, vast majority of them I would--and I don't have the exact number. But it's generally--and I would say 30-plus of them--it's 48 hours or 72 hours. So it's not, again, as though we're out on a limb. Probably seven days is the rarity. There's nothing worse than making a decision and filing a petition and then having to turmoil over it while you're waiting for a hearing five, six, seven days, a week later. In that whole time...so what this does is, it allows--Senator Cook's amendment is, once that girl makes a decision, it's--there it is; it's within 48 hours. I don't think it's a bad idea. We don't want anyone to suffer any more than they have to. And it's, again, it's looking out for the little girl. And that's what I keep hearing the emphasis of this bill is. So let's, maybe, be...I haven't used it yet today;

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I'm going to say it: What's good for the goose is good for the gander. I don't know if it's relevant here, but I wanted to use it. But it is important that the girl does have a chance to see a judge as quickly as possible, so she doesn't have to sit around and shake in her bed at night, wondering what's going to happen. So thank you very much. I appreciate it. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. Senator Conrad, you are recognized. This is your third time, Senator. [LB690]

SENATOR CONRAD: Thank you, Mr. President. Just to bring the record full circle, I did have a chance to visit with committee counsel for Judiciary Committee off mike. Pursuant to existing statute and unchanged by LB690 or any of the pending amendments, 71-6905: No fees or costs shall be required of any pregnant woman at either trial or the appellate level for any of the proceedings pursuant to the judicial bypass section. So thank you to Stacey Trout, excellent committee counsel for the Judiciary Committee, and to Senator Ashford for yielding to those questions and to the senators who brought that issue forward, because I think that is an important dialogue point on this important issue. And many thanks also to Senator Harr for his thoughtful considerations that he provided in supporting AM1529. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Conrad. There are no senators remaining in the queue. Senator Cook, you're recognized to close on your amendment. [LB690]

SENATOR COOK: Thank you, Mr. President. And thank you, members of the body. Senators Conrad and Harr, thank you for helping to explain some more information about our current judicial bypass procedure. I'd like to reinforce some parts of my opening, in the closing. First of all, we're already talking about a young woman who's, in all likelihood, engaged in a certain degree of denial and has made a painful decision, in all likelihood with the support of her family, to terminate a pregnancy. I don't agree that we are rushing the decision. Senator Brasch again emphasized that the person right now had up to seven days. I would argue that the time is already passed where the decision has been made. Senator Burke Harr did a good job of explaining what typically happens. And going to what Senator Brasch offered as the example of what typically happens if the seven days are not complied with, I can't imagine being in that situation and then having to follow through with a writ of mandamus, adding three days of--how do you make your way to Lincoln; do you hire counsel? I mean, at this point I think we're putting more and more barriers. And to be perhaps too candid, while the bill's sponsor and people who are supporting it claim that the bill is brought with the young woman in mind, in my opinion, offering this kind of legislation and offering it with seven days is another way to prolong the decision-making process until it may be beyond the legal time to terminate a pregnancy within the state of Nebraska. With that, I would simply ask, Mr. President and Mr. Clerk, for a call of the house. And then I would ask the body

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to advance AM1529, to attach it to LB690. Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Cook. There's been a request to place the house under call. The question is, shall the house go under call? Those in favor, vote aye; those opposed, vote nay. Record, Mr. Clerk. [LB690]

CLERK: 28 ayes, 0 nays to place the house under call. [LB690]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Cook, how would you like to proceed? [LB690]

SENATOR COOK: We can just do a... [LB690]

SENATOR GLOOR: Members, the question is, shall the amendment to LB690 be adopted? Those in favor, vote aye; those opposed, vote nay. Have all voted who care to? Record, Mr. Clerk. [LB690]

CLERK: 8 ayes, 30 nays on the amendment. [LB690]

SENATOR GLOOR: The amendment fails. Mr. Clerk. Raise the call. [LB690]

CLERK: Senator Burke Harr would move to amend. Senator, I have AM1544. [LB690]

SENATOR GLOOR: Senator Harr, you're recognized to open on your amendment. [LB690]

SENATOR HARR: Thank you very much, Mr. President. At this time I would move to withdraw AM1544. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. So ordered. [LB690]

CLERK: Senator Harr, I now have AM1507. (Legislative Journal page 1764.) [LB690]

SENATOR HARR: Thank you very much. Thank you, Mr. President and ladies and gentlemen. We're good? So this is--this is not a broken car I'm trying to sell you. What this is is what most states have. And what we're looking at is best interest...we're looking at judicial bypass. Let's start there--judicial bypass. So currently we have notification, and we're moving to consent. Now, I think we can all agree, consent is a higher burden than notification: you give the parent a veto right. Under notification, the Supreme Court has made a ruling, and in that ruling what they said is that, you can say, notification of the parent is not in the best interest; it's a lower burden. Now, because

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of...notification is a lower burden. Now, on consent, we have a higher burden. And so therefore we make judicial bypass just a little different. And the Supreme Court has ruled in a case, Bellotti v. Baird, and what they said was: If the determination is--one, is the girl emancipated? Meaning, is she independent of her parents? And that's a judicial determination. If she is, then it's up to the young woman to decide. If she's not emancipated, the next issue is, is she sufficiently mature and well informed? Okay. Good. If she is, it's up to her. The third prong is--and this is Bellotti--is, is the abortion in the best interest of the child, or the young woman? And I don't know what that means, to be honest with you. But that is what the Supreme Court has ruled. And that is fact; that is constitutional. What this bill intends to do...or what my amendment is to do--just that. What this bill intends to do is to say, first two prongs are the same. Is the girl properly--is she emancipated? If yes, she may have the--she may make that decision. Is she well informed and sufficiently mature? Then she may make that decision. But this bill takes a little different tweak. And it's: Is obtaining--is it in the best interest of the girl, the young woman, to get the consent of her parent or guardian? Now, that may seem like a distinction without a difference, but there's a large difference there. There may be, and will be, a situation where the abortion is not in the best interest of the young woman. However, obtaining the consent of the parent is also not in the best interest of the child, young woman. In that case, the court would rule--would be forced to rule, if they followed the law, that the young woman may have the abortion. Now, we've been talking all night about unintended consequences. There's a huge one. And this is what I have been pushing from the beginning. This is the deal I tried to make, was I think we need to make it about the abortion; is it in the best interest of the young woman? Because, ladies and gentlemen, that's what this bill is about. It's about abortion. It's not about obtaining consent from the parent, whether that's good or bad. So let's have the judge take evidence on that. There are those who would argue abortion is never in the best interest of the young woman. And in that case, what I'm asking for is more--is stricter. Now, I am not arguing whether it's more lenient or stricter. What I'm arguing is--is, my amendment is constitutional. Nobody in this room can refute that. Now, there can be an honest debate as to whether, as the bill is currently written, whether it's constitutional or not. There's never been a Supreme Court ruling on that. So we can make a decision--and that is what we are doing with this--we can make a decision: Do we want to challenge the constitution once again? We did it last year; we batted 500. Last year we had an opinion from the Attorney General that said, in his opinion it was constitutional. It was informal. This year we don't even have an informal opinion from the Attorney General. The informal opinion given by the Attorney General was based on notification, not consent. Meaning, is the notification of the parent in the best interest of the child? Well, we amended it: Is getting the consent of the parent in the best interest of the child? Is there a difference? You bet there is. How do I know? Well, that's why we're here. We're going from notification to consent. So heck, yes, there's a difference. What is that difference? Well, I don't know. I'll be honest. But there is a difference, and the courts need to rule on this. And I want to see this bill passed; I want to see it passed. I want it to be a solid, well-written bill that avoids litigation. And so that's why I

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introduced this amendment. Now, there are those who will say, well, he's been fighting everything else. No, what I want is parental consent. And that's exactly what I'm looking for, and I want it to be constitutional. I am first and foremost a constitutionalist. I've often said, when looking at a bill, this is what--or an amendment, well, a bill--this is what I do. Number one, is it constitutional? Can we determine that? Yes or no. If it's clearly unconstitutional, throw it away; we're done with it. If it is constitutional or there's a question--if it's constitutional, let's move on to the next step. If it's questionable, let's examine: Is this an area we want to delve into? And then the next step is always: Is this bill good public policy? Meaning, is this something we want? If it's good public policy, let's move to--and that's the intent of the bill, let's look: Does this bill do that intent? Meaning, is it well written and concise so anyone can understand it? If it is, move forward. Next, what are the unintended consequences? And examine that. If a bill passes all four of those criteria, then I'm going to vote for it. Now, LB690 is not clearly constitutional; there is a question. Now, we don't have an answer; we don't have an opinion from the AG. We can look to what other states have or haven't done. The vast, vast, vast majority have done "best interest" for the minor to have the abortion. There are some states that have done different language. Some of those are currently enjoined for that reason. And we could join that list. I don't want to. Now, the next step is, if it's questionably constitutional, is it good public policy? Well, again, there I have a question. Because the question isn't whether obtaining the consent is--that's not what the purpose of this bill is. It's to, really, make sure that that woman analyzes everything and that abortion--she's made a conscious decision, and if she hasn't, that it is in her best interest--not whether obtaining the consent of her parent is in her best interest. It's whether that abortion is in the best interest of that child. So I think it fails on that grounds. Now, we can move on; let's assume that it is. So the next step is... [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR HARR: Thank you. The next step is, does it carry out the policy that we want? Well, no, it doesn't. The underlying policy is good, but it doesn't cover it up. So then the next question is, are there unintended consequences? And again, the answer is yes. And those unintended consequences are, as I spoke earlier, where you have an abortion that is certified by the court, when it's not in the best interest of the child but it is in the best interest of the child not to obtain the parent's consent. So that's why I introduced this amendment. And I would ask for your support. Thank you very much. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. Senators in the speaking queue: Brasch, Conrad, and Ashford. Senator Brasch, you're recognized. [LB690]

SENATOR BRASCH: Thank you, Mr. President. And thank you, body. And thank you, Senator Harr. The question here is the best interest--"best interest" language, I believe, and its constitutionality. Senator Harr, I believe, had asked for an Attorney General's

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Opinion, as did I. And we did get a statement regarding the constitutionality of judicial bypass in LB690 under Bellotti v. Baird. And his written statement here is, at the start and at the end here, that: therefore we believe the judicial bypass provision in LB690 is constitutional. This is model legislation and reflective of other existing parental consent laws currently in place in other states. And the Supreme Court in Bellotti v. Baird said that a bypass provision in a parental involvement statute must include an allowance for the minor to alternatively show that even if she is not able to make this decision independently, the desired abortion would be in her best interests. Again, our Attorney General's Opinion makes it clear that this is sound language. The court found in Wicklund v. Lambert that a judicial bypass procedure requiring a minor to show that parental notification is not in her best interest is equivalent to a judicial bypass procedure requiring a minor to show that abortion without notification is in her best interests. The state of North Carolina: The parental consent requirement shall be waived if the court finds that it would be in the minor's best interests that parental consent be waived. This statute has been in effect since 1995. In Arkansas, the judge shall be determined (sic) whether the performance of an abortion upon her without the consent of her parents, guardian, or custodian would be in her best interests--legislation in effect since at least 2005. In Louisiana, the court shall decide whether or not it would be in the best interest of the minor to notify her parent or guardian of the proceedings. In Michigan, the probate court shall grant a waiver of parental consent if it finds that the waiver would be in the best interests of the minor--in effect since 1990. In North Dakota, the judge shall determine by clear and convincing evidence whether the performance of an abortion without notification and written and informed consent of her parent would be in her best interest. In Oklahoma, the judge must determine whether or not it would be in the best interests of the minor to notify her parent or guardian of the proceedings. In Arizona, the judge shall determine whether the performance of an abortion on her without the consent of one of her parents or her legal guardians or conservator would be in her best interest. Our Judiciary Committee amended this section to address these specific concerns. This has been dealt with in committee amendment and adopted on General File. I do appreciate the concern that Senator Harr has expressed. I do believe we've been diligent in looking at various ways that we can ensure that the best interest has been addressed... [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR BRASCH: ...as many of these states have. I would like to take this moment again to thank the body and our senator and not support AM1507. Thank you, Mr. President. And thank you, colleagues. [LB690]

SENATOR GLOOR: Thank you, Senator Brasch. Senator Conrad, you are recognized. [LB690]

SENATOR CONRAD: Thank you, Mr. President and I was hoping if Senator Harr is

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available, Senator Burke Harr... [LB690]

SENATOR GLOOR: Senator Harr, would you yield for a question? [LB690]

SENATOR CONRAD: I don't know if I see him on the floor or not, but...and maybe any member of the Judiciary...there he is. Welcome back, Senator Harr. I was listening carefully to your opening on your amendment and hearing a little bit more about what happened at the committee level and hearing a little bit more about your reading of Bellotti, which I think we can all be in agreement is, in fact, the established controlling case law surrounding this issue. And I just wanted to ask you a couple of questions about the distinctions and the differences between Bellotti and the current standard for judicial bypass and the changes in LB690 which I understand is in essence a codification of Nebraska Supreme Court case to a certain extent. I think it was titled In re: Anonymous. But let me just start off with the most simple and straightforward question. Is there any contradiction or disagreement that Bellotti is the case...controlling case law on this issue? [LB690]

SENATOR HARR: Bellotti is the controlling case law. [LB690]

SENATOR CONRAD: Okay. So nobody on either side disagrees with that? [LB690]

SENATOR HARR: No. [LB690]

SENATOR CONRAD: So it would be fair to say that rather than utilizing an untested standard when we change a significant portion of our judicial bypass statutes, which arguably provide more subjectivity to the judge in this proposal than currently exists, the safest legal route to prevent any challenge or confusion would be to adopt the standard set forth by the U.S. Supreme Court utilized in other states and as presented in your amendment. Is that a fair characterization of where we're at? [LB690]

SENATOR HARR: Yes, that is correct. Bellotti is the law of the land. It's a Supreme Court ruling, it hasn't been overturned. Now...and it hasn't been questioned either. This is going into questionably constitutional grounds and if I could address for a second... [LB690]

SENATOR CONRAD: Please. [LB690]

SENATOR HARR: ...why the AG's Opinion, while nice, is irrelevant. And that is because the question asked in the AG's Opinion was based on language that is not currently in LB690. It's based on the original language in LB690 which has been amended out. So while there's good original analysis talking about Bellotti, that's a good case. I mean, we talk about it's a good case law and there are other states that mirror it, and that's exactly right. And then as I stated earlier, the combination...I mean if we want to talk about

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written notification, the combination of LB690's written consent and judicial bypass language has never previously been subject to court challenge. Now that's exactly right. So it may be constitutional. I'm not arguing that it's unconstitutional. What I'm saying is, mine is the safer route. It is unrefuted law and it's the correct way to do if you want to be 100 percent constitutional. [LB690]

SENATOR CONRAD: Thank you, Senator Harr, that was a very clear recitation of your position and what was discussed at the committee level, and I think is a good contrast and comparison to the Attorney General's Opinion that was presented earlier. And I don't have the Attorney General's Opinion in front of me right this moment, but if memory serves it was definitely directed more fully to the change from notification to consent and had much less to say about the changes to the judicial bypass system, but does correctly note, and I think here again we can find some common ground on a difficult issue that Bellotti is the standard. The Attorney General does not refute, contest, or otherwise argue that the standard... [LB690]

SENATOR GLOOR: One minute. [LB690]

SENATOR CONRAD: ...thank you, Mr. President...on parental consent and on judicial bypass issues comes from Bellotti, so if that is indeed the agreed upon controlling case law, why are proponents opposed to this change that you're putting forward in AM1507? [LB690]

SENATOR HARR: Again I don't want to go into other people's motivations. [LB690]

SENATOR CONRAD: Okay. [LB690]

SENATOR HARR: I don't know the answer to that. What I can tell you is, there are 16 states that have the mirror, and this is the language, parental consent statutes that mirror Bellotti have been constantly...or have been consistently withstood constitutional challenges in other states. And then they go on to cite 16 statutes that do have that Bellotti language. [LB690]

SENATOR CONRAD: I know our time is running short, so thank you, Senator Harr. And I did hit my light on so maybe I'll have some time later, but that is a fair assessment to say that there are 16 states that have utilized... [LB690]

SENATOR GLOOR: Time, Senator. [LB690]

SENATOR CONRAD: Thank you, Mr. President. [LB690]

SENATOR GLOOR: Thank you, Senator Conrad. Senator Burke Harr, you're recognized. [LB690]

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SENATOR HARR: I'm going to pass at this time but, hopefully, in a couple of minutes I'll be able to come forward with another statement. Thank you. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. Senator Conrad, you're recognized. [LB690]

SENATOR CONRAD: Thank you, Mr. President and I'll be waiting expectantly as Senator Harr will, or as others will, for Senator Harr's forthcoming statement. Again I think that this is an important amendment and people of goodwill can have very different deeply-held, serious viewpoints when it comes to reproductive health and particularly as it relates to minors. But one thing that we should be able to agree to is the fact that we have established in controlling case law on this very question that is uncontroverted from the United States Supreme Court that has been adopted by 16 other states, our sister states in these great laboratories of democracy, and is the clearest and surest path to move this legislation forward in a manner that could vitiate the need for additional legal challenge, which is, in essence, on the taxpayers dime. Let's not forget about that for one moment. When serious legal considerations and questions and problems were brought forward just last year on one of Senator "Cap" Dierks's bill, we had repeated assurances from the Attorney General's Office that it was legally sound, and then shortly thereafter it was enjoined by a federal district court for a variety of reasons. Key components were conceded by the Attorney General's Office and just this year in the state claims bill, and as a part of the budget, the Nebraska Legislature and the Nebraska taxpayer wrote a check to Planned Parenthood to recover their attorneys fees in pursuing that legal action. So maybe it would be wise at this moment in time to adopt this standard, have proponents, if they have specific reasons as to why this shouldn't be adopted, bring those forward on the record. I haven't heard anything from anybody who is opposed to this. And maybe we should adopt the clear standard today. If there are valid reasons to adopt a different standard in Nebraska in the future, senators are free to work on that over the interim period and to bring forward additional modifications next session. But it seems that this is a clear and sure path to a technically and legally sound significant component of the judicial bypass process which we should hold ourselves to that higher standard for our citizens and for the legislation that we put forward. So, thank you. [LB690]

SENATOR GLOOR: Thank you, Senator Conrad. Senator Brasch, you're recognized. [LB690]

SENATOR BRASCH: Thank you, Mr. President, and thank you, body. We have had much deliberation this evening on many aspects of what I believe will make LB690 an even stronger, more important bill for young women, teenagers, their parents, guardians, and our communities. Fellow senators have looked at many different avenues. We have considered many different possibilities. The hearing was very

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thorough. We have not hesitated to listen to fellow colleagues and to work collaboratively. I do appreciate those efforts. And Senator Harr from the very beginning has shared with us his past experience in the courtroom and as an attorney wanting us to ensure constitutionality in this matter, and also protect, as he stated, the privacy, the concern, the care of a young girl, a teenager. I also want to stand up for the parents who deserve the right to be a part of such a decision. Our parents have an even greater role in our increasingly challenging economy and future that we face. We are facing that every day as senators here representing our constituents. My good neighbor, Senator Cook here, has shared with me her 47 trips around the sun and her many observations on the importance of young women, and Senator McGill also invited me to a luncheon where we shared with other young women the importance of moving forward in life confidently. And that is what we ask here is to give that young woman the confidence at the end of the day that she has someone there, that she has her parent, guardian, her grandparent, in one of the most important decisions that she will make in her future, in the future of the child, and especially when she is a minor under age of 18 and not fully capable of making those decisions alone. So that we no longer have situations like the blog I read earlier in General File of people keeping secret a decision and bearing that burden and not having the support, of having that young woman go home alone crying in the middle of the night, or worst-case scenario, hemorrhaging without her parents knowing she needs medical care. LB690 does ensure involvement of the parent or grandparent or guardian that someone is there for this young woman, this teenager. And I do appreciate the body here and their patience, their understanding, and their willingness to bring amendments forward which we are considering. And I do understand that Senator Harr is sharing with us another amendment here that is being submitted. So with the nod, good Senator Harr has given me, I would like to thank you again, Mr. President and thank the body for the time and work and consideration given to LB690. Thank you. [LB690]

SENATOR GLOOR: Thank you, Senator Brasch. Senator Burke Harr, you're recognized. [LB690]

SENATOR HARR: Thank you, Mr. President and thank you, members of the body. Thank you for your patience and cooperation this evening. It's 9:03 and I hope we won't have to be here much longer. I'm going to jabber for a little while just so that we can get the amendment up so you can all look at it. I want to let you have a chance to look at it. I introduced AM1507 because it is the clearest constitutional path. And I felt that was important and I thought it was important that we have a conversation about it. Having had that conversation, I'm going to withdraw AM1507 and I will be introducing an amendment very shortly. And I understand it's the will of the body to contest the constitutionality and I understand that and I accept that. So thank you very much. And I withdraw AM1507. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. So ordered. [LB690]

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CLERK: Mr. President, Senator Harr would move to amend with AM1573. (Legislative Journal pages 1764-1765.) [LB690]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Harr, you're recognized to open on your amendment. [LB690]

SENATOR HARR: Thank you, Mr. President and again thank you members of the body for being attentive. What I have introduced is AM1573. It is an amendment that is there to do what we have been talking about all night and that is to protect the young woman. This is...I've spoken about this earlier and I appreciate all the hard work that has gone into this by Senator Brasch, Senator Coash, Speaker Flood, and all the others, and all those behind the glass who have been most accommodating and willing to talk about the issue. What this does is, when a young woman goes to get an abortion, she has to obtain parental consent. Now that parental consent has to be notarized and I think that's a great thing. As we talked about on General File, I was involved in a case where an individual went in posing as a parent when he was not and he signed something. Now there was no notary requirement on there, so one of the big issues in the case was, is this person the person who signed it, was he there. Well, this helped eliminate some of that doubt by having the notary. So that's a good thing. Now the unintended consequence is, you're opening this up to third parties to look and this is a very sensitive issue. A girl has to tell her parents and we can control that. But we're opening it up to a third party and that woman has no control over the third party. Chances are she doesn't know. There are 34,000 notaries and so we want to make sure that that notary, you know...it has a confidentiality requirement. Now, originally, I thought it might be nice do a criminal. I realize that's not necessary. What we're doing here is a civil. It's very simple. When you're taking the class, part of the class will be to learn what the statute is and part of the statute now will be that if you tell, you will lose your license. You lose the ability to be a notary. It's very simple. Nothing complicated. Senator Brasch has been willing, she agrees with it, Senator Coash agrees with it. Talked to those behind the glass, they agree with it. It helped protect the girl so that she doesn't...isn't open to scorn from others, third parties that she can't control. So this is...just enforces, it helps control who she tells and how she tells. It protects the young woman and so I would ask that you please pass AM1573. Thank you very much. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. Are there senators wishing to be recognized? Seeing none, Senator Harr, you're recognized to close on your amendment. [LB690]

SENATOR HARR: I would waive closing and ask for a call of the house. [LB690]

SENATOR GLOOR: (Gavel) Thank you, Senator Harr. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor

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vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB690]

CLERK: 28 ayes, 3 nays to place the house under call. [LB690]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Harr, all members are in attendance. How would you like to proceed? [LB690]

SENATOR HARR: May I request a machine vote...machine vote. [LB690]

SENATOR GLOOR: Thank you, Senator Harr. Members, the question is, shall the amendment to LB690 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB690]

CLERK: 41 ayes, 0 nays, Mr. President, on the adoption of Senator Harr's amendment. [LB690]

SENATOR GLOOR: The amendment is adopted. Mr. Clerk. [LB690]

CLERK: I have nothing further on the bill, Mr. President. [LB690]

SENATOR GLOOR: Senator Larson for a motion. [LB690]

SENATOR LARSON: Mr. President, I move that LB690 be advanced to E&R for engrossing. [LB690]

SENATOR GLOOR: You've heard the motion. All those in favor say aye. Senator Council, you... [LB690]

SENATOR COUNCIL: I rise for a machine vote, please. [LB690]

SENATOR GLOOR: A machine vote has been requested. All those in favor of the advancement of LB690 to E&R engrossing, please vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB690]

CLERK: 35 ayes, 4 nays, Mr. President, on the advancement of LB690. [LB690]

SENATOR GLOOR: The call is raised. Mr. Clerk.

CLERK: I have a priority motion, Mr. President. Senator Mello would move to adjourn the body until Tuesday morning, May 24, at 9:00 a.m.

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Transcriber's Office

Floor Debate
May 23, 2011

SENATOR GLOOR: Members, you've heard the motion for adjournment until 9:00 a.m. tomorrow morning. All in favor say aye. All opposed, nay. We stand adjourned.