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Health and Human Services Committee  
March 09, 2011

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[LB219 LR21]

The Committee on Health and Human Services met at 1:30 p.m. on Wednesday, March 9, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB219 and LR21. Senators present: Kathy Campbell, Chairperson; Mike Gloor, Vice Chairperson; Dave Bloomfield; Tanya Cook; Gwen Howard; Bob Krist; and Norm Wallman. Senators absent: None.

SENATOR CAMPBELL: (Recorder Malfunction)...hearings of the Health and Human Services Committee. I'm Senator Kathy Campbell, and I represent the 25th Legislative District in Lincoln. And we'll go to my far right.

SENATOR BLOOMFIELD: Dave Bloomfield, District 17, northeast part of the state.

SENATOR COOK: I'm Tanya Cook from District 13 in northeast Omaha in Douglas County.

SENATOR GLOOR: Senator Mike Gloor, District 35, Grand Island.

MICHELLE CHAFFEE: I'm Michelle Chaffee, legal counsel.

SENATOR HOWARD: Senator Gwen Howard, District 9 in Omaha.

SENATOR CAMPBELL: And to my far left is Diane Johnson who's the committee clerk. And Ayisha and Crystal are the two pages. I'm going to go through a few reminders, and then we'll start. First of all, please silence your cell phone, so that you don't disturb your neighbor with any strange sounds coming from that cell phone. And although handouts are not required, if you have them, we would like 12 copies. As a rule, we don't make those copies, but outside it's posted where you can obtain them. Every witness who plans to testify this afternoon needs to sign in on an orange sheet that are on both sides, and please bring those forward and give them to the clerk before you sit down. If you are not testifying today in front of the microphone, but want to show support or opposition, you can sign either one of the white sheets on either side of it. We do have a light system in here. We start out at five minutes. It's green for a long time, it seems, and then it goes to yellow, and it goes really fast, and it's red. And you'll look up, and I'll be going time, time. That's it. I don't think we're going to have that problem today, but in any case. And when you come forward, please state your name before you start and spell your first and last name so it's very clear for the transcriber. And with that, we're going to open the hearings this afternoon with LB219, Senator McCoy's bill, to adopt the Health Care Freedom Act. Welcome. First time, I think, this year.

SENATOR McCOY: This year, I believe that's the case.

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

Health and Human Services Committee  
March 09, 2011

---

SENATOR CAMPBELL: Exactly. Welcome.

SENATOR McCOY: Thank you, Senator Campbell, and good afternoon, committee members. I am Beau McCoy. For the record, B-e-a-u M-c-C-o-y, and I represent the 39th District of the Legislature. And I am here this afternoon to introduce LB219 to you which seeks to adopt the Health Care Freedom Act. LB219 seeks to prevent a fine or penalty from being assessed on a person or employer for participating or not participating in any particular healthcare plan and allow direct payment for lawful medical services. The Patient Protection and Affordable Care Act or PPACA, as it's most commonly referred to, signed into law on March 30, 2010, is currently facing several court challenges with the individual mandate at the center of the debate. As we all know, Nebraska and 25 other states, joined in the court case, Florida v. United States Department of Health and Human Services, and that case with recent developments...actually, we received an e-mail just within the last 30 minutes, actually, that the Obama administration is asking the Eleventh Circuit Court of Appeals for an accelerated briefing schedule, so it would appear that the case will, or could potentially end up with the Supreme Court on the Supreme Court docket as of this October, this fall. And I know, Senator Campbell and I have had a number of discussions on this, and, obviously, those that were on the committee last year know that I brought this legislation last year as well. And at the time, when I introduced this legislation in January of this year, we didn't know that Judge Roger Vinson would rule the way that he did, so certainly this is a court case in progress. And I guess fundamentally, I look at this as and, as we all know, there are developments on this issue virtually on a daily basis. I just mentioned development just within the last 30 minutes. It's a very fluid situation that is being talked about in Congress on a daily basis. It's my understanding that the United States Senate tomorrow, or potentially tomorrow, will vote on the House version that's already been passed of the 1099 Repeal which is part of Obama care and the PPACA legislation. And, you know, well, there obviously, are differences of opinions on the value of the federal legislation. At least one thing that I think we can agree on, and that is there are many unanswered questions as to how this will be implemented. And in light of that, in my discussions with Senator Campbell, you know, I've asked that the committee, in light of developments, as I mentioned, with this headed likely to the Supreme Court this fall, that the committee...I would respectfully request the committee to hang on to this legislation and just to leave it sit. I wouldn't seek to advance it at this point. Because of that situation, we often...well, I wouldn't say often...occasionally will run into those situations where we have court cases pending. We didn't know where this would be when I introduced this. I believe it to be a very valuable subject and one that I'm certain that we will continue to address well into the coming years. As many of you know, I'm Vice Chair of the Banking, Commerce and Insurance Committee, and our committee will deal with a lot of those issues as will all of you on this committee in the next few years as we implement this legislation. In light of that, I'll probably just close for now and certainly entertain any questions if there are any. [LB219]

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

Health and Human Services Committee  
March 09, 2011

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SENATOR CAMPBELL: Okay. Senator Gloor. [LB219]

SENATOR GLOOR: Thank you, Senator Campbell. Thanks for being here, Senator McCoy, and I'll finish up talking about our Banking Committee that we're both on together. Is this legislation...what term do I want to use? Is this the same legislation that's been introduced in other states? I mean, has this been vetted specifically for Nebraska or are we using something that already has been out and about in some other states and has had a chance to be talked about and considered? [LB219]

SENATOR McCOY: That's a great question. I appreciate that, and it is tweaked slightly from similar legislation that has been introduced and passed in a number of other states. It has been changed around a little bit by drafting to fit within the confines of our statutes, but, yes, it is similar legislation to what's been introduced in, I believe, 41 states as it stands now and passed in...well, I think it's eight or nine states, as I recall the latest numbers. [LB219]

SENATOR GLOOR: And I apologize for not asking you this earlier, because I remember the first time I looked through this, I thought I'll just walk over and visit with you someday, and I've forgotten about it until I reread this bill summary. But I ask the question, because I'm assuming the imposition of any fine or penalty isn't loosely defined as also including copays or deductibles, but individuals that have to pay. If this has already been vetted, I'm sure that that, in fact, is not part and parcel of the definition of fines or penalties. [LB219]

SENATOR McCOY: Correct. [LB219]

SENATOR GLOOR: Okay. [LB219]

SENATOR McCOY: We talked about that, you may recall, briefly last year in the hearing on this same legislation, and that's certainly a good point. It's been my understanding that, yes, that would...it's not a concern. [LB219]

SENATOR GLOOR: And you don't see this as something that might be problematic as we continue those discussions in Banking, Commerce and Insurance on health insurance exchanges, and what we may want to do that could be of benefit to Nebraska in giving people even more options for insurance. You don't see this as something that necessarily is in conflict with that at this point in time. [LB219]

SENATOR McCOY: Well, I don't, but I think that leads into why that I would ask the committee just to hang onto at this point, because we don't know what the Supreme Court will...if it eventually ends up in the Supreme Court, and it would appear from...as of this afternoon that it most likely will, and not knowing what the outcome of that court decision would be, that would obviously have grave import on the implementation of

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

Health and Human Services Committee  
March 09, 2011

---

those healthcare exchanges or lack thereof, depending on what that decision may be. [LB219]

SENATOR GLOOR: Okay. Thanks. [LB219]

SENATOR CAMPBELL: Any other questions or comments? Thank you, Senator McCoy. [LB219]

SENATOR McCOY: Thank you. [LB219]

SENATOR CAMPBELL: I much appreciate your coming to visit with me, and I just personally concur with you that the situation is changing almost daily, so I appreciate your advice to the committee, and we will certainly take that under advisement. [LB219]

SENATOR McCOY: Thank you. [LB219]

SENATOR CAMPBELL: We will open now for testimony. Those who wish to testify in favor of the bill, could I see any hands on that? Those who wish to testify in opposition? Okay. Those in a neutral position? Okay. I didn't see any hands for proponents, so we'll go ahead and take all the opposition to LB219. Good afternoon. [LB219]

GEORGE LYFORD: (Exhibit 1) Good afternoon. My name is George Lyford. That's G-e-o-r-g-e L-y-f-o-r-d. I'm staff attorney at Nebraska Appleseed Center for Law in the Public Interest. Nebraska Appleseed is a nonpartisan, nonprofit law firm that works for equal justice and full opportunity for all Nebraskans. We agree with Senator McCoy that LB219 should be held at this time as things are changing on a daily basis. I passed out my written testimony, and I won't rehash everything in there. I'd just like to hit a few of the main points. I think the main consensus is that our healthcare system is not working as, I think, everyone would agree. Nebraskans are dealing with skyrocketing costs and, consequently, limited access. Currently, there's over 220,000 uninsured Nebraskans, 40,000 of which are children, approximately. The Affordable Care Act was signed into law one year ago, and it begins to create a system in which all Nebraskans have access to quality, affordable healthcare, as the individual responsibility provision is an essential part of the Affordable Care Act. The costs of covering the uninsured are borne by everyone else with insurance, and this results in increased costs to everybody. The individual responsibility provision in the Affordable Care Act is necessary to address this unfair distribution of costs. And LB219 attempts to repeal this aspect of healthcare reform. Our main concern is that LB219 will be duplicative in that Nebraska tax dollars are already being spent in the Florida lawsuit which has no binding effect on Nebraska as of now or its obligations to continue implementation of the Affordable Care Act. Recently, Judge Vinson issued a stay in the Florida case which clearly indicates that implementation of the Affordable Care Act should continue. To the extent that LB219 would be passed into law, it would likely be challenged in costly litigation, and to the

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

Health and Human Services Committee  
March 09, 2011

---

extent that it conflicts with federal law, would be invalidated, because it would be preempted by the Affordable Care Act. The state would have to spend a lot of tax dollars to defend the bill in litigation that it would likely lose while still engaging in litigation in the Florida case. Three courts have upheld the constitutionality of the individual responsibility provision and more than a dozen federal district courts have dismissed similar lawsuits. Only two federal district courts have found the individual responsibility provision to be unconstitutional. And as you've heard, it sounds like this issue is on a fast track to be decided ultimately by the Supreme Court. The individual responsibility provision is reasonable and good policy. It's fair to ask people to take responsibility for their healthcare. It's aimed at the so-called free riders in our healthcare system. Under our current system, as you know, our hospitals must provide treatment regardless of patient's ability to pay. And, consequently, the hospitals and insurers are forced into passing these costs off onto the rest of us with insurance. In 2008, I believe, the CBO estimated that about \$40 billion, that went to covering the uninsured was passed off onto insurers and hospitals. Meanwhile, the uninsured are falling into bankruptcy and therefore foregoing needed treatment. The Affordable Care Act, through the individual responsibility provision, addresses this by leveling the playing field and makes it possible by providing tax credits and other economic mechanisms to make coverage affordable. And this policy is simply essential for making the most popular reform measures in the Affordable Care Act possible by broadening the risk pool and bringing younger, healthy individuals into that risk pool. LB219 is not good policy, and will waste time and money and unnecessary litigation. Healthcare is a collective problem and requires a collective solution and, therefore, we respectfully request that you not advance LB219. Thank you. [LB219]

SENATOR CAMPBELL: Thank you, Mr. Lyford. Any questions from the senators?  
Senator Bloomfield. [LB219]

SENATOR BLOOMFIELD: I don't know if I'm going to be able to form this as a question or whether it's going to end up being a statement. But I have to take some exception to your statement that there's a broad consensus that our current healthcare system is not working. I've been in a few foreign countries. Ours works a lot better than most of them. I could understand if you said it's not working for everyone possibly,... [LB219]

GEORGE LYFORD: Um-hum. [LB219]

SENATOR BLOOMFIELD: ...but when you make the statement that it is not working, I would ask you to define that a little better or...I just plain don't agree with you. [LB219]

GEORGE LYFORD: Okay. [LB219]

SENATOR BLOOMFIELD: My legislative aide's mother-in-law had a minor stroke last night. Within ten minutes, she was being cared for. The system works. I don't think we

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

Health and Human Services Committee  
March 09, 2011

---

should risk destroying it. Thank you. [LB219]

GEORGE LYFORD: Thank you, Senator Bloomfield. I would only say that in response to that, that being an economic leader in this global economy, I feel that it's very essential to not let our most vulnerable citizens slip through the cracks. And while you're right, our healthcare system is topnotch for those that can gain access to it and can afford it, I think that it's just important to make sure that we are...that everybody...that all citizens in Nebraska and the United States have access to the same quality healthcare that those that can afford it have access to. [LB219]

SENATOR CAMPBELL: Senator Wallman. [LB219]

SENATOR WALLMAN: Thank you, Chairman. Yeah, thanks for being here. I know Appleseed is involved in a lot of things, with (inaudible) disabilities and low income. Do they have any...or organizations like Voices for Children and your organization...have any ideas how to make healthcare more affordable? You know, have different benchmarks of plans or something. [LB219]

GEORGE LYFORD: Different than what's laid out in the Affordable Care Act? [LB219]

SENATOR WALLMAN: Yeah, yeah. [LB219]

GEORGE LYFORD: Well, I think right now, our goal is to make sure that the elements of the Affordable Care Act are implemented as smoothly and cleanly as possible. You know, addressing the shortcomings of the healthcare system has been such a high priority in, well, generations now, but especially so in the last decade. And the consensus that was reached a year ago now, behind the Affordable Care Act, I think really needs to be the focus going forward and making sure that it's implemented as smoothly as possible. It provides a framework for going forward and further tailoring, you know, any further changes that need to be made to the healthcare system. But I think in the short term, the focus needs to be on a smooth and clean and cost-efficient implementation of that law. [LB219]

SENATOR WALLMAN: Thank you. [LB219]

GEORGE LYFORD: Thank you very much. [LB219]

SENATOR CAMPBELL: Any other questions or comments? For Senator Krist and Senator Wallman, who may not have heard Senator McCoy's opening on the bill, he has indicated that because of all the changing nature in the last 30 minutes, apparently, the President has asked for this to be accelerated. Senator McCoy's request to the committee is that the bill be held in the committee until we have some idea what may happen in the Supreme Court, so...just so that you senators are up to date. Thank you,

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

Health and Human Services Committee  
March 09, 2011

---

Mr. Lyford, very much. [LB219]

GEORGE LYFORD: Thank you very much. [LB219]

SENATOR CAMPBELL: Next opponent. Good afternoon. [LB219]

MARK INTERMILL: (Exhibit 2) Good afternoon. Thank you, Senator Campbell. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today on behalf of AARP. First of all, I want to say that I appreciate Senator McCoy's suggestion. I think that's a wise one. There are some things...the thing I've learned over...since the summer of 2009 is that reasonable people can disagree about the Affordable Care Act. And I think it's also important to look at what's in the Affordable Care Act as it relates to compelling a person to purchase insurance, and that's what I just distributed to you, that section that discusses that particular issue. It's fairly clear to me that the intent of the act is not to compel anyone to do anything, to buy any insurance that they don't want to buy. There is a penalty, and that penalty starts, I believe, in the first year at \$9.72 a month and tops out at \$62.50 per month which is roughly my wife's latte budget (laughter). But it's not the type of penalty that's going to...a lot of the critics of the Affordable Care Act say it's not strong enough to compel people to purchase insurance. So I think that the act itself doesn't really do that much to compel an individual to buy insurance. We did support the Affordable Care Act, and we're working to try to make sure it's implemented as well as possible. And part of that implementation is the development of the health insurance exchanges that the Department of Insurance is working on for the next few months, and I think after they have completed that process would be a good time to revisit this issue. I'll say we'll probably oppose it then, too, but I think there's a lot of things that are underway now that we need to look at to make sure that we develop a system that works as well as possible. And with that, I'd be happy to answer questions. [LB219]

SENATOR CAMPBELL: Senator Wallman. [LB219]

SENATOR WALLMAN: Thank you, Chairman Campbell. Yes, thank you for coming, Mark. Everybody that testifies, I always appreciate. And you have a regular, you know, rather large organization. And have your actuaries ever done a study on what it would cost if everybody did pay premiums? [LB219]

MARK INTERMILL: The best information we have is the congressional budget office's estimates of the costs of the program, and I don't have those at my fingertips, but I can certainly get ahold of them and get them to you. [LB219]

SENATOR WALLMAN: I appreciate that, yeah. Thanks. [LB219]

SENATOR CAMPBELL: Any other questions or comments for Mr. Intermill? Thank you

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

Health and Human Services Committee  
March 09, 2011

---

very much for coming today. [LB219]

MARK INTERMILL: Thank you. [LB219]

SENATOR CAMPBELL: Anyone else in the hearing room who wishes to testify? Ms. Erickson, are you testifying in opposition? In opposition. [LB219]

JULIE ERICKSON: Yes. [LB219]

SENATOR CAMPBELL: Okay. I just wanted to make sure that I had you in the right category for the record. [LB219]

JULIE ERICKSON: (Exhibit 3) Category. I appreciate that. Thank you. Health and Human Services committee members, Julie Erickson, J-u-l-i-e E-r-i-c-k-s-o-n. I am here representing the Center for Rural Affairs in opposition to LB219. I think we appreciate Senator McCoy's suggestion, obviously, to defer, and so I'm not going to read our testimony, and I think some of the court cases and those kinds of things have already been brought up. We are concerned that there does need to be some kind of activity in the...particularly the rural sector in access to healthcare. And there are problems in the system, and I think this committee is well aware of a lot of them. In the case of rural America, we have a lot of situations where there's...not only is the economy causing problems, but even being able to pay for services in healthcare is...becomes an increasing problem. And so, we want to see something done. I think each state is going to have to look at what works for us in those insurance exchanges or why those are...what those are all about. So we hope that down the road, this doesn't become a political issue that we actually look at taking care of people and the purpose behind the bill. We will not necessarily say this is absolutely the only solution that's out there, and we hope that all the parties get together and start talking about it. With that, if you have any questions. [LB219]

SENATOR CAMPBELL: Any questions or comments? Thank you for coming today. [LB219]

JULIE ERICKSON: Thanks. [LB219]

SENATOR CAMPBELL: Anyone else who wishes to testify on LB219? 219? [LB219]

KORBY GILBERTSON: Yes, but neutral. [LB219]

SENATOR CAMPBELL: Neutral. I should have called that. [LB219]

KORBY GILBERTSON: (Laugh) That's (inaudible). [LB219]

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

Health and Human Services Committee  
March 09, 2011

---

SENATOR CAMPBELL: Sorry. [LB219]

KORBY GILBERTSON: Good afternoon, Madam Chair, members of the committee. For the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Association of Health Underwriters. I think Senator Campbell summed it up best, and I also talked to Senator McCoy this morning that this is something that should be held by the committee. The health underwriters have been working very hard with both the Department of Insurance and the administration to try to prepare for an exchange if the state in fact has to do one. Obviously, everyone is not thrilled about trying to do one, but if it's something that the courts determine that we need to do, we don't want to be behind the eightball if we have to do it later. So, thank you. I would be happy to try and answer any questions. [LB219]

SENATOR CAMPBELL: Any questions? Thank you very much for catching my attention. [LB219]

KORBY GILBERTSON: Thank you. [LB219]

SENATOR CAMPBELL: Anyone else in a neutral position? Okay. Senator McCoy, would you like to close on your bill? [LB219]

SENATOR McCOY: I would, very briefly, Senator Campbell, and thank you. I guess one brief thing I would bring to the committee's attention is that even with these latest developments, demonstrating that probably this will likely end up in the Supreme Court yet on their docket for the start of their session this year in October, it doesn't change the fact that Judge Vinson, in his summary, stated, because the individual mandate is unconstitutional and not severable, the entire act must be declared void. So even though he paved the way in order for this to be fast-tracked, that did not change, it appears, his belief on the individual mandate, which is the key component of what we're trying to do here in LB219. But, obviously, as it's been stated, regardless of the issues or opinions around this issue, it clearly is the case that this will be decided, it appears, by Supreme Court. And, as I said in my opening, I appreciate the committee's indulgence to, hopefully, hold this legislation till we know what may happen at the federal level of the Supreme Court. [LB219]

SENATOR CAMPBELL: Thank you, Senator McCoy. Any final questions or comments? Senator Krist. [LB219]

SENATOR KRIST: Senator McCoy, I apologize for not being here. I was testifying in another committee, but I have read the proposed bill, and I understand that you're going to hold it. But I have my idea of, potentially, a chronology that might happen. I'm sure you do too. If, indeed, the Supreme Court would overturn and declare that the entire bill

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

Health and Human Services Committee  
March 09, 2011

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would be nullified, where do you see that chronology falling, and are we going to be able to react to it in the 2012 short session, the second session of the 102nd Legislature? [LB219]

SENATOR McCOY: Well, Senator Krist, that's a question that I did say in my opening, and Senator Gloor and I had a brief exchange on that. As Vice Chair of the Banking, Commerce and Insurance Committee, we certainly are dealing with this issue already in concert with the Department of Insurance. And clearly, talks are underway on implementation of this legislation well in advance of 2014, knowing full well what's going on in the courts. And it is somewhat hard to speculate, I guess, and a long answer to your question on, if the Supreme Court were to rule that it is either not severable, therefore, all of it is unconstitutional or part of it is. You know, I suppose it's possible if they may rule that the individual mandate is unconstitutional, but it is severable from the rest of the...I'm not sure where that would leave us. So, certainly, we would do our best job in a short session, next session, to address that, provided the court would deal with this issue at some point this fall before the end of the year. It's just...not being an avid court-watcher, I'm not sure exactly, and especially with something with this much of an impact nationally, it's, I guess, hard for me to speculate on what the court may do, and how we would be able to then answer and follow up in the short session with a plan in place to address that. [LB219]

SENATOR KRIST: And I agree with your chronology, and I would say, for the record, that, potentially, this Legislature, the 102nd Legislature, should certainly consider the potential, the necessity, of having a special session in late '12 to be able to react, because I think if I'm looking at the chronology, it's going to be summer of '12 before we're going to see some of these decisions, if not later. So, thank you, sir. Thank you for bringing it forward. Thank you, Chair. [LB219]

SENATOR CAMPBELL: And with that, we will close the public hearing on LB219. Next up is a Legislative Resolution hearing, LR21, brought by Senator Janssen to provide the Legislature reject the Affordable Care Act and call for repeal of the act by Congress. Welcome, Senator Janssen. (See also Exhibits 4, 5) [LB219]

SENATOR McCOY: Thank you. [LB219]

SENATOR JANSSEN: Thank you. Senator Campbell, members of the Health and Human Services Committee, for the record, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent District 15, which is Fremont and all of Dodge County. I appear before you today to introduce LR21. I would like to, I guess not totally repeat Senator McCoy, and my appetite for putting this forward has changed considerably since the time I put it forward. So would ask the same of you that Senator McCoy asked in potentially holding or--I hate to say it--doing whatever you want with it at this point in time (laugh). But I do want to, for the record, explain why I brought it. As a small

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

Health and Human Services Committee  
March 09, 2011

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business owner in Fremont, when something like this or anywhere in Nebraska, for that matter, but me, specifically, something like this comes down, you feel powerless in what you can do, and you just don't know how...and that's what really concerned me is where do I go as a business owner? How do I react to something that's just so unknown at this point? So, I guess I'm not speaking in opposition. You could almost put me in neutral testimony on my LR, but I want to read what lead me to it. And that's...this opening was written quite some time ago with just some updates in it. I would like to read it into the record and let you go on about your day. [LR21]

SENATOR CAMPBELL: Thank you. [LR21]

SENATOR JANSSEN: LR21 would express the Legislature's rejection of the Federal Health Care Reform Law, commonly referred to as the Affordable Care Act 2010, and ask the Congress of the United States to repeal it. The Affordable Care Act is presently being challenged in federal courts all over the United States over its many flaws. Judges in several circuit courts have issued conflicting rulings on the act's constitutionality. There is widespread belief that the act's premise, that the commerce clause of the United States Constitution can force an individual citizen to purchase private goods or services is a stunning abuse of the limited powers granted Congress in Article I Section 8. Notwithstanding that abuse of the U.S. Constitution, the ACA is also premised on an unbelievable exercise in accounting gamesmanship. I should note a lot of this was pulled from my readings over the interim in national newspapers. So I have no issue with the CBOs--Congressional Budget Office's work on the ACA. They did exactly what the Congressional Budget and Impoundment Control Act of '74 requires. I do have serious issues with the previous Congress to make the numbers work in the act and force the CBO to release their observed results on the federal accounting of the ACA. A Washington Post editorial appearing on their January 21, 2011, edition explains the exercise well. The CBO is required to accept every assumption, promise of future spending cuts, for example, and chronological gimmick that Congress gives it. All the CBO then does is perform the calculation and spit it out, and spit out the result. In fact, the whole Obama care bill, as it's called, was gamed to produce a favorable CBO number. Most glaringly, the entitlement it creates, government subsidized health insurance for 32 million Americans doesn't kick in until 2014. That was deliberately designed, so any projection for this decade would cover only six years of expenditures while that same ten-year projection would capture ten years of revenue. With ten years of money inflow over six years of outflow, the result is a positive, i.e. deficit-reducing number, surprise. If you think that's audacious, consider this. Obama care does not create just one new entitlement, healthcare insurance for everyone, it actually creates a second long-term care insurance. With an aging population, and with long-term care becoming extraordinarily expensive, this promises to be the biggest budget buster in the history of the welfare state. And yet, the CBO calculation--this new entitlement to long-term care--reduces the deficit over the next ten years by 70 billion, no less. How is this possible? I should say that again--by 70 billion, no less. How is this possible? By

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

Health and Human Services Committee  
March 09, 2011

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collecting premiums now and paying out no benefits for the first ten years, presto, that's how you come up with a temporary surplus. As former CBO Director, Douglas Holtz-Eakin and scholars, Joseph Antos and James Capretta note, only in Washington could the creation of a reckless entitlement program be used to offset, to grease the way for another entitlement. I would note, additionally, that only in Washington could such a neat little swindle be titled the "Class Act for Community Living Assistance Services and Support Act." That health care reform law of such enormous size and consequence revolutionizing one-sixth of the U.S. economy could be sold in such a flimflammy is astonishing, even in Washington standards. And that is from a Washington Post. I know some of those words are pretty jaded, and they're not mine. They're pretty much copy-paste words. I hope that LR21 might provide one opportunity for Nebraskans to further examine the accounting behind the ACA. I am certainly glad that Congress accounting methods are not used by our legislative Fiscal Office. A few other news articles deserve mention. According to an article that appeared in the Lincoln Journal Star on January 21, 2011, Medicare program's chief actuary, Richard Foster, reported on January 26 that the ACA probably won't hold costs down, and it won't let everybody keep their current health insurance if they like it. He previously doubted that Medicare cuts would prove to be politically sustainable. Again, the Journal Star at this time, on January 28, 2011: Medicare will have to be cut by about 6 percent over ten years in order to finance the ACA. This assumes Congress has the will to do so. They have shown little to no commitment to required cuts in years past, and, traditionally, passed one-year suspension over cuts due to strong public demands. I think the majority of Nebraskans have grave reservations or, like me, confusion about the Affordable Care Act. LR21 provides us, as a state Legislature, to make our opinion known on the uncertainty of the act's effects on our citizens. It could also indicate our concern that the ACA will not only increase the federal deficit, it also increases our state budget costs through the large expansion of the Nebraska Medicaid program. You are all aware on the impact on Nebraska's Medicaid programs are between \$106 million for fiscal year '14 through '19 and \$691 million for fiscal year '11 through '20, depending on whether you prefer to study results of the Kaiser Family Foundation or the Millen Study commissioned by the Department of Health and Human Services Division of Medicaid and Long-Term Care. Those are the reasons I brought LR21 initially, and those are...I guess I read a lot of newspapers. I don't typically come into committee hearings and read from newspaper articles, but this is more as a Nebraska business owner coming forward. I usually don't even delve into this committee, although it's a pleasure to appear before this committee as one of my classmates chairs it...the first one, I believe. But I just wanted that on the record, and appreciate the time that you've given me to say that today. [LR21]

SENATOR CAMPBELL: Thank you, Senator Janssen. Questions or comments? If not, we'll go to the proponents and... [LR21]

SENATOR JANSSEN: Thank you very much. [LR21]

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

Health and Human Services Committee  
March 09, 2011

---

SENATOR CAMPBELL: Can I have a show of hands of those who wish to testify in favor of the legislative resolution? Those who wish to testify in opposition? Same two. Neutral? Okay. We will start with the opponents to the bill. Good afternoon. [LR21]

MARK INTERMILL: (Exhibit 6) Good afternoon, Senator Campbell and members of the committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today representing AARP. I think...I agree with Senator Janssen that there's a lot of confusion about the Affordable Care Act. And one of the items in the resolution that caught my attention was on the...the whereas that indicates that the Affordable Care Act will harm seniors by making cuts from the Medicare budget, causing seniors to lose health insurance coverage they currently possess. So, I wanted just to bring to you some information, and this is from the CBO about what those Medicare cuts, where they come from. There are two primary sources of the cuts. One is the Medicare Advantage payments. Medicare Advantage payments is the private insurance company that's available to Medicare beneficiaries who opt out of the program. At the current...in 2009, when the act was passed, the payments were equivalent to about 116 percent of the cost to providing Medicare coverage. So this is an attempt to try to control those costs so that they are in line with what Medicare beneficiaries or what the costs of providing care to Medicare beneficiaries are. There are a number of other programs where the Medicare Payment Advisory Commission had identified areas where the Medicare margin for certain services was in the 16 percent range, and there had been some attempts in the Affordable Care Act to bring those back down to a more reasonable level. Medicare Disproportionate Share Hospital payments which go to hospitals because of uncompensated care. If the Affordable Care Act works and more people are covered, we won't have as much uncompensated care, so we don't need as much in the way of disproportionate share payments. So these are just some of the things that we are included in the Affordable Care Act that will help control the cost of Medicaid, about \$400 billion over the ten-year period. I think that these are things that can...are reasonable changes to make. And I think there was a reference to the physician payment issue where Congress has overridden previous attempts to control those costs, but I think, in that case, there is a problem with the...basic problem with the formula, that if we could get at that, we could probably be able to control those costs as well. So I just wanted to appear here in opposition to the resolution and just bring some information to the committee about what some of the cost containment in the bill is related to Medicare. So, be happy to try to answer questions. [LR21]

SENATOR CAMPBELL: Any questions, comments for Mr. Intermill? Thank you for coming today. [LR21]

MARK INTERMILL: Thank you. [LR21]

SENATOR CAMPBELL: The next opponent? [LR21]

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

Health and Human Services Committee  
March 09, 2011

---

GEORGE LYFORD: (Exhibit 7) Good afternoon, Senator Campbell, members of the Health and Human Services Committee. For the record, my name is George Lyford. That's G-e-o-r-g-e L-y-f-o-r-d. I'm here on behalf of Nebraska Appleseed Center for Law in the Public Interest in opposition to LR21. I just want to go into a few of the things that the Affordable Care Act is already doing for Nebraskans and what would consequently be taken away if LR21 were to go forward or any other appeal measure of the Affordable Care Act. I'd first like to say that I appreciate Senator Janssen's asking to hold onto LR21 for the time being as there is a lot of unknown surrounding the Affordable Care Act. But I'd like to go into some of the knowns, and those knowns are how the Affordable Care Act is already benefitting Nebraskans. Certain portions of the bill went into effect last year. Among other things, insurers are now unable to deny children for preexisting conditions. Individuals cannot be dropped off of their coverage if they encounter an unexpected illness or catastrophe in their life. Parents are allowed now to keep their children on their insurance policy until their children reach age 26, and small businesses in Nebraska cannot take advantage of tax cuts to help them provide coverage to their employees. As you know, and as we've discussed here this afternoon, healthcare costs are really pinching everybody's budget. Senator Janssen is here on behalf of small business owners, and it's true. Small businesses and farmers are just unable to provide coverage for their workers, especially businesses with fewer than ten employees. They can't take advantage of the large group coverage that larger employers can take advantage of. Between the period of 2007 and 2008, one out of four Nebraskans under age 65 went without insurance for a period of time, be it several months or six months or all of the two-year period of 2007 to 2008. And so, the Affordable Care Act is meant to bring some kind of consistency and security to these individuals. Now, beyond just those "knowns" that I mentioned, the aspects of the Affordable Care Act that have already gone into effect, countless more Nebraskans will benefit from measures in the law that have yet to go into effect, among which are the fact that insurers will not be able to deny coverage because of a preexisting condition. LR21 is an attempt to take all of this away, not only what is in effect already under the Affordable Care Act, but what has yet to go into effect. Our concern is also in some of the language in LR21, which includes some inaccuracies that we believe that the Legislature should not endorse. Among other things, that the Affordable Care Act makes the quality of healthcare worse, that it limits access to healthcare, that it hurts businesses, and generally, hurts the freedom of individuals to purchase insurance as they...or health coverage as they wish. We don't believe that these statements accurately reflect the Affordable Care Act. As we move forward, we're interested in the aspects that have gone into effect under the law; those that have yet to go into effect, and other efficiencies that the Legislature is really spearheading the way on like the medical home pilot, among other things. And we applaud those measures. And so, with that, I'd just like to close by saying that we respectfully request that the committee not advance LR21, and thank you for your time. [LR21]

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

Health and Human Services Committee  
March 09, 2011

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SENATOR CAMPBELL: Thank you, Mr. Lyford. Questions or comments? Senator Bloomfield. [LR21]

SENATOR BLOOMFIELD: Yes. Do you and your organization really contend that a young man or young woman at the age of 25 is still a child? [LR21]

GEORGE LYFORD: Senator Bloomfield, I don't know if we, you know, want to go into the semantics of that. But I think that the policy behind covering or allowing parents to keep their children on their coverage until they're 26 is sound, based on, you know, the economic turmoil that our country has been experiencing in the last several years. It's been difficult for people, for younger people my age and a lot of my friends that are in their mid-twenties have found it difficult to find jobs straight out of college. And I believe that that's sound policy if parents want to keep their kids on their insurance. [LR21]

SENATOR BLOOMFIELD: My son didn't have much trouble finding insurance in his mid-twenties in the Army. Thank you. [LR21]

GEORGE LYFORD: Thank you. [LR21]

SENATOR CAMPBELL: Any other questions or comments? Thank you, Mr. Lyford. [LR21]

GEORGE LYFORD: Thank you very much. Good afternoon. [LR21]

SENATOR CAMPBELL: Any others in opposition? Good afternoon again. [LR21]

JULIE ERICKSON: (Exhibit 8) (Inaudible) (laugh). My name is Julie Erickson, J-u-l-i-e E-r-i-c-k-s-o-n. I, again, am the registered lobbyist for the Center for Rural Affairs. With this particular legislative resolution, it's a little different than the last. The last was the mandate, individual mandate issue that certainly has been a lightning rod for a lot of the political discussion around healthcare reform. This particular legislation, though, goes further in looking at the entire Affordable Care Act. And I'm going to go ahead and put some of this into the record this time around. LR21 requests the Legislature to reject the Patient Protection and Affordable Care Act and call for the repeal of the law by Congress. As we all know, Congress took up the bills to repeal the act soon after the new Congress convened earlier this year. While a mild majority of the U.S. House voted to repeal the law, a majority of the U.S. Senate did not. The Affordable Care Act is still the law of the land, and will be for the foreseeable future. LR21 also contains a series of opinions about the Affordable Care Act. These opinions are, no doubt, sincerely held by a lot of people. According to the surveys by the Commonwealth Fund, a private foundation working toward a high performance health system, more than nine, if not ten leaders, in healthcare policy believe Affordable Care Act sets the right course for health care reform, and nearly seven of ten of the general public, 68 percent, experts favor

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

Health and Human Services Committee  
March 09, 2011

---

implementing the law with little or no change. Hundreds of thousands of Nebraskans will benefit from the provisions of the act. Those are with preexisting conditions, children with preexisting conditions, those with young adult children, those with severe health conditions, all those facing loss of their insurance will all benefit from the law. Over 33,000 Nebraska small businesses are eligible to receive tax credits under the Affordable Care Act to help provide and pay for health insurance for their employees. And in 2014, thousands of Nebraskans will receive assistance to help offset the costs of their health insurance, most importantly, the nearly 250,000 Nebraskans without health insurance who often go without necessary healthcare that endangers their health and life, and who impose a hidden tax for healthcare costs on those with insurance. LR21 seeks to take all of these benefits away from Nebraskans who need them. If the ultimate goal of LR21 would come to fruition, many Nebraskans would be worse off. The Affordable Care Act is certainly not perfect, and it needs work in the future to make it better. But that is the history of recent domestic policy achievements, notably Social Security and Medicare. They were created and became law to address serious issues that have been tweaked and improved through the years. In fact, LR21 even recognizes the need for a strong Medicare program. Bettering, not ending the Affordable Care Act is the right response to our nation's healthcare challenges. We believe that LR21 is unnecessary and potentially damaging to health and economic interests of many Nebraskans. And for those reasons, we oppose the resolution. Thank you. [LR21]

SENATOR CAMPBELL: Any questions or comments? Thank you, Ms. Erickson. [LR21]

JULIE ERICKSON: Thank you. [LR21]

SENATOR CAMPBELL: Any others in the room who wish to testify in opposition? Those who wish to testify in a neutral position? (Laugh) I thought maybe I had it wrong this time. [LR21]

KORBY GILBERTSON: Good afternoon, again, Madam Chair, members of the committee. For the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Association of Health Underwriters. As I discussed on the last bill, the Health Underwriters do not have a specific position on this legislation. However, they would hope that you would hold it in committee while we figure out what is going on with this process. [LR21]

SENATOR CAMPBELL: Okay. Any questions or comments? Thank you, Ms. Gilbertson. [LR21]

KORBY GILBERTSON: Thank you. [LR21]

SENATOR CAMPBELL: Also testifying in a neutral position? [LR21]

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

Health and Human Services Committee  
March 09, 2011

---

RON KLUTMAN: Good afternoon. My name is Ron Klutman. I'm a family physician from Columbus, Nebraska, where I've practiced for the last past 35 years. I think my son, who is down here helping me, probably will leave, because every time he hears his father talk, he takes off. I was initially not going to comment, but I thought I needed to at this point in time. I became interested in the uninsured and underinsured citizens of this state back in 1990 when we had what was called the Blue Ribbon Commission on Healthcare. At that time, we were trying to propose legislation that would cover all citizens of this state. What we've learned very quickly as we put so many Christmas decorations on the tree, it became unaffordable. Approximately four years ago, the Nebraska Medical Association, mandated by its physicians, decided we had to decide some way we can cover the citizens of the great state of Nebraska. So, over the next three years, maybe once a month, under some great leadership, we proposed a legislative bill that I think is still on hold at this point in time. Our two main things, as we looked at healthcare, is, first of all, we have to cover our citizens, and the main reason for that is a practicing physician, different than many of you...I've had at least three people die in my office, because with heart conditions, with chest pains, their deductible was \$10,000. Instead of going to the emergency room where they should have, they decided they couldn't afford the emergency. They came to my office, and they died in my office. So it's a real thing. As you look at the farmers and many small businesses, when you start talking about a \$10,000 deductible, that becomes sufficient for them to try to get the cheapest healthcare. I'm a small businessperson. I have 30 people in my clinic. I know what the cost of medicine is right now. We have to change our policy every year, trying to keep up with deductibles, health savings accounts, and it is a real hardship on our employees, just for us to afford. We truly believe that we need to cover our employees, because I'm in the world of healthcare. So, I think there is real reason why we need to do this. Two years ago, I sat down as representing Greater Nebraska to the AMA House of Delegates and heard a large debate in the AMA if we were going to support the present bill that was going through Congress. We eventually supported it, but that's why I'm in a neutral capacity at this time, because there are things in that, that we didn't quite accept which lead us to our second point that we and physicians, that any of this has to be fiscally sound. And I think the bill we brought forward was fiscally sound. We cannot keep skyrocketing healthcare costs as they are. And one of the premises is that we need to start basing healthcare on evidence-based medicine. And what I mean by that is, that before a procedure, before ability to treat a patient, it needs to be proven in clinical trials before it's released across the country. I think the prime example, and many of you may not remember this, but at one time, the treatment for end-stage breast cancer was bone marrow transplant. And there was billions and tens of billions and 20 billions of (inaudible), no evidence. There was never any evidence that this was effective, but this was...I mean, these people were desperate, and that's what we did. Finally, the clinical studies came out and showed not only was it not effective, it was probably harmful for the patients. So, when we start trying to decide about healthcare costs, we have to start looking at the evidence-based medicine. I thank

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

Health and Human Services Committee  
March 09, 2011

---

Senator Gloor for bringing in the medical home. We truly believe that this is some way we can drive the cost. When we introduced the bill, we were very comfortable. We went to the Nebraska Bar Association, the AARP, the Nebraska Hospital Association, and I think we got everyone basically to sign on. And I think, really, we can show over ten years that we could bring the cost of healthcare in this state down. We're (inaudible) on a national debate, and I have no problems with that. I think, at this point in time, the national debate really has done some significant things. Three years ago, I fell on the ice and broke my back. After three hospitals and ending up at Mayo's to have it pinned, it cost us \$350,000. I had not taken \$1 out of health insurance in over 40 years. You can imagine what happened to my health insurer. They would still give us health insurance at 200 percent increase over the year before. So it is a real reality. The insurance companies will cover you, but at such a tremendous cost, no one can afford it. We only need to look at covering kids up to 26, and my point, they probably are just still children. We look at other things, not being denied for preexisting disease. So I guess that's...I'm sitting here talking neutral, because I think there's real benefits on the national. I happen to believe ours is more fiscally responsible, and so that's why I need to take a neutral position. Thank you. [LR21]

SENATOR CAMPBELL: Thank you, Dr. Klutman. [LR21]

RON KLUTMAN: Did he leave? [LR21]

CLERK: No. [LR21]

SENATOR CAMPBELL: No. He was very patient through it all. [LR21]

SENATOR KRIST: He's got his fingers in his ears, though. [LR21]

RON KLUTMAN: What? I know, I know. Go ahead, yes, Senator. [LR21]

SENATOR CAMPBELL: Senator Gloor. [LR21]

SENATOR GLOOR: My thanks to the Chair. And he's grinning from ear to ear, you'll be pleased to know. Thank you, Dr. Klutman. You and I have talked about healthcare reform before. In fact, just walking into the room today, having those discussions with you and your son. But it's interesting and worth noting that you're here in a neutral capacity. Although you recognize the issue of access, you also have a profound concern about cost, and therein lies the problem with the Affordable Care Act. Senator Janssen, who points himself out as a small business owner, fails to point out, and I don't know why he does this, because it bolsters his case. His small business happens to be in healthcare, and he, like you, with a number of people who have increased access to healthcare, that's good for business. Good for your business and good for him, yet has some concerns, serious concerns about, is this the right way to go? You don't

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

Health and Human Services Committee  
March 09, 2011

---

necessarily have to agree with your neutral stance or his bill, but certainly, you both feel this way about principle and not because of business interests, and it's one of the reasons we do need to think long and hard about the path that we're going to go down or the path that we want to go down. More of a statement, but an opportunity for you to talk longer if you'd like to respond in any way. [LR21]

RON KLUTMAN: No. You know, I know how difficult it is as a legislator, as you face this issue because I know how long it took us...over three years, with, I think people that are very well informed about healthcare even trying to come together with real expertise in the room. And your job is not easy. Ours was fairly easy. We have two principles. We were going to insure every resident in the state of Nebraska with insurance that they could afford, and we were going to try to make this fiscally responsible, so that's what we drove at, and I think we were successful. [LR21]

SENATOR GLOOR: Thank you. [LR21]

SENATOR CAMPBELL: Other questions or comments for Dr. Klutman? Please give our best to everyone in Columbus and certainly to the federal healthcare clinic. You've been a real champion for it, I know. [LR21]

SENATOR GLOOR: And Senator Stuthman. [LR21]

RON KLUTMAN: Thank you. [LR21]

SENATOR CAMPBELL: And Senator Stuthman, yes. [LR21]

RON KLUTMAN: Yes. [LR21]

SENATOR CAMPBELL: Anyone else in the neutral position? Sir, did you wish to testify today? Sir? Did you want to testify today? [LR21]

RICHARD HEDRICK: Yes. [LR21]

SENATOR CAMPBELL: Okay, on the legislative resolution? [LR21]

RICHARD HEDRICK: I'm against these two bills. [LR21]

SENATOR CAMPBELL: Could you state your name and spell it for us? [LR21]

RICHARD HEDRICK: Richard Hedrick, H-e-d-r-i-c-k. [LR21]

SENATOR CAMPBELL: Thank you. [LR21]

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

Health and Human Services Committee  
March 09, 2011

---

RICHARD HEDRICK: These two bills are what you'd say, die quickly. You're not going to pay for it. Somehow I don't know how some bills or some people go to the hospital, and they have to take care of them. But not all people have to be taken care of, and we know if they cannot pay for it, why you go into the emergency ward, the hospitals just add it to the people that can pay. So, it's being paid one way or the other if they are getting...my experience, I thought I had VA, and I had a brain hemorrhage, and I went to the VA, and they sent me over to the St. Elizabeth's and found out that they didn't...I hadn't gone out there for two years, so they canceled it. And my wife, she's a stickler on insurance, so she had been paying Medicaid or Medicare for me, so that covered a lot of my expenses. But I still had \$1,000 to pay for the doctors. And so, there's this. We've got a big problem. My opinion is, a lot of the problems is that there are not enough doctors. I remember when I was in high school, my wife and mother's sister had a doctor for a good friend or she married a doctor. And the doctor was bitching at a party that he had to work so hard. The lawyer heard him, and he says, I don't feel a bit sorry for you, because I have people that want to go in the doctor's profession, and I can't get them in, because there's a quota. And there's still a quota. We need to do something about this problem for. Arizona, they've got something like 90 people waiting for transplants, and then they cut off...the government cut off the money for them, and two of them died. And I don't know what's going to happen to the rest of them. [LR21]

SENATOR CAMPBELL: Okay. Thank you, Mr. Hedrick. Any questions or comments? Thank you for coming today. [LR21]

RICHARD HEDRICK: You what? [LR21]

SENATOR CAMPBELL: Thank you for coming today. [LR21]

RICHARD HEDRICK: Oh, thanks. [LR21]

SENATOR CAMPBELL: Seeing no one else in the hearing room who wishes to testify, Senator Janssen, do you wish to close on your resolution? [LR21]

SENATOR JANSSEN: Thank you, Chairman Campbell. I appreciate the discussion, and that's what I ended up bringing this for. I would also probably want to get a transcript of this hearing, because I believe I heard Nebraska Appleseed say, "We appreciate Senator Janssen," so that's something that I haven't heard (laughter) for quite some time. I'd like to thank Mr. Lyford for that. Senator Gloor, you brought up a good point. Perhaps I should have you writing my openings, but (laughter)...and it was intentional...I'll say it's intentional now, but...to leave that out, because people kept asking me about healthcare and what's it going to do to your business? And, I said, I really don't know. And any time we're talking about my business which is healthcare staffing, and you're talking about throwing billions upon billions of dollars into a certain industry, as a business owner you have to think you're going to benefit from that

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

Health and Human Services Committee  
March 09, 2011

---

somehow. And the other side...the conservative side of me obviously says, no, this is not right. But also, it was brought up, we started talking about number of employees, and about the confusion that I've had, and I think many other people have had. The company I own, RTG Medical, we kind of hover between 40 and 50 employees, and, coincidentally, that's kind of the number that has been tossed around is 50 employees before certain provisions of this come into effect. And, also, when I talk about how many employees do we really have? We have 250 employees that work for us in a full-time nature out across the entire United States right now. Those are nurses, some physicians, and physical therapists, speech therapists. I'll save my time on my commercial here, because...unless they're really going to put this on TV tonight, and then I can give a phone number and a Web address. But that was another concern, though. When they look at me as the CEO of a company and say, how is that going to affect you? And I said, I'm a little bit scared, because I don't know how many employees, and I don't know how they would be classified. They're certainly not independent contractors. We insure them. Like the doctor...his last name escapes me...running the company. We pay for health insurance for our employees. I'm in the position where this is now my eleventh year of owning a company and seeing a company's insurance rates raise the way they have, and with one employee...just one employee having a certain event happen in their life, how it dramatically affect...it affects a small pool. So, I can see a reason for this type of legislation, but I just want to proceed cautiously. And I have talked to Senator Pahls and Banking and Finance and Insurance Committee, and following this very closely. And, Senator Bloomfield, there's no way you'll ever get me to believe that a 26-year-old is a kid (laughter). Thank you. [LR21]

SENATOR BLOOMFIELD: Thank you. [LR21]

SENATOR JANSSEN: Thank you. [LR21]

SENATOR CAMPBELL: Any questions or comments? We'll close the public hearing on LR21, and that is all the hearings that we have today. We would ask that our guests quietly leave the room. We will go into Executive... [LR21]