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Judiciary Committee
March 09, 2011

[LB461 LB521 LB690]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 9, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB461, LB521, and LB690. Senators present: Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: Brad Ashford, Chairperson.

SENATOR LATHROP: Good afternoon. My name is Steve Lathrop. I'm the Vice Chair of the Judiciary Committee. Senator Ashford is introducing a bill in another committee, Revenue Committee, and so he's not going to be here at least as we start our day. And I'm still waiting for enough people to get here so that we can start our proceedings. I think I have to have at least a quorum before we can start. So maybe we can be calling senators and finding out where they're at and encouraging them to get here. In the meantime, I'm going to give you a little preview--and I was just told this was Senator Ashford's rule--and that is we have three bills and they are three bills of important consequence. In order that we get out of here in a timely fashion, and that we allow everybody an opportunity to testify, you may be sitting here thinking I want to testify on every one of these bills. And what I'm going to suggest to you is that in the time it takes for me to round up enough senators to get started, perhaps you could talk to folks who think like you do and are of the same mind and intend to say essentially the same thing, because we're going to go an hour a bill, which would be about a half-hour a side. So we'll have the senator introduce it and we'll start taking proponents for a half-hour and then opponents for a half-hour, neutral testimony, wrap it up, and move on to the next bill. And that might mean that you want to coordinate with people that are going to testify in a manner similar to you, so you can do that while we're waiting for at least one person to show up. Okay? And we'll get going in a few minutes. Thank you. (Pause) Okay. Again, my name is Steve Lathrop. I am Vice Chair of the committee since Senator Ashford is not here. And I expect him along later. He's introducing a bill on kind of big deal over in Revenue. We are going to start with LB461. That's Senator Pirsch. We'll have Senator Pirsch introduce his bill. And everybody is on the light system today, and that's another thing I should explain because we do have some people here who are not familiar faces. Go ahead, Pete, and then I'll...the light system basically works this way. It's on a three-minute timer. You'll get a green light when you sit down. We'd like you to give us your name and spell your last name, and your first if it's a little unusual. I mean if it's Mary and we know how Mary is spelled, that's great, but if it's something more unusual (laugh), then--I was looking around for an unusual first name--then please spell both your first name and your last name, and then you can give us your testimony. If you have handouts, you can give them to the pages and they will share those with the committee members. You'll get a green light for two minutes, then it will go to yellow and you'll have one minute. When it goes to yellow, you ought to be thinking that I got one minute to wrap it up. And when it turns red, I will ask you to stop. Okay? I don't want to have to interrupt you because I always feel rude when I have to

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do that. When you see the red light, that means stop. And if any of the committee members have a question, they'll ask you. Okay? All right, with that we'll start, and begin with Senator Pirsch and LB461. Welcome, Senator Pirsch.

SENATOR PIRSCH: Thank you, Vice Chairman Lathrop, members of the Judiciary Committee. My name is...I'm State Senator Pete Pirsch, and the name is spelled, for the record, P-e-t-e P-i-r-s-c-h. I represent Legislative District 4. I am the sponsor of LB461, the Freedom of Conscience Act. LB461 sets forward a number of important areas where employees cannot be discriminated against by a healthcare facility based on their religious beliefs or morals in a number of different context. And I would call your attention, if you're looking at the bill, to page...under Section 3 on page 3, the context are set out in (a), (b), on the next page, (c) and (d). Those would include in the context of an abortion; (b) in a context of an experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissues derived from the destruction of same; (c) an experiment or a medical procedure on an in vitro human embryo that is not related to the beneficial treatment of that in vitro human embryo; (d) an experiment or medical procedure on a developing child in an artificial or natural womb, at any stage of development, that is not related to the beneficial treatment of the developing child; and finally, (e) a procedure, including a transplant procedure, that uses fetal tissues or organs that come from a source other than a stillbirth or a miscarriage; or finally, (f) an act that intentionally causes or assists in causing the death of an individual. So that is kind of the heart...I'll go into the heart of the bill. There are, I understand as I look around and see the room, quite a large number of those testifying here on this bill and others. And so I'll keep my introduction very brief. And with that, I'd just point out that there is, in Section 4, another important facet, which is on page 4. It states, under the bill: No health care facility is required to admit any patient or to allow the use of the health care facility for the purpose of performing any of the acts specified in section 3, as I've gone over, of this act, as well. With that, I will open myself up to questions... [LB461]

SENATOR LATHROP: Very good. [LB461]

SENATOR PIRSCH: ...with the understanding that there are quite a few testifiers here to follow me that... [LB461]

SENATOR LATHROP: Good. [LB461]

SENATOR PIRSCH: ...yeah. [LB461]

SENATOR LATHROP: Any questions for Senator Pirsch? Senator Council, you're recognized. [LB461]

SENATOR COUNCIL: Yes. Thank you, Senator Pirsch. [LB461]

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SENATOR PIRSCH: Yes. [LB461]

SENATOR COUNCIL: I've been reviewing the provisions of LB461, and my question goes to the prohibition against a health facility being required to admit a patient or allow the facility to be used for any of the acts listed, and one of them being an abortion, unless the woman is in imminent danger of death. [LB461]

SENATOR PIRSCH: Yes. [LB461]

SENATOR COUNCIL: Now there's been a lot of discussion and concern addressed regarding the issue of fetal anomalies as...an exception that should be considered. And, in fact, I'm mindful of the article that just appeared recently in the newspaper about the mother who discovered that her embryonic fluids had been released and that she and the child were experiencing womb contractions to the point that it was harmful to the child and harmful to the mother. As I read your bill, if in an emergency situation, she would not be able to be admitted? [LB461]

SENATOR PIRSCH: I'm sorry. Is that the... [LB461]

SENATOR COUNCIL: That's my question. [LB461]

SENATOR PIRSCH: That's the question. [LB461]

SENATOR COUNCIL: Yes. [LB461]

SENATOR PIRSCH: In an emergency situation, she would not be able to be admitted? [LB461]

SENATOR COUNCIL: Yeah, under your bill, would she be allowed to be admitted? [LB461]

SENATOR PIRSCH: And I have to apologize. I'm not familiar with the facts or details of...I understand that a late-breaking incident has...of which you referenced, has...I think I had received some e-mail making vague reference to an incident, but I have not been provided the particular details of that incident to which you refer other than it's occurred. And the e-mail came, I think yesterday, and so I don't know what that is. But with respect to the bill, there is...and I'm trying to find the correct provision...but, yes, there is a provision in there with respect to the life of the mother, saving the life of the mother. And when it comes to term fetal anomalies, if they rise to the level where they would cause the death of the mother, then certainly that is encompassed in the bill where freedom of conscience...that could not cause the invocation of this if there is going to be a death that results as a result of it. [LB461]

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SENATOR COUNCIL: What about a multiple birth where the life of one of the fetuses is at risk if the other fetus isn't terminated? [LB461]

SENATOR PIRSCH: Well, you know, I certainly can look at this. I mean I'd have to take a specific look at the way that the bill is constructed with respect to kind of unusual circumstances. But I believe you're saying if it required the death of all children to save them... [LB461]

SENATOR COUNCIL: One of them--it's an abortion. One of them. [LB461]

SENATOR PIRSCH: Of one of the children to save the life of the mother? [LB461]

SENATOR COUNCIL: Of the other. [LB461]

SENATOR PIRSCH: Oh, you're saying in... [LB461]

SENATOR COUNCIL: Multiple. Multiple fetuses. [LB461]

SENATOR PIRSCH: In circumstances. [LB461]

SENATOR COUNCIL: Yes. [LB461]

SENATOR PIRSCH: Well, I'd have to...you know, I'm have...not sure...to be quite honest, I haven't become aware of an incident that's occurred in the past, and so I haven't taken a specific analysis of the bill with respect to treating that kind of unusual situation. But I certainly can look at that and would be willing to work with this committee in terms of if there's any concerns or issues that you have with respect to that, you know, kind of unusual or off-the-norm type of situations that occurred. But the general approach of the bill is, you know, if, you know...you know, when it usually comes up is the life of the mother, if that is threatened, and to the extent that the mother will die then this would not be an act that could be invoked in a protective manner. [LB461]

SENATOR COUNCIL: And let me ask about the civil cause of action. I didn't see anything in the bill that would deprive an individual of a cause of action if he or she was terminated for refusing to participate in a particular procedure if that individual knowingly accepted employment, knowing that those procedures were going to be administered. [LB461]

SENATOR PIRSCH: Yeah. Well, the... [LB461]

SENATOR COUNCIL: There's nothing in your bill that says that they would have no cause of action. [LB461]

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SENATOR PIRSCH: Well, I...yeah, there's nothing in the bill that would distinguish individuals who take specific jobs who would be a general approach to individuals who would be covered by the freedom of conscience. So it's a generalized approach in this bill, and, you know, it doesn't distinguish in that manner. [LB461]

SENATOR COUNCIL: So if I knowingly...if I take a position at a place where I know that these procedures are regularly performed, under your bill I would still have a cause of action if I was terminated or disciplined for failing to carry out my job. [LB461]

SENATOR PIRSCH: Well, it would seem highly unlikely...I don't believe it's ever come up in those jurisdictions that do...many jurisdictions, of course, have a broad Freedom of Conscience Act. And I don't believe, to my knowledge, I've ever become aware of an instance where that has come up, where somebody knowingly sought employment at an abortion clinic and then began systematically to invoke the Freedom of Conscience. Is that what you mean? [LB461]

SENATOR COUNCIL: I...certainly the potential exists, doesn't it? [LB461]

SENATOR PIRSCH: Well, I guess it has been a...something that has not occurred to my knowledge, thus far, with the many states having such a Freedom of Conscience, and so it wasn't something that I...it's not addressed...I guess the bottom line, it's... [LB461]

SENATOR COUNCIL: Okay, that's good, because the potential... [LB461]

SENATOR PIRSCH: ...there's no language here. [LB461]

SENATOR COUNCIL: Because the potential exists, correct? [LB461]

SENATOR PIRSCH: Well, I would say perhaps in theory, but I don't see it in...I mean...I mean I'm not... [LB461]

SENATOR COUNCIL: Why not? [LB461]

SENATOR PIRSCH: ...sure what the odds of that (laugh) ever occurring are, but I would say that it would...it's a very unlikely occurrence, although theoretically possible, I suppose. There's no encompassment in this for differential treatment of different types of employees. [LB461]

SENATOR COUNCIL: Thank you,... [LB461]

SENATOR PIRSCH: Yes. [LB461]

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SENATOR COUNCIL: ...Mr. Vice Vice Chair...Vice Chair. [LB461]

SENATOR LATHROP: One vice. [LB461]

SENATOR COUNCIL: One vice. [LB461]

SENATOR LATHROP: Senator Harr. [LB461]

SENATOR HARR: Thanks. Hey, Senator Pirsch, do you know how many other states have passed this Freedom of Conscience Act? [LB461]

SENATOR PIRSCH: You know, I don't have the exact number. I know that somebody who is going to be testifying after me here today has those precise numbers, and he's going to be... [LB461]

SENATOR HARR: Perfect. Thank you. [LB461]

SENATOR PIRSCH: ...commenting on that, so. [LB461]

SENATOR LATHROP: I see no other questions, Senator Pirsch. I'll presume you'll stay to close? [LB461]

SENATOR PIRSCH: Yes, please. [LB461]

SENATOR LATHROP: Okay. Very good. Proponents, please. And if I didn't mention this, we do have the sign-in sheet too. We'd like you to come with a sign-in sheet and give it to the page and they'll make sure we make a good record. So welcome, and you may begin with your name. [LB461]

DALE MICHELS: (Exhibit 1) Vice Chairman Lathrop, I am Dr. Dale Michels, M-i-c-h-e-l-s. I am a family physician. I've been in practice here in Lincoln, Nebraska, for almost 37 years. Up until I turned 60, I was active in caring for pregnant women. At 60, I said it was time to retire from that part of medicine. I have two items to share with you: the outline of my testimony and the summary of an organization called Freedom2Care.org, which is a national issue that talks about the loss of the right of conscience for healthcare professionals. Just for some background, this is often portrayed as a Catholic religious issue, and for the record, I'm Protestant, not Catholic, so what be that as it may, it's still a very significant issue. And I think it's important to note that it doesn't restrict the availability of any legal healthcare service presently being offered. So it's not a restriction in terms of what we're offering. LB461, at least to me, seems to be partly as a result of the federal government's repeal of the right of conscience regulations. It seems that there has been a failure of the current

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administration to allow physicians or any other healthcare personnel to care for the American public as they want to be cared for, with an ethical and moral standard. There was a poll taken in 2009 which indicates--of patients--88 percent indicate it's important or very important that they share a similar set of morals as their doctors and healthcare professionals that care for them. There have been some arguments proposed for the status quo. One, it will affect care availability if healthcare professionals can opt out. There's no evidence on a national level that's true. It can give healthcare professionals a smokescreen to hide behind to avoid treatment of certain patients and illnesses. Again, no evidence. In fact, often in my experience, faith-based professionals are frequently the ones who deal with those groups. No one is required to perform abortion, according to national law, so it's not needed. However, the referral for or filing the prescription for medications or treatments is considered morally complicit. The practical response is that there are 91 percent of almost 3,000 physicians stated: I would rather stop practicing medicine altogether than be forced to violate my conscience. In Nebraska, there are 3,200 practicing physicians. If one-sixth were considered faith-based, which I think is low, that would mean that 533 physicians would consider quitting, so we'd have to find some physicians to take their place fairly rapidly. For example, that would be nearly all the physicians in Lincoln, Nebraska. My personal response is that if I'm caring for you, do you want me to be guided by the Hippocratic oath, my standards and morals, or do you want me to provide a level of care that changes based on the whim of your insurance company or your boyfriend or your boss or your family? Since the federal government chooses not to respect the right of both the patient and the professional, I feel it must be done on the state level. I'm aware there are several items in this bill that need some work, and I would certainly be willing to work with senators to try and make that work. Thank you. [LB461]

SENATOR LATHROP: Very good. Thank you, Doctor. Are there any questions from the committee members? I see none. Thank you for your testimony and for coming down here today. [LB461]

DALE MICHELS: Sure. [LB461]

SENATOR LATHROP: Next proponent. Good afternoon. [LB461]

EDWARD DeSIMONE: (Exhibit 2) Good afternoon. I want to thank the committee for the opportunity to present my views on LB461. My name is...I'm Dr. Edward DeSimone, D-e-S-i-m-o-n-e. I've been a pharmacist for 39 years. I've practiced in independent community pharmacy in Philadelphia, as well as small and big hospitals in Indiana. I'm licensed to practice pharmacy in Nebraska and I've spent the last 34 years as a pharmacy educator, the last 22 years at Creighton University where I serve as professor of pharmacy sciences in the School of Pharmacy and Health Professions. I want to speak in support of LB461. I believe that this is an absolutely necessary piece of legislation. For the past more than 15 years, pharmacists around the country have been

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fired for refusing to fill prescriptions or to dispense or sell drugs such as Plan B, what's known as the morning-after pill, for exercising their rights of conscience. While LB461 uses the terminology "abortion," and I certainly support that, I believe it needs to be a little bit more expansive to cover right of conscience decisions. Again, I'm speaking for pharmacists who feel that these drugs are, in fact, not contraceptives, but rather, they are abortifacients. If you read the product literature from the manufacturer of Plan B, by their own admission--and I will just quote--it says, in talking about mechanism of action, "Plan B may inhibit implantation," which makes it an abortifacient drug. And so pharmacists around the country have been fired for exercising that right. In 2005, a number of pharmacists were fired in the state of Illinois because the governor was attempting to force pharmacists to dispense these drugs. I served as an expert witness in Illinois to defend a pharmacist who was accused of lying to patients because they said they didn't stock the drug. Because of my involvement in Illinois, I worked as an expert witness in Washington State as the board of pharmacy was attempting to force pharmacists to dispense drugs that they felt were inappropriate or they had an issue of conscience with those particular drugs as being abortifacients. And in both cases the pharmacists have won out in the long run. The problem here is it takes a lot of expensive litigation and fighting, when all we need to do is say if you have an issue of conscience, you should be allowed to exercise that issue. I've included a number of supporting documentation testimony from of the House of Representatives Small Business Committee from the American Pharmacists Association, as well as an amicus brief from the Washington State case in which I was one of the pharmacists on the brief. Thank you. [LB461]

SENATOR LATHROP: Very good. You said you're at Creighton? [LB461]

EDWARD DeSIMONE: Yes, sir. [LB461]

SENATOR LATHROP: And how long have you been teaching there? [LB461]

EDWARD DeSIMONE: At Creighton, 22 years. [LB461]

SENATOR LATHROP: In their Pharmacy College? [LB461]

EDWARD DeSIMONE: Yes, sir. [LB461]

SENATOR LATHROP: So you're teaching the pharmacy students? [LB461]

EDWARD DeSIMONE: Yes, I am. [LB461]

SENATOR LATHROP: Oh. Very good. [LB461]

EDWARD DeSIMONE: And I lecture in the ethics course as well. [LB461]

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SENATOR LATHROP: What's that? [LB461]

EDWARD DeSIMONE: I lecture in the ethics course on this issue as well. [LB461]

SENATOR LATHROP: Good. Let me see if there's any questions from the committee. I see none. Very good. Thanks for coming down, Doctor. We appreciate hearing from you. Next proponent, please. And while he's getting situated, with a show of hands can I see the number of people that are going to testify as proponents? So three more. And opponents? Three or four. Okay, good. Thank you. Welcome. [LB461]

KURT CLYNE: Good afternoon. Thank you. My name is Dr. Kurt Clyne, and the first name is K-u-r-t, the last name is C-l-y-n-e. And also, like Dr. DeSimone, I'm a pharmacist, although I'm a practicing hospital pharmacist who is here today to support LB461 introduced by Senator Pirsch. I am in support of this bill, expanded, that will allow myself and other pharmacists to exercise our right of conscience based on moral or religious beliefs. In my practice setting, pharmacists review 2,200 new medication orders each day. I see incorrect prescriptions ordered quite often that I have the legal right and responsibility to refuse to fill if I or any of my colleagues feel there is a safety risk to the patient. I am fortunate to work at a hospital where medications having abortifacient effect are not permitted. I was not so fortunate at one time, having worked at another hospital where I was expected to dispense saline solution and the morning-after pill that were used as abortifacients. I do not want to be placed in that position ever again. If I should leave the healthcare setting I currently am working at, I want to see an all-inclusive law in Nebraska that protects my right of conscience and will not allow my place of practice to force me to violate my moral or religious beliefs. Thank you. [LB461]

SENATOR LATHROP: Thanks. Senator Council has got a question for you. [LB461]

SENATOR COUNCIL: Yes. Thank you, Dr. Clyne, for appearing this afternoon. And I guess I should have asked Dr. DeSimone the same question, because in Dr. DeSimone's testimony he made reference to lawsuits in Illinois. And looking at that, those were all against chain pharmacies or chained healthcare. But I read the definition--and maybe I'm wrong--so a healthcare facility as defined in the act includes just a grocery store pharmacy, as you understand it? [LB461]

KURT CLYNE: Senator Pirsch. Where's...I was going to ask that... [LB461]

SENATOR COUNCIL: I'm going to ask, as you understand it. [LB461]

KURT CLYNE: Well, I see this LB461 to imply that...abortions. I'd like to see LB461 expanded that will include abortifacients and not...and giving me the freedom of

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conscience to not have to dispense abortifacients in my work, based on moral and religious beliefs. [LB461]

SENATOR COUNCIL: And give me a medical description of an abortifacient. [LB461]

KURT CLYNE: A medical description of an abortifacient, like Dr. DeSimone said, it's in the Physicians' Desk Reference. If you take a look at Plan B or high-dose contraceptive, one of the mechanisms of action is it prevents the implantation of the fertilized embryo. And it's fertilized, there's a baby there, and that prevents the implantation. That's an abortifacient effect of a drug. [LB461]

SENATOR COUNCIL: So a...the patch or a birth control pill would fall within the definition of an abortifacient. [LB461]

KURT CLYNE: Yes. It has the potential to cause an abortifacient effect. [LB461]

SENATOR COUNCIL: Thank you. [LB461]

SENATOR LATHROP: I think that's all the questions. Thank you for your testimony. [LB461]

GREG SCHLEPPENBACH: Good afternoon, Senator Lathrop, members of the committee. My name is Greg Schleppenbach. I assume, Senator, you would like me to spell that one. [LB461]

SENATOR LATHROP: (Laugh) You better. [LB461]

GREG SCHLEPPENBACH: S-c-h-l-e-p-p-e-n-b-a-c-h. I'm here on behalf of the Nebraska Catholic Conference to express our support for the important rights of conscience principles embodied in LB461. Religious freedom and the rights of conscience are among the most basic values the Catholic Church seeks to promote and protect. Protection of this basic right of conscience takes on an even greater urgency when individuals and institutions in the healing professions are subjected to pressure, or risk being pressured to participate in conduct which is directly inimical to the role and function of medicine. Although Nebraska law does provide some protections in the abortion context, we think there is need for broader protections within and outside that context. This need is demonstrated, in part, by a growing hostility on the part of some professional organizations and advocacy groups to rights of conscience in healthcare. For example, in November 2007, the American College of Obstetricians and Gynecologists issued an opinion asserting that it is unethical for obstetricians/gynecologists to decline to provide or refer for abortion or sterilization. The American Civil Liberties Union has developed a reported advocacy kit aimed at requiring all hospitals, including those with a conscientious objection, to provide

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abortions. The report argues that the, quote, law should not permit an institution's religious strictures to interfere with the public's access to reproductive healthcare, unquote. The National Abortion Rights Action League Pro-Choice America claims that conscience clauses, which it and other advocacy groups pejoratively label refusal clauses, are, quote, dangerous for women's health, unquote. The Physicians for Reproductive Choice and Health claims that, quote, the right of the patient to timely and comprehensive reproductive healthcare must always prevail, unquote, over a healthcare provider's rights of conscience. And that, quote, several other leading national and medical public health associations hold similar beliefs. Hostility to conscience and conscience rights is not confined to professional organizations and advocacy groups. State and local governments have exerted pressure upon healthcare professionals and institutions to provide abortions and other services in the face of conscientious objections. I want to say that we do acknowledge that we think LB461 does need some work to resolve some drafting issues, and we would certainly like to see it have a broader application. Nonetheless, we want to commend Senator Pirsch for drawing attention to the need for better conscience protection in our state, and we are committed to helping him achieve that outcome. Thank you. [LB461]

SENATOR LATHROP: Thanks, Greg. Any questions of Mr. Schleppenbach? I do have a question just about the idea of having a problem from having a conscientious objection to something that's going on. And I...if I can just use a doctor's office, for example. There's the doctor, of course, who makes a decision to do whatever type of work that's being done that one might have a conscientious objection to. Then there might be a nurse or a medical assistant who would be involved in the procedure. Would this apply to some clerical staff, say, I don't want to do the billing on that procedure because it involved a procedure I find morally objectionable? [LB461]

GREG SCHLEPPENBACH: You know, it...based on my understanding of the bill, I don't think it would. I'd have to look at the definitions more closely to find out if that would include somebody like that. I think its intention, clearly, is those who are engaged in the provision of healthcare. And I think that would be the primary point of it. Those are the ones who are actually engaging in the conduct that has the potential of violating their conscience directly. [LB461]

SENATOR LATHROP: Okay. And you don't have to answer this if you don't want to, but did you participate in drafting this bill? [LB461]

GREG SCHLEPPENBACH: No. [LB461]

SENATOR LATHROP: Okay. Have you made a study of these from other states? [LB461]

GREG SCHLEPPENBACH: Not in any detail. I've got some, you know, a minimal

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knowledge about these kinds of laws in other states. [LB461]

SENATOR LATHROP: And I get the point that we're trying to make or the principle that's involved here, and I agree with it. I do have a question, I guess, and it goes to we have, obviously if you're internal medicine at some big large group, it's easy to be busy all day long doing things that you don't find objectionable, right? But if you get out to a small town in greater Nebraska and maybe there's one doctor who does that kind of work and he can't not hire you, and you're the...he only has one assistant in the office at a time, do other states make some accommodation or you kind of put the healthcare provider in a place where he can't ask if you have a moral objection to something that he does, right? That's part of the bill? In other words, the doctor can't discriminate and say I'm not going to hire you because you may have a moral objection, right? But it could be a one-man shop where he needs that person. Do the other states...is there a size limit or...? [LB461]

GREG SCHLEPPENBACH: Yeah, I can't answer the question. [LB461]

SENATOR LATHROP: You follow me? [LB461]

GREG SCHLEPPENBACH: Yeah. [LB461]

SENATOR LATHROP: I mean there is, in some respects, there's sort of a tension here with somebody trying to run a business, too, as morally objectionable as that might be to someone. [LB461]

GREG SCHLEPPENBACH: Yeah. I don't have that level of expertise, but I...you know, what I can say is that I think there is strong openness and interest to look at a variety of different context. I think that's why it's clear the bill needs continued work, but I think the basic premise of it, the impetus behind it is critically important. It's a matter of finding the right language, the right application, you know, to meet our interests. And we'd like to see it broader than what it is. But those kind of scenarios have to be looked at well. Sure. [LB461]

SENATOR LATHROP: Okay. And let me ask then one more question because it looked like the way this was in the definition of abortion, it said it doesn't include contraceptives. And it sounded like we had somebody suggest, one of the witnesses say, I would have a problem or I would include contraceptive, so whatever the pills are that a pharmacist might hand out to a female patient. [LB461]

GREG SCHLEPPENBACH: Right. Well, there would be other reasons, besides the potential abortifacient component to contraception, why some would not want to prescribe. You know, if their moral or religious objections to contraception, in general, irrespective of the potential abortifacient effect, there would still be a concern about that

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violating their conscience. So, yeah...no, the definition in here would not include contraception per se. [LB461]

SENATOR LATHROP: Okay. Let me ask the question a different way or maybe get to my point, if there is a point to this, in a different approach. And that is, we're sort of putting the burden on the provider to accommodate the religious and moral beliefs of an employee. And do any other states approach it differently and say, if you do these kinds of things you shall tell your employees so they have an opportunity not to take a job with you? [LB461]

GREG SCHLEPPENBACH: Yeah. I don't know. I can't answer the question. It's a good question. [LB461]

SENATOR LATHROP: I do...and, I mean, maybe it's because I sit on the Business and Labor Committee, we heard about businesses and...and I appreciate the competing concerns, both of them. But if you're a one-man pharmacy and you have one pharmacist there, and the pharmacist says I'm not handing those things out; I'm not going to do it. And I don't know if this is something that has to be "if there are more than one employee" or something like that. But that does seem to be at least a consideration. You agree? [LB461]

GREG SCHLEPPENBACH: Yeah. I think it is something. But I...you know, the key here, though, is the primacy of conscience and that this bill and what it proposes to do is a shield, not a sword. [LB461]

SENATOR LATHROP: Yeah. And I certainly don't disagree with the principle. But I do wonder if it gets to...and a lot of times we sit in Omaha and Lincoln and we think of healthcare as what we see when we drive by Creighton or UNMC. But when you get out to greater Nebraska and there's one doctor or one pharmacy, and they have one employee or at least one at a time. Anyway, that might be a consideration as you... [LB461]

GREG SCHLEPPENBACH: You should have asked the pharmacists behind me. They probably could have answered it better than I. [LB461]

SENATOR LATHROP: Okay. Well, I thought you might have done more of a study. But we appreciate your testimony, Greg, and I don't know if that's...okay. Great. Thank you. Any other proponents? Julie. [LB461]

JULIE SCHMIT-ALBIN: (Exhibit 3) Senator Lathrop and members of the committee, my name is Julie Schmit-Albin. I'm executive director of Nebraska Right to Life, the State Affiliate to the Right to Life Committee. We urge your support of LB461, the Freedom of Conscience Act. Pro-life Nebraskans who work in the medical field should have their

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religious and moral beliefs about abortion, unethical medical research, and euthanasia protected in the workplace. LB461 would protect healthcare professionals' freedom of conscience by upholding their right to refuse to participate in the taking of innocent human life either through abortion or euthanasia. It also protects healthcare workers from violating their conscience in the area of unethical medical research which has been burgeoning at our University Medical Center in the past decade. The preeminent principle of medical ethics is, "First, do no harm." Most who go into the healthcare field do so for life-affirming reasons: to cure; to heal the sick, the inform. And so it's essential that healthcare professionals' right to decline to be involved in the destruction of innocent human life be protected. [LB461]

SENATOR LATHROP: That's it? Hang on a minute. Before you get away let's see if anybody has a question for you. I see none. Thanks, Julie. Any other proponents? [LB461]

KAREN BOWLING: (Exhibit 4) In respect to time, I'll keep my comments short. I'm Karen Bowling, B-o-w-l-i-n-g, and I'm testifying on behalf of Nebraska Family Council. My written testimony is there. There's one point that one of the doctors did mention that I think is worth highlighting, that is I guess personal to me. Next week I will be leaving to D.C. to participate in my son's white coat ceremony as he prepares to graduate from Howard School of Medicine. And in his graduating class he is aware of one student has chosen not a particular field of medicine in gynecology for fear that they would have to participate, in their residency, in participating in abortions. And so I think this is a bill that does need work but I want to go on public record that I think it is important because it not only affects patients and doctors now, but it affects the choices of young people choosing the field of medicine that they would practice. Thank you for your time. [LB461]

SENATOR LATHROP: Thanks a lot. Any questions? Oh, one second. A question from Senator Council. [LB461]

KAREN BOWLING: Yes, Senator Council. [LB461]

SENATOR COUNCIL: And thank you for testifying and I apologize. I'm asking you because I neglected to ask a previous... [LB461]

KAREN BOWLING: Certainly. [LB461]

SENATOR COUNCIL: And I think you were the last hand that was raised, and you said something about work on the bill, because just looking at it, in your opinion are there other procedures that could be found to be against the religious or moral precepts of numbers of other people who aren't...that aren't reflected in this bill? [LB461]

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KAREN BOWLING: What do you mean, Senator Council, when you say other procedures? [LB461]

SENATOR COUNCIL: Okay. Let me tell you...let me give you an example. Jehovah Witnesses don't believe in blood transfusions. I don't see that mentioned, you know, in the bill. There are other religious orders who don't believe in certain other medical procedures. [LB461]

KAREN BOWLING: I think that... [LB461]

SENATOR COUNCIL: Are we not being limited in terms of the procedures that have been identified here and are ignoring the "conscienceness" of other healthcare providers and their religious beliefs? [LB461]

KAREN BOWLING: I personally don't feel that way, but I...Senator Council, I believe that's for the legal minds, such as yourself, who can help craft that to make it so it best serves our citizenry. I think "conscienceness," the freedom for conscience, is a civil rights issue. You ought to be able to say no to certain things, and that's where I'm coming from. And I don't want to speak out of turn, not knowing all of the legal ramifications. But, thank you, Senator Council. [LB461]

SENATOR COUNCIL: Thank you. [LB461]

KAREN BOWLING: Thank you. [LB461]

SENATOR LATHROP: I think that's it. Thank you very much. [LB461]

KAREN BOWLING: Okay. Thank you. [LB461]

SENATOR LATHROP: Any other proponents here to testify on LB461? Anyone here in opposition? [LB461]

TERRY WERNER: (Exhibits 5 and 6) Good afternoon, Senator Lathrop and Judiciary Committee. My name is Terry Werner, T-e-r-r-y W-e-r-n-e-r. I am the executive director for the Nebraska Chapter of the National Association of Social Workers. We believe that you are on a slippery slope when you begin to legislate based upon morality and prevailing political beliefs. I am concerned that LB461 will have unintended consequences on the social work profession and others as well. All professions abide by a code of ethics, something that their members are thoroughly schooled in. Codes are about the concern for the client and the patient and not about the provider. The legislation puts providers' interests ahead of what is best for the client. Legislation, too, must be about what is best for the safety and well-being of Nebraskans and, at the very least, do no harm. For the past three years, NASW, along with all the major mental

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health provider groups, have been embroiled in a conscience clause battle at the Board of Mental Health Practice. Finally, the board, as well as the Psychology Board, unanimously passed the regulations requiring referrals and sent it on to the Board of Health. Unfortunately, in the case of our regulations, the administration does not seem to be willing to schedule a public hearing or to refer it on to the Board of Health. Our position is that a mental health provider can choose not to provide services based upon moral or religious grounds, and, in fact, must deny services if they do not have a competency in the area of the concern. However, they absolutely must provide a credible referral. In Section 2(5), line 5, it clearly states that, "Participate in means to perform, practice, engage in, assist in, recommend, counsel in favor of, make referrals for,...." This is an end run on the regulatory work that all of the major professions have done over the past three years. We are talking about social workers, psychologists, marriage and family therapists, professional counselors, and licensed alcohol and drug counselors. The boards of all of these groups unanimously passed the regulations with the requirement of providing a referral. The Board of Mental Health Practice's proposed language reads: Credential holders must provide professional assistance to patients/clients without discrimination on the basis of race, age, ethnicity, socioeconomic status, disability, gender, health status, religion, national origin, sexual orientation, or gender identity, or if uncomfortable doing so, credential holders must refer such patients/clients to another professional for assistance. With the referral language of LB461, you are allowing the credential holders to violate their own code of ethics. Where does this end? This is unnecessary legislation. It is about the provider and not about what is best for the health and safety of the client. Please do not advance this bill. And I'd also like to formally and officially into the record present you with a letter from the Nebraska Association for Marriage and Family Therapy in opposition. [LB461]

SENATOR LATHROP: All right. Thanks, Terry. Are there...Senator Coash has a question for you. [LB461]

SENATOR COASH: Thank you, Senator Lathrop. Mr. Werner, do you have members of your organization...did you get any members of your organization who, in the provision of their work, might find part of their work objectionable because of their moral beliefs? [LB461]

TERRY WERNER: Oh, of course. And we believe, as an association, that they are permitted to not provide services based on moral or religious objections. However, it is...but according to our code of ethics and our belief, is they must provide a referral. And we believe that in certain cases this can be a life-and-death situation. [LB461]

SENATOR COASH: So is your objection to the bill the absence of the referral language? [LB461]

TERRY WERNER: Yes. [LB461]

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SENATOR COASH: Not the fact that you might have some members who would find something that they would have to do in their professional work morally objectionable. My question is, if the referral language was in here, would you come in here and support this bill? [LB461]

TERRY WERNER: I'm not sure I would support it because I'm not sure it's necessary. I'm not sure that the professional organizations' code of ethics don't already cover this. So I'm not sure I would support it or not, but that is my objection today. [LB461]

SENATOR COASH: Okay. Thank you. [LB461]

SENATOR LATHROP: Senator Larson. [LB461]

SENATOR LARSON: Thank you, Vice Chairman Lathrop. And I guess mine is kind of a comment but meant as a question as well. Going back on to the violating your organization's code of ethics, which code of ethics is more important, somebody's moral code of ethics in which they live by everyday or your organization's? [LB461]

TERRY WERNER: Well, I think when you become a professional in an organization, you subscribe to the code of ethics. And... [LB461]

SENATOR LARSON: So your organization's code. [LB461]

TERRY WERNER: I think that's a personal decision. You have to make that decision. And our code of ethics allows you to make that personal decision, so. But there are also, and I think this... [LB461]

SENATOR LARSON: Well, you just said...oh, go ahead. I'm sorry. [LB461]

TERRY WERNER: I think legislation needs to look at not the provider's morality but it needs to look at what's best for the health and the well-being of the entire citizenry of Nebraska. [LB461]

SENATOR LARSON: Not the provider's morality but the person's? [LB461]

TERRY WERNER: I think legislation should be for the best interests of Nebraskans and not the best interests of a provider. I think our code of ethics, and I'm fairly certain most other code of ethics, provide for morality issues. [LB461]

SENATOR LARSON: I see. Thank you. [LB461]

SENATOR LATHROP: I see no other questions. Thanks, Terry. Next opponent, please.

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[LB461]

TRACY DURBIN: (Exhibit 7) Vice Chairman Lathrop, committee members, thank you for the opportunity to speak today. My name is Tracy Durbin. I'm the director of quality and risk management at Planned Parenthood of the Heartland. We oppose LB461. Refusal clauses have historically found a balance of freedom of conscience for the provider and for the patient. However, there is no stipulation in LB461 that guarantees the provision of abortion care to a patient. A refusal clause is appropriate only if it provides an adequate plan for referral and does not disrupt or obstruct a patient's access to care. In order to accommodate the rights of the patient, professionals who refuse to provide a certain service must do so consistently and inform their employers so that the proper arrangements can be made for patients. This includes setting up a referral procedure to another doctor or healthcare facility. No doubt there are times when the conscience of an individual healthcare provider may conflict with the needs of a patient, including in cases of abortion. In these situations, a woman should not have to worry about the religious and moral beliefs of her provider interfering with her receiving the best possible care. It's in her best interest that only medical professionals committed to providing such services do so. When this isn't possible, a reasonable ethical fallback is for a facility to provide the patient with a referral that will ensure she receives continuity of care without facing an undue burden, such as traveling long distances or encountering additional barriers. While we recognize the right of individuals to decline to provide services to which they object, we believe it goes too far to grant such a right to an entire institution like a hospital. When policymakers grant conscience rights, they also need to address mitigating the potential harm to patients. Of particular concern is that LB461 is based on the premise of protecting inaction based on conscience, but it provides no protection based on an action of conscience. Monday's edition of the Omaha World-Herald and Lincoln Journal Star featured the story of a Grand Island family that was denied the ability to end a pregnancy that had no hope of survival. If this family's doctor felt compelled to act in accordance with his conscience and end the pregnancy, shouldn't this legislation provide the physician the same protection to act on his conscience? Shouldn't that doctor have been able to provide abortion care without fear of prosecution? It is disturbing that as we discuss this bill about conscience, the 20-week ban passed just last year resulted in such an unconscionable outcome. I urge you to revisit that law to protect Nebraska families instead of passing additional restrictions on a woman's access to reproductive healthcare. I ask that you kill LB461. Thank you. [LB461]

SENATOR LATHROP: Thank you. Are there any questions from the committee? I see none. Thank you for your testimony. [LB461]

LAUREL MARSH: (Exhibit 8) Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I appear today on behalf of ACLU-Nebraska. ACLU-Nebraska has significant concerns on the limited medical exception that's described in LB461 on page

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3, Section 3(1)(a). We all recognize that the constitutional protection for a woman's decision to end her pregnancy is derived from the due process clause of the Fourteenth Amendment to the constitution. There's a little discussion of that in the piece that's going around, but I think that the...a woman's right to make this decision is well established. The priority of an individual's right to refuse under LB461 is limited to cases in which the pregnant woman suffers from a physical disorder, a physical injury, or a physical illness which causes the woman to be in imminent danger of death unless an abortion is immediately performed or induced and there are no other competent people available to attend to the women. While this type of restriction may be permitted in restrictions that delay abortion, such as a 24-hour waiting period or a parental consent requirement, they are inadequate for the purposes contemplated in LB461. LB461 should also include exceptions for a woman's mental health. Clearly we cannot say that there would never be a circumstance in which a mental health disorder would not require immediate attention. I also have a discussion of those citations that talk about the need for the inclusion of a mental health exception, different cases that the courts have looked at over time. Our basic point is that we can't second-guess the future, and Nebraska needs to give serious consideration to the inclusion of a mental health exception to LB461. [LB461]

SENATOR LATHROP: Okay. Senator Council. [LB461]

SENATOR COUNCIL: Thank you. And thank you as well, Ms. Marsh, for attending. It's interesting that you should discuss the mental health exception and the absence of an exception for that, just as there is an absence of an exception for fetal anomalies, multiple birth fetal anomalies in the mental health. And last year, when we were debating some abortion-related bills and the issue of the lack of a mental health exception, there was a lot of conversation about the ability to treat someone who was depressed or having...experiencing severe depression at the result of a pregnancy, and under the legislation that was ultimately enacted being unable to make a decision to terminate that pregnancy. I guess that's a long way to state a comment. I just wanted...it's really interesting on the record I've been...I'm an insomniac so I watch late-night television, and the commercial that sticks in my head and sticks in my head and sticks in my head is if you were prescribed Paxil, an antidepressant, during your pregnancy and your child suffers from a heart condition, underdeveloped lungs, all of these conditions that are the effect of that, the use of that prescription. I'm just wondering, under your reading of LB461, if a pharmacist could refuse now to prescribe Paxil to a pregnant woman. [LB461]

LAUREL MARSH: I'm sorry, Senator. I had not contemplated that type of a scenario and I don't think that my experience goes far enough to answer your question. [LB461]

SENATOR COUNCIL: Well, let me ask you a question I think your experience does go far enough, and I asked the question of Senator Pirsch and he didn't see the likelihood

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of it, when, quite frankly, it appears to jump off the page on page 6. I asked the question whether or not, under LB461, an employer would be forced to hire someone who they knew had some objection; or could a person who knowingly had objection accept employment knowing these procedures were going to be performed and then still have the ability to sue? Do you read Section 6(1) the same as I do, which means if I apply for a position at a healthcare facility that provides...performs all of the activities that are outlined in the bill as being contrary to someone's religious or moral conscience, and if I state that all of these things offend my conscience and the employer says, well, I can't...I don't want...I'm not going...I refuse to hire you because you can't do it don't...am I correct in reading Section 6, that that would allow...would provide me with a civil cause of action? [LB461]

LAUREL MARSH: Well, I think that maybe I'll answer your question in a somewhat different way. I do think your reading is correct and I think we already have some pretty specific state laws on not discriminating against people in employment because of religion. [LB461]

SENATOR COUNCIL: Correct. Okay, thank you. [LB461]

SENATOR LATHROP: Okay. I think that's it. [LB461]

LAUREL MARSH: Thank you. [LB461]

SENATOR LATHROP: Do you need any help? [LB461]

LAUREL MARSH: I am just hoping you're not going to count this in my three minutes. Thank you. [LB461]

SENATOR LATHROP: Yeah, we won't start the clock until you sit. All right. Thank you. Any other opponents to LB461 who wish to be heard? [LB461]

SUE ELLEN WALL: Good afternoon. [LB461]

SENATOR LATHROP: Good afternoon. [LB461]

SUE ELLEN WALL: My name is Sue Ellen Wall. I'm an attorney here in Lincoln, Nebraska. I have some observations to make about this bill, although I came for a later bill primarily. This bill, from hearing the proponents' testimony, does not appear to be ready for prime time. There are a lot of unanswered questions and potential unintended consequences. And I'm usually proud to be a Nebraskan, but I feel like we're becoming a laboratory for experimental legislation in the area of putting restrictions on women's rights to the integrity and freedom of their own bodies, which this is, I believe, another ill-disguised effort to do. It appears to me that this bill creates a new class of

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employment discrimination law that is the same but different from religion. And there are preliminary requirements for filing suit under that, and I don't see any accommodation for that legal requirement for this group of people and don't know why they would be excepted from those sorts of administrative prerequisites before filing suit. I have the same concerns that Senator Council does in terms of can you be sued after...when the employee knows perfectly well what it is that you do, which seems to me would be part of the employment...prospective employment process. And also not to repeat what Ms. Marsh said, but I have a strong bias against our trying to distinguish between physical and mental disorders, because it seems to me unless you believe there are little green men in your brain running around affecting your emotions and your psychological behavior or cathode ray of some aliens, everything in our bodies is physical. And just because we can't see it, doesn't mean it isn't physical, and there is no reason and no basis that I can understand why that would be true. I've just learned there's a new description called broken-heart syndrome, which we've always used colloquially, which is apparently an actual physical disintegration of the heart. When somebody loses a dear beloved spouse, their hearts literally physically break or disintegrate to the point where that person dies. And I think there are all sorts of things we don't understand, but one we distinguish is if physical is somehow different because we can see it, when the psychological and emotional things are equally as damaging and sometimes more harmful. A broken bone heals. Lots of mental and physical...or mental things do not ever quite heal, so. Thank you. [LB461]

SENATOR LATHROP: Thanks, Sue Ellen. Any questions? I do want to ask you a question. And I know you're a practicing lawyer, you mentioned that. Do you do employment discrimination cases? [LB461]

SUE ELLEN WALL: I was trained by Tom Cope. And I don't do many of them anymore because that field has... [LB461]

SENATOR LATHROP: And was Tom Cope an employment lawyer? [LB461]

SUE ELLEN WALL: That's all he did, and he did it extremely... [LB461]

SENATOR LATHROP: As you know, I've never done one of them, so. [LB461]

SUE ELLEN WALL: Well, most people haven't, and it's a rare form of practice right now. But it was the field I... [LB461]

SENATOR LATHROP: But this would, in your...on page 6, Section 6, which is lines 2-8, the conversation, or...you just directed your remarks to that section. Do you believe that creates a cause of action for someone so that if they are discriminated against, and they say, you know what? The first time they have to fill a prescription at the pharmacy that they have a conscientious objection to, if somebody said, well, if you're not going to fill

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that, we've got to let you go, that would create a cause of action for that person?
[LB461]

SUE ELLEN WALL: Well, I would think that...that's what this bill does is creates a class of people who have characteristics that are the same... [LB461]

SENATOR LATHROP: And I don't know that that's not an intended consequence. You suggested... [LB461]

SUE ELLEN WALL: I think there's lots of unintended. [LB461]

SENATOR LATHROP: ...it might be an unintended consequence. It might be an intended consequence. And I... [LB461]

SUE ELLEN WALL: It could be but it seems to me that's what the legislation does right now is creates another class of people that I would identify as potentially distinct from just a basic religious claim. I also think it's subject to mass quantities of abuse. [LB461]

SENATOR LATHROP: Okay. I think that answered my question. Oh, one other thing. You did...you said...if it is a protected class and does give rise to a cause of action, you suggested that unlike some other discrimination cases, this one doesn't have to go through some administrative steps. What would that be? [LB461]

SUE ELLEN WALL: Filing with the NEOC. Filing deadlines. So many days, which... [LB461]

SENATOR LATHROP: Okay. And the reason I ask is I see Senator Pirsch is making notes as people are testifying, and he's acknowledged that the bill needs some rewrites in some respects and I don't know if he is going to direct any of his work in that area, but at least we should explore it with... [LB461]

SUE ELLEN WALL: It seems to me there are lots of unanswered questions, and I was particularly interested in nobody seems to know what other states have already done in the absence of a federal law, and it's always instructive. And I...we don't do well as the incubator state for that kind of legislation. [LB461]

SENATOR LATHROP: And I'm not trying to wade in or open the door to more commentary on the policy part of it, but as...if we're going to create a cause of action, is there a reason why we'd want to make these people go through the NEOC first, as we do with, say, racial discrimination and housing? [LB461]

SUE ELLEN WALL: Why should they be different? [LB461]

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SENATOR LATHROP: But does that help the process in some respect, sending them through the NEOC? [LB461]

SUE ELLEN WALL: Well, if it helps the process (laugh) for everybody else that's required to go, why wouldn't...I don't know why they would be treated differently. [LB461]

SENATOR LATHROP: Okay. So an amendment to the bill may be that they shall have a cause of action the same as people in some other section of the law that... [LB461]

SUE ELLEN WALL: If that's what the Legislature intends to do... [LB461]

SENATOR LATHROP: Okay. [LB461]

SUE ELLEN WALL: ...which is...it appears to me that's what you've done but you just didn't finish that job. [LB461]

SENATOR LATHROP: And that may be instructive and helpful for Senator Pirsch (inaudible). All right. [LB461]

SUE ELLEN WALL: And then, of course, it gets investigated and basically those cases get vetted before they're allowed to go to trial, so...or go to court. [LB461]

SENATOR LATHROP: Okay. Very good. Any other questions? All right, thank you for your thoughts. Any other opponents? Anyone here in a neutral capacity? Well, wait a minute. We've got somebody. Hello, John. [LB461]

JOHN LINDSAY: Senator Lathrop, members of the committee, for the record my name is John Lindsay, L-i-n-d-s-a-y. I'm appearing as a lobbyist on...actually I have two clients. Just to note one, the Nebraska Association of Trial Attorneys has a consistent policy, which by the way the Nebraska Association of Trial Attorneys take no position on the underlying goals or purposes of the act. Our concern is specifically with the immunity provision that's contained on page 5, lines 12-17. And without going through the reasons which you've heard repeatedly through this session, we consistently oppose that language. Second, appearing on behalf of Blue Cross Blue Shield of Nebraska, with just...with a concern about the language on the same page 5. Just the term "accommodate" seems to be a little bit...I'm not sure if it's broad or undefined or we're not quite sure what direction...what exactly is covered by it. [LB461]

SENATOR LATHROP: Where was that, John? [LB461]

JOHN LINDSAY: Page 5, line 23. And it's...the concern is just, what are we required to do? And knowing that Senator Pirsch is making adjustments to the bill, we would be

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happy to work with Senator Pirsch's office and the committee to find language that would accomplish that. I'd be happy to answer any questions. [LB461]

SENATOR LATHROP: And that you said...was that Blue Cross Blue Shield had a concern about what accommodation means? [LB461]

JOHN LINDSAY: Right. And that provision deals with health insurance carriers. [LB461]

SENATOR LATHROP: Okay. I see Senator Pirsch making notes, so an accommodation to Blue Cross is on the way. (Laughter) Any other questions for Mr. Lindsay? All right. Thanks, John. Anyone else here in a neutral capacity? Seeing none, Senator Pirsch, you are good to close. [LB461]

SENATOR PIRSCH: Well, I thank the committee for its attentiveness and the questions, and I think we've had a good hearing here today, and I appreciate the testimony of all. With respect to the bill, I think that it's clear that the general concept is both important and sound. And I am committed to bringing about, with this LB461, greater freedom of conscience in this state. I think that the premise which is embedded in it rings true, that I think that it will result in the best outcome, not just for providers, but also for patients and for, in that matter, as a result of people...all of the people of the state of Nebraska. And so with respect to those points of concerns, we went over some hypotheticals, I'd be very much committed to working with this committee looking at the definitions and the issues that were brought up here today. And with that, I thank you for your attention. [LB461]

SENATOR LATHROP: Thanks, Pete. Any questions for Senator Pirsch? I see none. Thanks very much for your bill. That will close our hearing on LB461 and bring us to LB521 and Senator Fulton. Tony, we might give them a second to move about if they need to before we...and while Senator Fulton is getting himself situated, how many people are here as a proponent or intend to testify on LB521? Okay. And how many in opposition? Okay, very good. All right, to Senator Fulton and LB521. [LB461]

SENATOR FULTON: Thank you, Mr. Vice Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I bring to you LB521. For approximately the past two years, Planned Parenthood of the Heartland has provided chemical abortions to women without a physician present. Instead, that physician administers the chemical abortion from miles away through the use of a webcam. This practice occurs in Iowa presently, and LB521 is intended to prevent the proliferation of these webcam abortions into our state. One may ask how one of these webcam abortions works. A pregnant woman who generally is in a rural setting visits a Planned Parenthood clinic where a nurse practitioner or other staff member would perform an ultrasound and physical exam. The performing physician, sitting miles away in a remote office, then communicates with the pregnant woman through use of a webcam. The

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physician then pushes a button and a remote control drawer opens near the mother. The drawer contains Mifeprex and misoprostol...for the record, I'm not positive if I'm pronouncing it correctly, but I'm going back to my Latin to... [LB521]

SENATOR LATHROP: And for the record, we wouldn't know the difference. (Laughter) [LB521]

SENATOR MCGILL: No, we wouldn't. [LB521]

SENATOR FULTON: (Exhibit 9) Thank you, Senator, also known as RU-486. One pill is taken before the mother leaves the clinic. The misoprostol is then taken later at home. This procedure has resulted in an increase in abortions in Iowa, despite a decrease in the number of abortions performed nationwide. This practice does nothing to improve the safety of the RU-486 procedure, which in and of itself has an 8 percent failure rate. I ask for your assistance in ensuring that this practice is left to the realm of science fiction. No abortions are presently performed in Nebraska without the physician...presence of an attending physician. I ask that the committee allow LB521 to move forward so we can keep it that way. And I have a letter a lady asked...she submitted this letter and asked if she could have it into the record in support of the bill--a nurse asked. So thank you. [LB521]

SENATOR LATHROP: That will be made a part of the record, Senator Fulton. Are there any questions? Senator Council. [LB521]

SENATOR COUNCIL: Yes. Thank you, Vice Chairman Lathrop and Senator Fulton. Now that I understand, because when I received the bill I was trying to figure out what this was all about, particularly after just going through the introduction of my bill to repeal the death penalty. And one of the questions raised is that we don't know who is prescribing the Class I controlled substances that are being used in...and when there are executions, and there's no policy that the person who prescribes it has to administer it. But in looking at your bill, I'm trying to understand what is the cause...what is the damage? What is the cause of action? I see a cause of action being available without really no damage. For example, and under...as I read the bill, it is a violation of LB251 (sic--LB521) for a drug that induces an abortion to be administered by the nurse practitioner. Okay? That's a violation of the law that you are proposing in LB521, correct? [LB521]

SENATOR FULTON: Yes. [LB521]

SENATOR COUNCIL: Okay. And then it goes on to say that the bill would create a civil cause of action against a person who performed an abortion in knowing or reckless violation of the provision. So there's a cause of action even though there may not be any harm--I mean in the sense that the procedure was, you know, completed. There is

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no damage to the health of the patient, yet your bill provides a cause of action merely by virtue of the fact that the person who administered the prescription drug is not the person who wrote that prescription. And I don't understand. So what is your objective? [LB521]

SENATOR FULTON: The...I, okay...I need to correct the record then with respect to your question. I'm understanding it more clearly after listening here. If the physician is not present. So was that your question? If...? [LB521]

SENATOR COUNCIL: Yeah. That's, as I understand the...as I understand your bill, it is unlawful for someone to administer a drug that induces an abortion if that person is not the physician who prescribed, dispensed, or provided it. Am I reading the bill correctly? [LB521]

SENATOR FULTON: Not entirely. [LB521]

SENATOR COUNCIL: Okay. [LB521]

SENATOR FULTON: Let's see, so we...let's go to page...this is Section 5, so it's page 6 of the bill. Let's go to line 24. "The drug shall be administered by or in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided." So there... [LB521]

SENATOR COUNCIL: So it's unlawful if the drug is administered by someone other than the physician being physically present in the room who wrote the prescription. [LB521]

SENATOR FULTON: If the physician is not physically present, then yes. [LB521]

SENATOR COUNCIL: That's a violation. Right? [LB521]

SENATOR FULTON: Yes. [LB521]

SENATOR COUNCIL: Okay, so...and let's say that occurred, yet there was no physical harm to the mother, had the requisite checkup afterwards. But under your bill there would still be a civil cause of action against who: the nurse practitioner, or the physician who wasn't present in the room? [LB521]

SENATOR FULTON: The...my intention would be the physician who is not present in the room, and I...if that's not clear, then we could clarify that, but that's my intention. I guess the cause for action would exist if Section 5 were violated. And the way in which Section 5 would be violated is if a physician was not physically present, and so that would be the cause for action. Is that more...does that more clearly answer your

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question: so against whom is the cause proper? [LB521]

SENATOR COUNCIL: Yes. [LB521]

SENATOR FULTON: And my intention would be the doctor who is not present--so in other words the doctor who is performing a webcam abortion. That's my intention but that's not to say...I'm...there should be remedy for one who is wronged. Now if...let's say that there is no... [LB521]

SENATOR COUNCIL: But that's the point I'm getting to. What's the wrong? Just...for you, the wrong is administering a drug that induces an abortion. But what other wrong has occurred? [LB521]

SENATOR FULTON: If as in 8 percent of the cases, the abortion is not completed, then it would it seems to me reasonable to believe that the woman would have to seek some remedy. And that's part of what...the premise upon which I bring this bill is that these chemical abortions should not be administered absent a physician... [LB521]

SENATOR COUNCIL: Okay. So the only time there would be a cause of action is if the woman who was seeking to have the abortion induced with the use of this drug that did not occur, and... [LB521]

SENATOR FULTON: In the presence of a physician. [LB521]

SENATOR COUNCIL: No--I'm getting to the wrong. Okay. And it didn't occur in the presence of a physician, and your point was...and I was asking you, what was the wrong? And you said the wrong would occur in the event the drug was administered and the abortion did not, was not completed--that the pregnancy wasn't terminated--that that would be the point at which there would be a wrong. I mean an actual damage to the patient. But before that, just the mere fact that the physician wasn't present, is it your intent that that gives rise to a civil cause of action? [LB521]

SENATOR FULTON: Well, if the...it would be, but I just...I don't know what...I don't know how one...if one goes seeking a webcam abortion, knowing that they are illegal, should we...assuming we pass LB521 and it becomes law, I don't know what...I don't know what...how one would be wronged...a woman, how she would be wronged. I guess my intention here is to communicate that if a woman is wronged by a webcam abortion such that she has to pay money or suffer physical duress or what have you, there should be a cause for her remedy, and that's my intention. [LB521]

SENATOR COUNCIL: Okay. So is the woman...is the woman guilty of a Class I misdemeanor as well? [LB521]

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SENATOR FULTON: No. And we're...I believe we spelled that out specifically in the bill. [LB521]

SENATOR COUNCIL: Okay. So the woman who goes in knowingly seeking, what,... [LB521]

SENATOR FULTON: Yeah, it's page 8, line 22. [LB521]

SENATOR COUNCIL: ...a, quote, illegal abortion, is not subject to prosecution. [LB521]

SENATOR FULTON: That's correct. [LB521]

SENATOR COUNCIL: But instead she has the ability to bring a civil cause of action against the person who administered. [LB521]

SENATOR FULTON: That...yes, under the bill that's correct. [LB521]

SENATOR COUNCIL: Thank you. [LB521]

SENATOR LATHROP: Senator McGill. [LB521]

SENATOR MCGILL: You might not be the right person to ask, and it may be the folks who I'm sure are here in opposition, (laugh) but what...do you know what the process is if someone...if a woman goes in face to face with a doctor, what...because you're creating, oh, you have to do a checkup in so many days and this and that. And do you have any idea what's happening right now with a face-to-face doctor? [LB521]

SENATOR FULTON: I'm not positive. It probably would be better to ask another. But where I get this... [LB521]

SENATOR MCGILL: It would be good to know that because...I mean we are putting further guidelines in for what a doctor, what's appropriate... [LB521]

SENATOR FULTON: Right. [LB521]

SENATOR MCGILL: ...with this particular drug, so. [LB521]

SENATOR FULTON: You know, I understand that, and I'll...let me...if I could direct you to where I come up with this. [LB521]

SENATOR MCGILL: Okay. [LB521]

SENATOR FULTON: Presently, with the mifepristone, the tablet label which comes with

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recommendations which I'm not positive but I believe they come...they're approved by the FDA, patients--and I'm reading from the label now--patients should be scheduled for and return for a follow-up visit at approximately 14 days after administration of mifepristone to confirm that the pregnancy is completely terminated. That's where this comes from. So I am putting this into the statute and I recognize that this...there already exists a guideline through the drug itself, I believe also through FDA--so I am. I'm admitting I'm putting this forward into the statute. If the committee believes that's too much for the statute, then I'm open to talking about that. But that's not just...I didn't just invent that. That exists by way of practice and suggestion today. [LB521]

SENATOR MCGILL: Just curious to learn about if nurse practitioners are the ones who are currently doing a follow-up, for instance, or, you know, what that process is, just to see what the practical differences are between a webcam and not a live doctor. So that's just what I'm looking for to learning about through the hearing. [LB521]

SENATOR FULTON: Okay. [LB521]

SENATOR LATHROP: Senator Coash. [LB521]

SENATOR COASH: Thank you, Senator Lathrop. Senator Fulton, as I'm reading LB521 I'm trying to figure out how that fits with the bill, your bill last year, that was passed regarding the ultrasound and...so, and since you did that bill too, I'm trying to figure out how these kinds of things could occur in Nebraska, given the fact that the ultrasound is law now. How do those two fit? [LB521]

SENATOR FULTON: Well, my...the ultrasound does not go away. And my understanding is the way...I...in doing research on this, you know, I've been to Planned Parenthood's Web site and I've seen media reports of what goes on in Iowa anyway, you know, reading through FDA recommendations. There still would need to be an ultrasound performed, which is according to our law, but I also think that's the practice anyway. [LB521]

SENATOR COASH: So it's obviously not...couldn't be a doctor who is doing it if the doctor is via webcam, so it's another healthcare person that's doing that. [LB521]

SENATOR FULTON: Correct. [LB521]

SENATOR COASH: Okay. [LB521]

SENATOR FULTON: Right. [LB521]

SENATOR COASH: Does this...does your bill...I just want to make sure I understand your intent. This procedure of using RU-486 is not prohibited under this law if it's done

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face to face, correct? [LB521]

SENATOR FULTON: Correct. And this is...it's one of these interesting areas where we have--my colleagues know how I feel, my pro-life position, how I feel about RU-486 and abortions generally--but recognizing that RU-486 is legal, it's allowed, I thought it was...this is an appropriate bill to express the concern that I have, and frankly, I think that Nebraskans have. At least have a doctor present. So I want to be clear on the record. I'm not trying to outlaw RU-486. That's not my intention. That's not what the bill says. We are saying that when such a chemical abortion is procured, then a doctor should at least be present to she who is procuring it. [LB521]

SENATOR COASH: Okay. Thank you. And one final question. In your opening you mentioned that the webcam procedure has been in Iowa for quite awhile. And in your opening you said that there's been an increase of abortions since that procedure has been implemented? [LB521]

SENATOR FULTON: That's my understanding. I've read a couple different things: one, that there has been no significant change when, indeed, abortions have decreased nationally, and I read another report that said that they had actually increased in Iowa. [LB521]

SENATOR COASH: Can you point to the...my question is, increased by 50 percent...1, 2...? I'm just...I'm interested to know the facts behind the increase. [LB521]

SENATOR FULTON: I will find it...I'm...I'll come back and close and I'll find you the numbers. [LB521]

SENATOR COASH: All right. Thank you. [LB521]

SENATOR MCGILL: Senator Fulton. [LB521]

SENATOR LATHROP: Senator McGill. [LB521]

SENATOR MCGILL: Where can we try to track down that information? [LB521]

SENATOR FULTON: I believe it's through the FDA. I think that's where I read it and I think that's who keeps the statistics. One could also get them from the state of Iowa, but I've read so many things on this I... [LB521]

SENATOR MCGILL: Yeah, it would be nice to have that before you make a statement that the number of abortions have gone up, when there's conflicting...and when you don't have hard numbers to share with us, so. [LB521]

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SENATOR FULTON: Well, I can get you the hard numbers, but... [LB521]

SENATOR MCGILL: Okay. I would appreciate that. (Laugh) [LB521]

SENATOR FULTON: ...that's my understanding, so. [LB521]

SENATOR LATHROP: Senator Fulton, I do have a question for you, and that is, is this--just as a matter of educating me on the subject--is this being done across state lines? In other words, is there a doctor, like in Des Moines, who is the guy that sits there all day and watches Skype or video procedures done in other states, or is it all happening inside the borders of Iowa, if you know? [LB521]

SENATOR FULTON: I'm not...and let me start by saying I'm not positive, but what I have seen, I believe this was done...I believe this was done. The ones in Iowa...or at least the one...the report that I read was that it was not a doctor from Iowa, so I believe it was done over state lines. I'm not positive about that. I tried to... [LB521]

SENATOR LATHROP: So it would be...some clinic in Iowa has a cable to a doctor that may not be in Iowa, and your concern is they'll open one of those clinics in Nebraska and some doctor who's... [LB521]

SENATOR FULTON: Yes. [LB521]

SENATOR LATHROP: ...anywhere in the world, literally. [LB521]

SENATOR FULTON: Well, that's...that is a concern, but I...you know, whether I'm accurate in my understanding of what goes on in Iowa--maybe I am, maybe I'm not--the bill as envisioned and it's written would disallow the practice of a webcam abortion in Nebraska even if the doctor...let's say the doctor is in Omaha, the webcam abortion actually occurs in, you know, some other town. Whether that doctor is in the state lines within Nebraska or whether he's in Timbuktu, I'm just saying that he should be present. That's all I'm... [LB521]

SENATOR LATHROP: And the reason I ask is I didn't know this even happened until you were...you introduced the bill, and I think we've had a conversation about it. I was just trying to figure out what happens. And I had one more question, or at least another question. That is, is there a health concern for the woman that we are legislating, or is this just we're going to have fewer abortions if we don't allow this process? In other words, are you worried that this needs to be done in the company of a doctor for health reasons or is it just to knock down the number of abortions? [LB521]

SENATOR FULTON: Well, I...I mean again, one...my colleagues know where I stand on abortion. But this would not necessarily decrease the number of abortions in Nebraska,

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and the reason I say that is because these aren't being done now. So in that regard, you know, I'm status quo. [LB521]

SENATOR LATHROP: Right. [LB521]

SENATOR FULTON: The reason...I'll just tell you. When this was brought to me, my first...my initial reaction that that's not...these aren't...that's...this was a spoof video. I watched the video; it was a spoof video I thought. Well, it wasn't the case. It actually...I took the video from Planned Parenthood's Web site and I did research--and, yeah, these are going on. And so my initial reaction is now RU-486, this is that controversial thing I've been reading about in the newspapers. And so to answer your question directly, I--safety. I mean I know I've said this with ultrasound and I mean it. This is...this isn't...this is a procedure which lends itself to having a doctor present. The clinical studies that were done in the United States, and I can actually give you that citation, there were...let's see...the failure rate...so it was in U.S. trials, 92.1 percent of the 827 subjects had a complete medical abortion. There were 65 women, or 7.9 percent, who ended up receiving a surgical abortion after RU-486... [LB521]

SENATOR LATHROP: What's a failure rate mean? You use that term and I'm like what, how do you fail at this? [LB521]

SENATOR FULTON: The abortion was not completed as intended with the drug. [LB521]

SENATOR LATHROP: Okay. [LB521]

SENATOR FULTON: So another way to say that, I mean, you know, one can parse words to make things say...and I've used numbers to... [LB521]

SENATOR LATHROP: I'm not trying to parse words. [LB521]

SENATOR FULTON: Yeah. [LB521]

SENATOR LATHROP: I just don't understand this whole thing. [LB521]

SENATOR FULTON: I want to be clear in saying that I'm reading from these clinical...the clinical studies printed on these, the mifepristone label: 7.9 percent received a surgical abortion, 20...let's see, yeah, ended up needing a surgical abortion. So the RU-486 didn't accomplish its goal. It required a surgical abortion afterward. There are also, which I'm sure...I'm guessing that this will be disputed but what I've understood is that in the United States anyway there have been...I think the number was 1,100 injuries reported to FDA that were attributed to RU-486. I think the number was ten in the world attributed deaths to RU-486. So I guess what I'm saying here is

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that this is an issue that's not without controversy and certainly it's something that would require our attention as legislators. And by setting this up to be done over webcam, it seems to me that we run the risk of mass producing these webcam abortions which indeed have some risk. I mean this isn't...you know... [LB521]

SENATOR LATHROP: Well, maybe this is the question then. Is the risk higher if the doctor is not in the room and do you diminish the risk if the doctor is present? Do you follow? [LB521]

SENATOR FULTON: Yeah. Sure. [LB521]

SENATOR LATHROP: I'm just trying to get what you're getting at. [LB521]

SENATOR MCGILL: And that's why I asked about what the procedure currently is,... [LB521]

SENATOR FULTON: Yeah. [LB521]

SENATOR MCGILL: ...if it's nurse practitioners versus doctors right now even if it's face to face. [LB521]

SENATOR FULTON: Right. [LB521]

SENATOR LATHROP: Well, okay. [LB521]

SENATOR FULTON: My thought is that by having a doctor present, risk would be mitigated. That's my own thought. And I'll take that a step further and say that that is the recommendation of the FDA. Okay? [LB521]

SENATOR LATHROP: That a doctor be in the room. [LB521]

SENATOR FULTON: That an examination be performed by the doctor. [LB521]

SENATOR LATHROP: Okay. [LB521]

SENATOR COUNCIL: Can I ask... [LB521]

SENATOR LATHROP: Good. Thanks. That answers my... [LB521]

SENATOR FULTON: If I'm wrong about that I'm sure someone will correct me, but that's my understanding. [LB521]

SENATOR LATHROP: Well, I have to tell you, I knew nothing about this process before

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you introduced the bill and we've had a conversation about it, so thus the questions from one uneducated guy. Senator McGill. [LB521]

SENATOR MCGILL: It sounds like...do you know, is Iowa doing this for other types of drugs or...I mean because I wasn't really familiar with this either? But I imagine it is kind of a wave of the future to help people in rural areas, like you were saying, get drugs. [LB521]

SENATOR FULTON: Yeah. [LB521]

SENATOR MCGILL: I'm just wondering if this is something they're doing in other things, too, or is it just Planned Parenthood using this right now? [LB521]

SENATOR FULTON: Yeah, I'm not positive. [LB521]

SENATOR MCGILL: Okay. [LB521]

SENATOR FULTON: I don't know. And I am anticipating that an argument that could be leveled against the bill is that it would place shackles on the utilization of telemedicine, which is not my... [LB521]

SENATOR MCGILL: Because that's what... [LB521]

SENATOR FULTON: Yeah. [LB521]

SENATOR MCGILL: ...telemedicine is going to start happening more and more, I imagine. [LB521]

SENATOR FULTON: And it should. [LB521]

SENATOR MCGILL: Yeah. [LB521]

SENATOR FULTON: It should. And so I...the language of the bill, I make it specific to abortion [LB521]

SENATOR LATHROP: Senator Council. [LB521]

SENATOR COUNCIL: Yeah, and this is a follow-up on Senator McGill's questions because it may come as some surprise to you, Senator Fulton, and maybe some others present, I don't know anything about how RU-486 is used. It's not something that I spend nights reading up on. But it is an FDA-approved drug, correct? [LB521]

SENATOR FULTON: Yes. [LB521]

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SENATOR COUNCIL: And it kind of tags on, is it an FDA-approved drug that can only be administered under a physician's...so can I go to a pharmacy, assuming the pharmacy doesn't have a conscience problem, can I go to a pharmacy and if I have a doctor that prescribed RU-486, can I go pick it up at the pharmacy and get the little sheet that's attached and says this is how you use this? [LB521]

SENATOR FULTON: I don't believe that occurs. [LB521]

SENATOR COUNCIL: Okay. I just need to know. I don't know. Thank you. Maybe some...I don't know. [LB521]

SENATOR FULTON: Again, if I'm incorrect, someone hopefully will correct me, but that's not my understanding. [LB521]

SENATOR COUNCIL: Okay. [LB521]

SENATOR MCGILL: I don't think it is. I don't know if anybody else can answer that. [LB521]

SENATOR LATHROP: Senator Harr. [LB521]

SENATOR HARR: Thank you. And I am late to this dance, so I apologize. [LB521]

SENATOR FULTON: We're still dancing. It's okay. (Laugh) [LB521]

SENATOR HARR: And I just heard this last line of questioning and it kind of raised a little question in my head. You said telepharmacy should occur, correct? You're for it as a general concept. [LB521]

SENATOR FULTON: I am, yes. [LB521]

SENATOR HARR: How does telepharmacy... [LB521]

SENATOR FULTON: Or telemedicine, I should... [LB521]

SENATOR HARR: What is it? [LB521]

SENATOR FULTON: Telemedicine. [LB521]

SENATOR HARR: Telemedicine, okay. And that's what I note. I don't understand why RU-486, as FDA approved, should be any different than any other procedure that telemedicine occurs. What is the extra? Why is there...why should there be prevention

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of...if telemedicine is good, it's good; if it's bad, it's bad, is my opinion. I'm not sure why we treat RU-486, morning-after pill, whatever, differently than we do any other prescription. [LB521]

SENATOR FULTON: Okay. Well, let me just start by RU-486 and the morning-after pill are completely separate. [LB521]

SENATOR HARR: Okay. [LB521]

SENATOR FULTON: They're different. [LB521]

SENATOR HARR: That tells you how up I am on this whole...let's go with the RU whatever that we've been talking about then. [LB521]

SENATOR FULTON: Uh-huh. My...and how do I say this, abortion is different and RU-486 should be treated differently. I would not want to put a bill out that says all telemedicine ought to be banned such that we disallow webcam abortions, and that's something that I contemplated but that's not my intention. [LB521]

SENATOR HARR: But why should it be treated differently? [LB521]

SENATOR FULTON: Well, I think there's a place for telemedicine, you know... [LB521]

SENATOR HARR: But that's not what I'm asking, if there's a place or not a place. I'm asking why should RU-486 be treated differently? [LB521]

SENATOR FULTON: Okay. Number one, abortion, abortion is something different than, you know, a sinus infection. I'm not being flippant. I'm just...there's a difference. Number two, there's... [LB521]

SENATOR HARR: And what is that difference? [LB521]

SENATOR FULTON: Well, abortion is taking the life of an unborn child. In my book, it's different than a... [LB521]

SENATOR HARR: Okay, fair, and I'd agree with that. But as far as... [LB521]

SENATOR FULTON: But as far as the woman and what the woman is seeing, RU-486, I believe, again, it's the FDA, at seven weeks gestation, past seven weeks gestation...I'll say it a different way. RU-486 can be administered prior to seven weeks gestation. [LB521]

SENATOR HARR: Okay. [LB521]

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SENATOR FULTON: Okay? Now that's not to say I don't know that there's a law that prohibits its use after seven weeks, but the safety factors start to plunge after seven weeks, according to the FDA. Okay? [LB521]

SENATOR LATHROP: The what plunges, Tony? [LB521]

SENATOR FULTON: Safety. [LB521]

SENATOR LATHROP: Okay. [LB521]

SENATOR FULTON: Factor of safety. And so, you know, if you have someone on the end of a webcam who's making a determination at what point of gestation has that fetus progressed, it seems to me it's a lot...we're going to be more accurate, I would feel a lot better about it, it would be much safer if the doctor is in the physical presence of the woman to make that determination about the child. So that's one. And number two... [LB521]

SENATOR HARR: But how can that doctor make a determination on a sinus infection telemedically? They can't look in your ear. They can't look in your mouth, the cough, hold, suppress your tongue. [LB521]

SENATOR FULTON: Sure. [LB521]

SENATOR HARR: I mean I have a problem with...I mean it's either...well, go ahead with number two. [LB521]

SENATOR FULTON: Well, okay. Number two, and there could be others, I guess I'm pulling out a couple that I've read through FDA, RU-486 should not be administered in the case of an ectopic pregnancy, which can be...I understand they're rare but, again, having a doctor in the presence of a woman who's seeking an abortion, to me it's common sense. It's safer to have him there. He's able to determine if he knew there's an ectopic pregnancy because he does a physical. He's there physically with her, partaking in the examination, and so having the doctor in the presence is safer than not having him in the presence. So to address your question... [LB521]

SENATOR HARR: Agree. I agree with that. [LB521]

SENATOR FULTON: ...following my logic, taken to an absolute, we would ban all telemedicine because a doctor is not in the presence via telemedicine. That comes down to a question of logic. I know, and I know, believe, that having a chemical abortion administered and conducted absent a physician is not safe. In order for me to sit here and say with certitude that all...to I would have to be familiar with every potential

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procedure that could be administered via telemedicine in order to say that all of them aren't safe and I have not spent my time or energy doing that. [LB521]

SENATOR HARR: Yeah. I think it's really more of a question of policy, if we want telemedicine or not, in my opinion, but yeah. [LB521]

SENATOR FULTON: Yeah. Well, I just...I want my intention to be clear here. This is relegated to abortion. There is a place for telemedicine and I've focused on abortion because, frankly, I was appalled when I saw this was happening. [LB521]

SENATOR HARR: But you'd also agree there probably isn't a place for abortion, period. [LB521]

SENATOR FULTON: That is my position,... [LB521]

SENATOR HARR: Okay. [LB521]

SENATOR FULTON: ...but I'm not banning an abortion. I'm working within the confines of the law. And actually, I mean... [LB521]

SENATOR HARR: Yeah, and fair. I know, yeah, I... [LB521]

SENATOR FULTON: Yeah. [LB521]

SENATOR HARR: ...just take it to its logical end. [LB521]

SENATOR FULTON: Status quo is what I would like to preserve here. There are no abortions being conducted absent a physician in Nebraska. I'd like to keep it that way. [LB521]

SENATOR HARR: On telemedicine status quo. [LB521]

SENATOR FULTON: Abortion status quo. That's all I'm addressing. [LB521]

SENATOR MCGILL: So no more abortions. (Laugh) [LB521]

SENATOR HARR: Fair enough. [LB521]

SENATOR FULTON: Senator, if you're interested in addressing telemedicine, here's the other potential issue we might. I had a chance, after talking with you yesterday, to think about this. If indeed we wanted to put a ban on all telemedicine, that would be something contemplated under the Health and Human Services Committee. And so I've... [LB521]

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SENATOR HARR: That's really the better question, is why is this here instead of HHS. That is my...yeah, that's a good point, yes. I have nothing further. [LB521]

SENATOR LATHROP: I think we know this is where they end up. (Laughter) And so we learn something about medicine every time one comes along. Senator Fulton, thank you. And you'll stick around to close? [LB521]

SENATOR HARR: Uh-huh, thanks. [LB521]

SENATOR FULTON: I am, yes. [LB521]

SENATOR LATHROP: Okay. Those who are here in support? [LB521]

JULIE SCHMIT-ALBIN: (Exhibit 10) Good afternoon, Senator Lathrop and members of the committee. [LB521]

SENATOR LATHROP: Good afternoon once again. [LB521]

JULIE SCHMIT-ALBIN: My name is Julie Schmit-Albin and that's S-c-h-m-i-t-A-l-b-i-n. I'm executive director of Nebraska Right to Life, which is the state affiliate of National Right to Life Committee, and I appear before you today in strong support of LB521. And just a little bit of background: I know Senator Fulton discussed how the webcam abortion process is done, but they did first appear in 2008 in Iowa and were introduced there by Planned Parenthood. And it's important for you to know that Planned Parenthood last year, Nebraska Planned Parenthood and Iowa Planned Parenthood, merged. So that's why we're concerned, because what's in Iowa may well come to Nebraska. This is being conducted at 16 satellite sites across Iowa right now and in Nebraska Planned Parenthood has a freestanding abortion facility at 3705 South Street, where they've been conducting abortions, surgical and chemical, since 1995. Omaha just opened a new Planned Parenthood abortion facility where they're going to be conducting...where they're conducting chemical and are intending to conduct surgical abortions. The process that he discussed, the abortionist may be sitting in Des Moines and vis-a-vis the Skype-type setup at the 16 satellite sites across Iowa. The patient is with a health professional in a Planned Parenthood site at these rural or more remote sites. And as he discussed, over the computer...she is seen by the nurse practitioner or the health professional at the satellite site and is given a pregnancy test and receives an ultrasound but to our understanding does not receive a physical examination. And so the abortionist questions her over the Skype-type setup and then asks her if she would like to take the RU-486 regimen, and if she acknowledges yes, then he pushes or she pushes a button on their end in Des Moines, on their computer, which opens a drawer on her end and then she takes the first dose under the guidance of the health professional at the Planned Parenthood site. So at no time is the woman in the same

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room as the abortionist. So I think that they're also to view a video that gives them some instruction of what can happen, but if they're experiencing problems, they are told to call Planned Parenthood's 24-hour hot line. And if there are problems or complications, say this comes to Nebraska and the abortionist is sitting in Omaha or Lincoln and the woman or girl is sitting out in Grand Island or Scottsbluff, the problems or complications become that of the emergency room in Scottsbluff or Grand Island. And a young girl may be presenting herself in an emergency room if she's having hemorrhaging and not know what's going on and perhaps is scared to tell the ER physician that she took a drug cocktail to induce a chemical abortion. They may not even know that she took that and so there could just be concerns there. Basically, Planned Parenthood overcomes two obstacles with webcam abortions, the first being access to our rural areas and areas of population that they may want to target. They cannot afford to send a circuit-riding abortionist around the state to do surgical abortions. They're not equipped in remote sites to do surgical abortions. However, they can basically open a storefront office in rural communities across Nebraska, as they have in Iowa, and offer RU-486 through the chemical process. The cost of sending an abortionist and person around the state is alleviated by having the abortionist sitting in the one site. And I can address some of the other questions that were raised with regard to statistics. I guess that's my red light, right? I'm out. [LB521]

SENATOR LATHROP: That's probably your red light, but I'm guessing you're going to get some questions about the statistics. [LB521]

JULIE SCHMIT-ALBIN: Okay. All right. [LB521]

SENATOR LATHROP: So, Senator McGill. [LB521]

SENATOR MCGILL: So you can go ahead and share those statistics. [LB521]

JULIE SCHMIT-ALBIN: Okay. Senator Coash, who I guess is gone, had asked about the stats on the abortion numbers in Iowa and Planned Parenthood did nearly 2,000 more abortions in 2008 than in 2002. There were 4,492 versus 2,898 between those two years. Chemical abortions in 2008 in Iowa exceeded surgical ones: 2,582 abortions with RU-486 against 2,210 surgical abortions. So again, the concern is that in Iowa they've seen an increase in chemical. [LB521]

SENATOR MCGILL: What year did the chemical ones start? [LB521]

JULIE SCHMIT-ALBIN: Two thousand eight, July of 2008. [LB521]

SENATOR MCGILL: So the increase is in the type and not in abortion overall. Because I know my staff has been looking at numbers and abortions have gone down from 2007 to 2008 to 2009. [LB521]

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JULIE SCHMIT-ALBIN: Uh-huh. [LB521]

SENATOR MCGILL: So, overall, abortions have gone down in Iowa. It's just the type. [LB521]

JULIE SCHMIT-ALBIN: Right. The chemical has increased. [LB521]

SENATOR MCGILL: Okay. [LB521]

SENATOR LATHROP: Okay. Any other questions? [LB521]

JULIE SCHMIT-ALBIN: Okay. Thank you. [LB521]

SENATOR LATHROP: I see none. Thanks, Julie. Any other proponents? Anyone else here in...? [LB521]

GREG SCHLEPPENBACH: Hello again, Senator Lathrop, members of the committee. [LB521]

SENATOR LATHROP: Good afternoon. [LB521]

GREG SCHLEPPENBACH: My name is Greg Schleppenbach, spelled S-c-h-l-e-p-p-e-n-b-a-c-h. I am here on behalf of the Nebraska Catholic Conference to go on record in support of LB521. I actually didn't prepare anything so this could be either really good or really bad. (Laughter) I actually...I did more research in preparing than in writing testimony, and I went on the FDA Web site, found some information about RU-486. Just for some general information that they provide, they say, since its approval in September 2000, Food and Drug Administration has received reports of serious adverse events, including several deaths, in the United States following medical abortion with mifepristone and misoprostol. They also provide a detail of the protocol for this and it makes it pretty clear that the protocol or the drugs are to be provided or ingested in the presence of the physician who administer them. According to the FDA, the approval for regimen for a medical abortion through 49 days of pregnancy is: day 1, administration of Mifeprex to be taken orally at once; day 3, two tablets of misoprostol orally at once; day 14, posttreatment, the patient must return to confirm that a complete termination has occurred, if not, surgical termination is recommended to manage medical abortion treatment failures. And a question and answer guide regarding Mifeprex, the FDA notes that mifepristone is supplied directly to physicians who meet certain qualifications--some of this is addressed to Senator Council's questions--and that it is not available in pharmacies or legally available over the Internet. Further, physicians who meet these...those qualifications, "must agree to other responsibilities, such as dispensing the medication guide." The medication guide, which

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is provided to the patient, specifies that the tablets of Mifeprex and misoprostol are to be taken "at your provider's office." This requirement is repeated in the directions for dosage and administration, which note that, quote, treatment with Mifeprex and misoprostol for the termination of pregnancy requires three office visits by the patient and specified, quote, Mifeprex may be administered only in a clinic, medical office, or hospital by or under the supervision of a physician able to assess the gestational age of an embryo and diagnose ectopic pregnancies. Further, the patient agreement, which must be signed by the patient, expressly states: I understand that I will take Mifeprex in my provider's office day one; I understand that I will take misoprostol in my provider's office two days after I take Mifeprex, day three. The current law in Nebraska is it's a felony for a nonphysician to do an abortion. That's current law. How this process is done now with RU-486 I can't tell you, but it seems to me the law is clear that it should be provided by a physician and anybody other than a physician is a felony to provide or perform an abortion. I guess some of this might come down to how do you define perform. Does it...is the physician actually has to hand the prescription? If it's a chemical abortion, that's the mechanism for doing the abortion so it seems to me the answer is yes. So hopefully that's been helpful. Encourage you to support the bill.
[LB521]

SENATOR COUNCIL: Just a question. [LB521]

SENATOR LATHROP: Thanks, Greg. Senator Council has got a question for you.
[LB521]

SENATOR COUNCIL: Yeah, and if you can read that section to me again, Greg, as I heard you say, it says by or under the supervision of a physician. Is that correct?
[LB521]

GREG SCHLEPPENBACH: Well, let me see. [LB521]

SENATOR COUNCIL: Day...when it talks about actually taking the... [LB521]

GREG SCHLEPPENBACH: Well, the patient agreement or... [LB521]

SENATOR COUNCIL: No, no. You were outlining the method of carrying this out and take one... [LB521]

GREG SCHLEPPENBACH: Yeah. Yeah. [LB521]

SENATOR COUNCIL: ...by or under the supervision of the... [LB521]

GREG SCHLEPPENBACH: Mifeprex. Mifeprex may be administered only in a clinic, medical office, or hospital by or under the supervision of a physician. That's what's FDA

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regulations. Nebraska law says it must be...abortions must be performed by a physician, not merely under the supervision of a physician but by a physician. Well, maybe there's some ambiguity in the law in that regard, but I don't think so. I think it's pretty clear that, you know, a nonphysician cannot do a surgical abortion, clearly. What constitutes the actual act of abortion using drugs? Well, if the only action is the woman takes the drugs, it seems to me that it's the abortionist who needs to be present. You know, again, I think there are serious health issues, serious medical risks, as the FDA has noted in their documents and all available on the FDA Web site. It seems to me there's good reason we have public policy that says a physician should perform an abortion and nonphysicians should not. And I think this is stretching that to a sort of cynical degree to suggest that doing this via Skype or webcam, whatever you want to call it, I think is pushing the limits of safety issues. I think it's...one of the first and foremost issues is a safety issue. [LB521]

SENATOR COUNCIL: Okay. I'm not going to get into...but that's one of the problems I have with the comment about what is or is not an abortifacient, because we could logically take that argument that if the abortifacient, however you pronounce that, I try to...I looked that up so I don't even think...well, that's another thing. But that is in someone's mind performing an abortion. Then every time a pharmacist fills a subscription for a contraceptive, there's an abortion being performed. [LB521]

GREG SCHLEPPENBACH: No, there's a distinction there. There's certainly a moral distinction between contraception and abortion. But the medical reality of most hormonal contraception is that that is one of its modes of action, and it's right in the package insert, if you'd look at any of them. It's not speculation. They're saying that the various modes of operation, most of which are contraceptive in that they prevent conception, but it does say that if conception occurs one of the other mechanisms of hormonal contraception is that it changes the lining of the uterus, makes it inhospitable to a embryo implanting. So now we're not talking about stopping/preventing conception. We're talking about what...that term--abortifacient. It's an early abortion because it's not preventing conception, not preventing the start of a new human life. It is stopping that life from continuing after it has begun by not allowing it to implant and continue to grow in the womb. [LB521]

SENATOR COUNCIL: Okay. And that's the point I'm making. Taking that argument to its logical extent, any woman who chooses to take oral contraceptives, taking the...your argument to its logical extent, could not take those unless they were in the presence of their medical provider. [LB521]

GREG SCHLEPPENBACH: No, because the primary purpose and mode of operation of contraception is contraception, and nobody can know for sure whether or not it operates as an abortifacient or not. [LB521]

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SENATOR COUNCIL: Okay. Thank you. [LB521]

SENATOR LATHROP: Think that's it. Thanks, Greg. [LB521]

GREG SCHLEPPENBACH: You bet. [LB521]

SENATOR LATHROP: Any other proponents? Is that a yes? I thought I saw a hand and then you disappeared. Okay. Welcome. [LB521]

MARY JANE ZIOLA: (Exhibits 13, 14, 15, 16, 23, and 24) My name is Mary Ziola and I'm with Nebraskans United for Life and we have 13,000 petitions to submit today of people that are against Planned Parenthood and the expansion of abortion and webcam abortions. Planned Parenthood continues to perpetuate the myth that their webcam abortions benefit women in rural areas without access to medical services. In truth, Planned Parenthood's telemed abortion clinics are simply not located in rural areas. They are in places like Ankeny, a suburb of Des Moines, which is located in the highest populated county in Iowa. Another is in Ames, a robust college town with great access to legitimate quality medical care. In fact, all of Planned Parenthood's so-called remote locations are in communities that have ample medical services available for women, services that simply do not include the destruction of innocent babies. When women do not have abortion businesses actively marketing abortions to them in their neighborhoods, they tend to reconsider abortion and instead make life-affirming decisions for their babies. They experience this living in the now abortion-free community of Wichita, Kansas, where local pregnancy centers inform us that business is up, few women opt for abortion and requests for adoption have quadrupled since the closure of the city's last abortion clinic. With America's changing attitudes, shifting away from support for abortion, and with surgical abortion clinics closing in droves for lack of business, it is easy to see why the webcam abortion scheme is attractive to Planned Parenthood. It helps them increase access to customers without the expense of actually having to provide those customers with personal contact with qualified, licensed, medical personnel. It preys on vulnerable women who are susceptible to Planned Parenthood misleading marketing rhetoric. And that's why we at Nebraskans United for Life are for LB521. [LB521]

SENATOR LATHROP: Very good. Thanks, Mary. Any questions? I see none. If you want to leave those with the pages,... [LB521]

MARY JANE ZIOLA: Okay. [LB521]

SENATOR LATHROP: ...they'll hang on to them. We'll make them part of the record or do with them as we're supposed to or allowed to, I guess. [LB521]

MARY JANE ZIOLA: Okay. [LB521]

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SENATOR LATHROP: Okay. Any other proponents? Anyone here in opposition?
[LB521]

TRACY DURBIN: (Exhibit 12) Vice Chairman Lathrop and committee members, thank you again for giving me an opportunity to speak. My name is Tracy Durbin, T-r-a-c-y D-u-r-b-i-n. As you know, we provide Iowa women access to medication abortion via telemedicine. We developed the program in response to the needs and requests of rural communities where services aren't available. LB521 would prohibit this use of technology in Nebraska. We don't currently provide this service in the state and have no immediate plans to do so. Regardless of this fact, we oppose LB521 due to the potential that some medical groups may seek to provide these services in the future. Telemedicine is a longstanding approach to delivering quality care and widely used throughout the country. The Veterans' Administration uses telemedicine for cardiac care, posttraumatic stress disorder, and access to specialists for conditions such as diabetic eye disease and skin conditions. California school-based health centers use them for asthma care and dental care and other pediatric healthcare needs. The University of Virginia Health System uses this technology to expand healthcare access, including providing prenatal care to women with high-risk pregnancies. Providing abortion care via telemedicine involves the exact same process as any form of telemedicine healthcare. There's no basis for imposing a prohibition on one type of procedure and there's no medical evidence that the practice is dangerous. In fact, it is safe and effective and women are highly satisfied with abortion care being provided through telemedicine. An independent researcher surveyed 200 patients who received medication abortion care via telemedicine and 200 who received medication abortion care in person from a physician: 94 percent of women who used telemedicine were very satisfied with their experience compared with 88 percent in the second group. This was reported in the Des Moines Register in May of 2010. And I should point out that the Iowa Board of Medicine investigated this practice and protocol. Neither was found to be improper or unsafe, and no action was taken to change or stop the practice. Telemedicine brings healthcare to people in rural areas where access to providers is limited. Women who live and work outside of major metropolitan centers do face more disadvantages than those in or near cities when confronted with an unintended or crisis pregnancy. A woman is forced to travel for services, leaving behind support systems and obligations, and she and her family are faced with the costs of travel and accommodation. It's unfair that a woman in a rural part of our state does not have the same access to abortion care as a woman who lives in or near a city. In closing, medication abortion care is safe whether provided by telemedicine or not. To single it out for prohibition is not medically justified. Secondly, such a prohibition would set a precedent that could hamper the expansion and innovation in telemedicine--a technology which will help ensure that regardless of where one lives he or she will have access to the healthcare they need when they need it. We ask that you indefinitely postpone LB521. Thank you for your time and attention. [LB521]

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SENATOR LATHROP: Thank you for your testimony. Senator McGill. [LB521]

SENATOR MCGILL: So what exactly happens if a woman comes in now? It's before seven weeks and is going...is interested in this option. [LB521]

TRACY DURBIN: You mean the telemedicine option? [LB521]

SENATOR MCGILL: No. No, say...no, a face to face conversation. I'm trying to understand the difference practically speaking between the telehealth version it, the Web, whatever, and if there's a live doctor there. [LB521]

TRACY DURBIN: It's the exact same procedure, step by step, until the point where the Mifeprex or mifepristone, it's also been referred to as RU-486, is dispensed. It's the exact same procedure up until that point. [LB521]

SENATOR MCGILL: Is the doctor there with the woman the whole time as she's getting her ultrasound or... [LB521]

TRACY DURBIN: No. [LB521]

SENATOR MCGILL: And the doctor just comes in at the last minute? [LB521]

TRACY DURBIN: The doctor comes in, review... [LB521]

SENATOR MCGILL: So is it...are they with a nurse practitioner? Who are they with as they... [LB521]

TRACY DURBIN: They're with a variety of people. When they... [LB521]

SENATOR MCGILL: Okay. Can you go ahead and go into... [LB521]

TRACY DURBIN: Sure. [LB521]

SENATOR MCGILL: ...so I can better understand that because I don't know. [LB521]

TRACY DURBIN: When, generally speaking, when somebody comes in for a medication abortion, they're going to be filling out paperwork, they're going to be filling out a detailed history. [LB521]

SENATOR MCGILL: And it still...is there still the waiting period if they're... [LB521]

TRACY DURBIN: Yes. [LB521]

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SENATOR MCGILL: Okay. [LB521]

TRACY DURBIN: When they call to make the appointment, that... [LB521]

SENATOR MCGILL: Okay. [LB521]

TRACY DURBIN: ...you still have to do that. [LB521]

SENATOR MCGILL: Okay. [LB521]

TRACY DURBIN: They have to go through lab work. They have to have an ultrasound done. And then all of those forms are sent over to the clinician, including the ultrasound, who reviews them. Whether that clinician is on site or somewhere else, that's all reviewed. And at that point then the clinician would come in, in person,... [LB521]

SENATOR MCGILL: Uh-huh. [LB521]

TRACY DURBIN: ...and hand the mifepristone to the patient, give them instructions for how to take the misoprostol at home, and then they come back in two weeks for their follow-up ultrasound and exam. [LB521]

SENATOR MCGILL: And does the doctor see them in that follow-up? [LB521]

TRACY DURBIN: No, that's done by a nurse practitioner. [LB521]

SENATOR MCGILL: Okay. So that would be different. That would be an impact on the law for those who are seen, because this law says they have to see their physician again I think. But I'm just trying to see the difference, you know, what practical effect it would have even on the people who currently see the doctor face to face go into a location. Okay, thank you. [LB521]

SENATOR LATHROP: I think that's all the questions. Thank you for your testimony. Next opponent of LB521, if any? Anyone else here in opposition? Anyone here in a neutral capacity? Seeing none, Senator Fulton to close on LB521. [LB521]

SENATOR FULTON: Thank you, Mr. Vice Chairman. I'll be brief. The numbers were cited that Senator McGill requested, which is good because my staff was working feverishly to find them and they've been found. I just want to say that I'm hopeful that I can work with the committee to move this forward. I have spoken with a senator here in our body. Senator Bloomfield has indicated he would make this his priority, so it will have a priority designation. And just recognize that we had opposition. I know it was said that there is no immediate plans to bring this to Nebraska but I don't think it's a leap

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that it could be coming to Nebraska, and I ask this committee to move this bill forward so that we can maintain the status quo with respect to abortion. Thank you. [LB521]

SENATOR LATHROP: Tony, I do have a question and this is sort of a lawyer question, if I can, and that is this provides for a cause of action for the mother or the father if he's married to the mother or grandma. Is that right? [LB521]

SENATOR FULTON: The maternal grandparents of... [LB521]

SENATOR LATHROP: Okay. [LB521]

SENATOR FULTON: ...maternal grandparents of the child. [LB521]

SENATOR LATHROP: And here's something that I want you to think about at least before it comes out of committee and that is in the law we work at whenever you provide somebody with a cause of action for some kind of a medical procedure, we talked...Greg and I talked about this last year with Senator Dierks's bill, when you provide somebody with a cause of action, generally what you have to do is show a legal connection between something and a damage. So if we provide somebody with a cause of action, the question is, what are the damages? Is there some consequence or some injury to the mother because the doctor wasn't in the room? Right? So when we look at all of malpractice law, the damages in a malpractice case are the consequence of somebody's medical mistake. And if we're making this the equivalent of a medical mistake, the question for a court to answer in this cause of action you're creating is, so what are the damages for the mom, right, or anybody that's bringing a cause of action? And there certainly would be, I believe, if there were some consequence to not having the doctor in the room at the time, okay, but just to create a cause of action and say you can collect damages for doing this procedure doesn't answer the question to the court, that the court eventually has to instruct a jury on, which is some woman has a procedure done remotely and now she's suing the doctor and she's in the courtroom and everybody is about to try to figure out what her damages are, and the question is what are her damages? Is she...was the...did she suffer some ill side effect? Did she have a physical medical problem because the doctor wasn't there and it was only a nurse practitioner? Do you get it? [LB521]

SENATOR FULTON: Yep, understood. [LB521]

SENATOR LATHROP: Okay. And I think at some point before we Exec on this, we ought to have an answer to that. [LB521]

SENATOR FULTON: Yeah, understood. And I will do that. I can do that at a later time. [LB521]

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SENATOR LATHROP: Okay. Senator McGill. [LB521]

SENATOR MCGILL: I was just wondering, since we found out that it's typical for the follow-up visit to be with a nurse practitioner unless, I'm assuming, there's a problem, is that something you would have a problem with, instead of having it be with a physician, the follow-up? [LB521]

SENATOR FULTON: No, that's not a problem and...well,... [LB521]

SENATOR MCGILL: I mean we can talk about it but I'm just throwing it out there since that's currently... [LB521]

SENATOR FULTON: Yeah, that's...I don't believe the... [LB521]

SENATOR MCGILL: ...what they do. [LB521]

SENATOR FULTON: The bill doesn't require that that follow-up...it just requires that the follow-up... [LB521]

SENATOR MCGILL: So that the physician can confirm that the pregnancy has been terminated. [LB521]

SENATOR FULTON: Yeah. The requirement here is that the physician make all reasonable efforts to ensure that the patient returns. Okay. [LB521]

SENATOR MCGILL: Okay. [LB521]

SENATOR FULTON: So the follow-up doesn't necessarily have to be with that physician. [LB521]

SENATOR MCGILL: Even have to...okay. Okay. Thank you. [LB521]

SENATOR FULTON: Okay. Thank you. [LB521]

SENATOR LATHROP: I think that's it. Thanks, Senator Fulton, and that will close the hearing on LB521. Before we close it, though, we have the petitions and I don't know what the process is, but to the extent we can make them part of the record or acknowledge them in the record, that will be done. And frankly, I've never had somebody bring in... [LB521]

SENATOR MCGILL: Thirteen thousand petitions. [LB521]

SENATOR LATHROP: ...however many petitions were brought in, and I'm not sure what

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we do with them so...but we'll do what we can with them, in the spirit intended. (See also Exhibit 22) And that will close LB521 and bring us to LB690 and Senator Brasch. Welcome. [LB521]

SENATOR BRASCH: (Exhibit 17) Thank you and good afternoon, Vice Chairman Lathrop and members of the Judiciary Committee. My name is Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent Legislative District 16. I am before you today as introducer of LB690. My purpose in bringing LB690 is purely simply yet very important and not to be taken lightly. The issue here is not whether you are for or against abortion. Please consider young women, minors seeking an abortion who today may face being alone in this decision or who may face being alone following an abortion. I carry this legislation because I wholeheartedly believe requiring parental consent for an abortion is sincerely the best option for young women for their safety, for their health, well-being, and peace of mind. If a minor decides to have an abortion, that decision should not come alone or without a parent or family at her side. She should not find herself alone, especially at a time when physically she may require aftercare or, equally important, family needs to be there for emotional support, be it needing comfort or simply encouragement. I am hopeful that requiring parental consent will encourage parents to be there also to offer guidance in current and future choices and especially in the event that the postabortion medical conditions or concerns should arise. While I believe participation by parents is best, I do also recognize that not every parent-child relationship is or transforms into the healthy and nurturing relationship we'd like to see. Therefore, LB690 does also take this into account and provides for judicial bypass when parental consideration is not an option for a minor. LB690 moves Nebraska forward from requiring parental notification to requiring parental consent for a woman who is less than 18 years of age seeking an abortion. There are currently 25 states that require parental consent, plus there are an additional 3 states that have already recognized the importance of strengthening laws and parental involvement and have moved from parental notification to parental consent, while at least 1 other state is also considering consent legislation. LB690 states that no person shall perform an abortion upon a pregnant woman less than 18 years of age without the notarized written consent of both the pregnant woman and one of her parents or her legal guardian. An exception is granted in the case of a medical emergency. Intent is explicitly stated for a pregnant woman's parent or guardian to consider only her best interest. Section 4 of the bill addresses cases of child abuse and that a young woman may obtain notarized written consent from a sibling or from a stepparent or grandparent if she signs a statement declaring that she's a victim of abuse at the hands of her parent or guardian. Because Nebraska Right to Life has expressed concerns with that particular section, I have drafted an amendment I will leave for your consideration. AM208 keeps the focus narrow and strictly on parental consent and the role of the parents, without placing any obligation on siblings or other family members. Section 5 of LB690 speaks to the pregnant minor choosing to carry her baby and deems her emancipated for eligibility of public assistance benefits if her parents should deny her financial support. Judicial bypass is established in Section 6 of the bill should the

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young pregnant woman choose not to obtain her parent's consent for an abortion. I hope that including the judicial bypass will help alleviate some concerns you may have with moving from parental notification to consent. Additionally, LB690 does establish a Class III misdemeanor for a physician in violation of the consent requirements for an unauthorized person who provides consent for a person who coerces a minor to have an abortion. This bill also calls for a monthly report, including the number of consents, the number of exceptions, and the pregnant woman's age and pregnancy or abortion history. I do have another amendment, AM711, that provides clarification to that section by stating that such reporting requirements are to be done by the physician. I believe that parental consent requirements first respect the parents and give the parents the opportunity to offer information to assist with making such an irreversible decision. Our laws require a parent's consent for tattoos and ear piercing. Certainly this necessitates consent as well. Requiring parental consent serves a valuable function to help ensure that another adult does not pose as a parent to the young woman and offers her protection from sexual exploitation. While these only touch upon the basis for supporting a parental consent law, these are significant reasons, as research has shown. Proponent testifiers here today who have an understanding of supporting research and related legal matters will follow and provide their expertise on LB690 and the importance of obtaining parental consent. I sincerely appreciate your consideration of LB690 and I have had the opportunity to visit with each of you, to some extent, about this bill and my intentions. I will express to you my intention to prioritize LB690 and my willingness to work with you to bring this bill to the floor. I'm happy to address your questions, however, I would like to do so at closing to grant adequate testimony time for those following me who can address more of the legal and practical aspects of this bill. Thank you. [LB690]

SENATOR LATHROP: Thank you, Senator. Any questions? I see no questions from the committee and we'll look forward to your close. Anyone here in support of LB690 that wishes to be heard? [LB690]

DANIEL McCONCHIE: (Exhibit 18) Mr. Chairman, members of the committee, my name is Daniel McConchie, last name spelled M-c-C-o-n-c-h-i-e. I am vice president of government affairs for Americans United for Life, a national public interest law firm with a practice in abortion and bioethics law. After thoroughly reviewing LB690, which mandates parental consent before a minor may obtain an abortion, AUL appreciates this opportunity to testify about the need for this important legislation. LB690 would convert Nebraska's existing parental notification requirement before a minor can obtain an abortion into a law requiring parental consent. The purposes behind parental involvement laws are clear--to protect the health and welfare of minors and to foster family unity and protect the rights of parents. The United States Supreme Court has acknowledged that "Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences." Further, the medical, emotional, and psychological consequences of abortion are often serious

and can be lasting, particularly when the patient is immature. Parents usually possess information essential to a physician's exercise of his or her best medical judgment concerning their daughter. Further, parents who are aware that their daughter has had an abortion may better be able to ensure the best postabortion medical attention. For these reasons, parental involvement laws protect the health and welfare of minors, as well as foster family unity, and protect the constitutional rights of parents to rear their children. Parental involvement laws also reduce the number of minors who have abortions. For example, the 1996 study revealed that parental involvement laws appear to decrease minors' demands for abortion by 13 to 25 percent. Further, LB690 can better protect minors in Nebraska because parental consent laws are more effective than parental notification laws, like the current Nebraska law. A 2008 study showed that parental consent laws reduce the minor abortion rate 18.7 percent on average nationally while parental notification laws only reduce the abortion rate by about 5 percent. Further, parental consent laws better protect the health and welfare of minors by allowing parents to be directly involved in the medical decisions of their minor daughters and to help them make the best personal choices, including carrying the child to term and choosing not to have an abortion. Additionally, parental notice laws may be easier for abortion providers to circumvent than parental consent laws. Abortion providers could evade a parental notification law simply by arguing, for example, that a misnotification was the fault of timing or other factors. Minors who believe that they may be able to intercept a notification letter or other contact might not be deterred by a parental notification law as opposed to a parental consent law. For example, in an Ohio case, a 13-year-old who was pregnant with her soccer coach's baby sought an abortion. The abortion provider, quote, notified the coach that the child intended to have the abortion with the alleged belief that they were speaking with the child's father. In conclusion, LB690 is carefully drafted to withstand constitutional scrutiny and protect minors facing this monumental decision. It will help better protect minors in the state of Nebraska from the harms inherent in abortion. Thank you. [LB690]

SENATOR LATHROP: Thank you. Appreciate the testimony. Are there questions?
Senator Council. [LB690]

SENATOR COUNCIL: Yes, thank you. And thank you for your testimony and I appreciate the concerns that you've expressed. Do you have data with regard to Nebraska in terms of abortion rates of minors since the enactment of the notification? Have we seen a marked increase? Do we have any percentages to show what impact that parental notification has had on abortions in Nebraska? [LB690]

DANIEL McCONCHIE: I do not have that number here. My understanding is of the current rate of abortions in the state, 16 percent of abortions are performed on girls under the age of 19, which the current bracket is under 19 is the way that they bracket ages, but I don't have information as to how that...the original change of the parental notification law when it was originally passed has impacted those numbers. That said,

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even if there was a indication to show how much change there might have been, I'm not in a position to know what other factors may have changed around the same time that might have also impacted those numbers in the state. [LB690]

SENATOR COUNCIL: And that would hold true for the data you share with us from other states, too, wouldn't it? [LB690]

DANIEL McCONCHIE: Well, in those, there is a researcher who used to work at Harvard MIT by the name of Michael New who says several peer-reviewed published studies on this subject--he has studied the issue of taxpayer funding of abortion, of parental involvement laws and of informed consent laws--and in all of those he was able to, through ways I don't understand, not being a statistician, be able to isolate how the impact of those laws made on the abortion rate in the state. He just has a study that was published in this last month, an issue of I think the publication is called State Politics and Policy Quarterly, in which he addresses this issue yet again bringing up to date the most up-to-date numbers that were available. [LB690]

SENATOR COUNCIL: Yeah, I'd be curious as to how he could factor out any other intervening causes. And then in terms of the concern, would the concern with regard to whether parents actually receive the notice and if you're actually...because I'm looking at LB690 and it says a notarized statement. I mean you could have the same concerns with a notarized statement, not knowing whether that's the person. I mean people can falsify... [LB690]

DANIEL McCONCHIE: True. [LB690]

SENATOR COUNCIL: ... notary public indicators. Could the protection that you've expressed a concern about also be addressed by...under the current law requiring that there be an acknowledgement of receipt of the notice that is notarized? [LB690]

DANIEL McCONCHIE: That would strengthen the existing parental notification law. However, that does not put the parent in the position of having the ultimate amount of influence over their child's life. One point that I did not mention in the testimony is that when a minor daughter undergoes an abortion, any complications that may come from that, any follow-up care and so forth, the parent is financially responsible for. And this is the only medical procedure that is set aside, if you will, that a minor cannot get without a parent's consent. They can't get their ears pierced. They can't get a tattoo. They can't go through any other medical procedure. This is isolated separately. We think that this should be treated equally along with any other kind of medical intervention. [LB690]

SENATOR COUNCIL: Tattoos are medical intervention? No. [LB690]

DANIEL McCONCHIE: Well,... [LB690]

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SENATOR COUNCIL: I mean I understand, I understand what you're stating in terms of the distinction and I just after stating it because it's curious that there's only a few who are concerned about the maturation level of young people when they're committing abortions. I don't...I wish I would have that same level of concern when we're talking about the immaturity of young people when they create heinous crimes. Thank you. [LB690]

SENATOR LATHROP: Any other questions? Oh, Senator Harr. [LB690]

SENATOR HARR: I just have a couple. And I agree with you, if my daughter had a procedure I'd probably want to know about it. But I do want to address a couple issues because we don't live in "Ozzie-and-Harriet" world. The language currently allows for stepparents or grandparents who are 21 years of age or older. Do you know why that language was originally inserted in there? [LB690]

DANIEL McCONCHIE: This is based upon, in part, off of a model piece of legislation that we have on hand. We recognize that it is stronger to have...to not have those provisions in there that provides the strongest amount of support for parental rights. That said, as you've mentioned, you know, there are unusual circumstances in this regard. [LB690]

SENATOR HARR: The "Precious" situation, as we call it. [LB690]

DANIEL McCONCHIE: And we have included this in there because we recognize that it is, in many cases, politically necessary to have this language in there in order for a bill to be passed and we believe that it's better to have a parental consent law with this provision in there than no consent law at all. [LB690]

SENATOR HARR: Okay. And then because the judicial bypass, the language has been changed a little bit, and I'm just...was there a problem, are you aware of a problem with the old parental consent judicial or, excuse me, the old judicial bypass language? Is this because it's based on model code or is this because there was an issue you had with the previous judicial bypass language? [LB690]

DANIEL McCONCHIE: I am not 100 percent certain and I would have to check to make absolutely sure. [LB690]

SENATOR HARR: Okay. [LB690]

DANIEL McCONCHIE: So I could do that. [LB690]

SENATOR HARR: Because here's my problem, is...and to be honest, well, the clear

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and convincing, I like that, adding a level, but it says, and I'm on page 8 if you're following at home, page 8, line 11, well, it really...yeah, it starts on 10. It says, "the court determines by clear and convincing evidence that the pregnant woman is both sufficiently mature and well-informed to decide whether to have an abortion." And I like clear and convincing but then I'm not sure "sufficiently" is now another criteria that's not really defined. What is sufficient, what isn't? I'd probably ask that that word be stricken out of there. It just says: by clear and convincing evidence that the woman is both mature and well-informed to decide to have an abortion. That's more of an authorship issue I guess maybe. [LB690]

DANIEL McCONCHIE: I would have to double-check. That may be because of what existing Supreme Court precedence recommend on that. I would have to double-check, get that. Because in some respects, as we understand, there is a range of maturity. You know, my 11-year-old is more mature than my 9-year-old in ways, but I wouldn't call her mature. And so I think this is an effort to try to indicate that there is a standard that exists that kind of...your average person would agree this person is mature enough to make this decision. [LB690]

SENATOR HARR: Okay. And that kind of leads me to my next question is because this is settled law within judicial bypass, we're introducing new language and that's going to probably introduce the possibility of new litigation. So I hate to open doors you don't have to open. And this, I'm not quite sure, what would you...I mean how would you see a judge asking questions under this language? What questions would you see a judge asking? [LB690]

DANIEL McCONCHIE: Well, in regards to the language itself, I don't believe that this would cause any sort of issue for the courts because this language that is identical or extremely similar to this is in place in other states. As was mentioned by the senator, there's 25 states that have parental consent laws on the books. In those states in which they have parental involvement laws of some sort that are not in effect, it's been based upon issues with their own state constitution, some sort of right to abortion that exists there, and that is not the case here in Nebraska. [LB690]

SENATOR HARR: Yeah, and that's fair and well and I understand that. But I, you know, this is in front of us in Nebraska and I really don't know. And I'm not trying to be flippant, smart-alecky or anything, but I don't know what...I mean what kind of questions would a judge ask to determine that the person is sufficiently mature and well-informed to decide whether to have an abortion? [LB690]

DANIEL McCONCHIE: A judge has a great deal of leeway in being able to ask what it is, and so this is really up to the judge as to what this is. For example, this question was raised prior and the judge...one of our attorneys wrote, the judge has a great deal of discretion in this area. He will talk to the minor to determine her maturity and how

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well-informed she is. And there's areas that are generally used in these that judges use. One is experience refers to all that has happened to the minor during her lifetime, including things that she has seen and done. Examples include minor's age and experiences working outside the home, living away from home, traveling on her own, handling her own personal finances and making other significant decisions. Perspective, which refers to the minor's ability to appreciate and understand the relative gravity and possible detrimental impact of the available options to her, whether carrying her child to term or to aborting it, the potential consequences of each. Specific examples include the steps she took to explore her options and the extent to which she considered and weighed the potential consequences of abortion. And lastly is judgment, which refers to a minor's intellectual and emotional ability to make the abortion decision without the consent of her parents or guardians. This includes the minor's conduct since learning of her pregnancy and her intellectual ability to understand her options to make an informed decision. This was what was delineated by an Arizona appellate court in a case in 2003 as to what types of things that a judge should do. [LB690]

SENATOR HARR: They could look at with this language. [LB690]

DANIEL McCONCHIE: Yeah, with language that is... [LB690]

SENATOR HARR: Okay. [LB690]

DANIEL McCONCHIE: ...very similar to this. And this is pretty much considered to be the standard. [LB690]

SENATOR HARR: Okay. And you'd agree with me if you're 16 or under the state has an even higher interest to a certain degree in notification or/and consent just because of the statutory rape issue. [LB690]

DANIEL McCONCHIE: Yes, I would agree with that. [LB690]

SENATOR HARR: Okay. That's all I have. [LB690]

SENATOR LATHROP: Very good. Thank you for your testimony and you came from... [LB690]

DANIEL McCONCHIE: Chicago. [LB690]

SENATOR LATHROP: ...Chicago. Well, all right. Have a safe journey back. [LB690]

DANIEL McCONCHIE: Thank you, sir. [LB690]

SENATOR LATHROP: Next proponent. [LB690]

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KAY ORR: Good afternoon, Senator Lathrop,... [LB690]

SENATOR LATHROP: Good afternoon. Welcome. [LB690]

KAY ORR: ...members of the committee. My name is Kay Orr, that's spelled K-a-y O-r-r, and I'm pleased to be here for LB690. I don't come as the former Governor or the former State Treasurer. I come as a mother and a grandmother and concerned about the well-being of our young children here in Nebraska. I believe that LB690, which modifies our current state law aimed at reducing the number of abortions in our state by requiring that a minor receive parental consent before ending a life of her unborn child. Today, as a mother and a grandmother and concerned for the well-being of the unborn children of Nebraska, I believe that parents deserve more than simply notification when their daughter is faced with incredible, life-defining decisions of pregnancy. As in every other aspect of parenting, our mothers and fathers should have the ability to shepherd their child through this experience. I have some personal knowledge of that, a step removed of course. I have seven grandchildren. One of them is a girl. She came to us by way of adoption. Her birth mother was of legal age. She was a student at the university, but I know from that family that that parental counseling that she got from...at that time was very important to her and that decision that they made was for her to go to full term and adopt the baby out. The committee has heard many times, but the words bear repeating, life is sacred and, thus, it is of paramount importance that the laws of the state of Nebraska reflect our people's respect for the sanctity of life. And this is the first time I've been back to the Capitol for a number of years but I've returned to urge you to give favorable consideration to advance this LB690 which closes the loopholes in and strengthens our current parental notification law which originated when I was Governor of Nebraska. It was during my tenure as Governor that pro-life senators in Nebraska Legislature attempted to pass a law requiring parental notification before a minor ended the life of her child through abortion. Actually, we started with parental consent, but after unsuccessful attempts and several compromises the Legislature passed a weakened version of the original proposal. The original law, passed in 1991, did not provide the parental involvement for our daughters that they deserve to have when deciding to end the life of an unborn child. And one such loophole which remains in state statute allows parental notification to be waived if a minor presents a signed note providing, and I think that's been dealt with before, providing an obvious invitation for a minor to circumvent the law. So while LB690 would not only ensure that our daughters share the moral responsibility with their parents of protecting their unborn child but would also dramatically reduce the abortion rate among minors here in the state of Nebraska. So I think it's time that we join those other states that were mentioned by the previous proponent, the 25 states which require parental consent when a minor considers ending the life of her child. So please join me, I plead, in supporting LB690. [LB690]

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SENATOR LATHROP: Thank you. Let's see if there's any questions. I see none.
[LB690]

KAY ORR: Thank you very much. [LB690]

SENATOR LATHROP: Good to have you back. [LB690]

SENATOR MCGILL: Thank you, Governor. [LB690]

SENATOR LATHROP: Thank you. [LB690]

KAY ORR: Thank you. I may, as a postscript, say it's been a long time but I haven't forgotten the long hours that you spend down here, so I thank you, all of you, for the work that you do. [LB690]

SENATOR LATHROP: Thanks. Next proponent. [LB690]

DAVE BYDALEK: Members of the committee, for the record, my name is Dave Bydalek, that's B-y-d-a-l-e-k. I'm the executive director of Family First, a nonprofit research and education organization located here in Lincoln. I'm here today to register our wholehearted support for LB690. The current Nebraska law regarding parental notification was passed via LB425 back in 1991. While the passage of the parental notification bill was desperately needed, it soon became apparent that several substantial loopholes existed which were being exploited by abortion providers to effectively gut the statute. The most evident problem is a provision whereby parental notification can be waived if the minor child presents a note signed by the minor's parent or guardian. This provision is an invitation to forgery as there is no requirement that these signatures be witnessed or notarized. Another problem is there is no requirement that an individual who accompanies a minor to an abortion facility prove they are the minor's actual parent or guardian. This problem was highlighted by a situation which took place in Omaha. A 35-year-old man impregnated a 16-year-old girl, took the girl to the abortion clinic, posing as the girl's father. The loophole enabled the girl to get an abortion without notification of her parents. We worked with Senator Quandahl back in 19...or I think it was 2000 on some bills to clean up those problems, and he introduced LB340 through LB342 back in 2001. LB690 not only cleans up these loopholes, it represents a substantial improvement over the previous notification requirements. Parental consent laws better protect the health and welfare of minors by allowing parents to be directly involved in the medical decisions of their minor daughters and to help them make their best personal choices, including carrying the child to term, not having abortions. Parents must give consent for other medical procedures, including body piercing and disbursement of aspirin in a school setting. In fact, we require tattoo artists to receive written consent from the parent or guardian and to keep a copy of that consent on file for five years. Our staff at Family First spoke to several tattoo parlors

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here in Lincoln. They said that if a parent or guardian comes to the business with their child, they have to show a photo ID with the same last name of the child. Additionally, they take a fingerprint of the parent and keep it on file in their records. Minors often need their parents to sign school report cards or approve school field trips. Abortion, which involves a life and death decision, should not be the exception. We believe that it makes absolutely no sense for Nebraska, which can legally require parental consent for abortions, to have a higher standard for tattoos, body piercing, and handing out of aspirin at school, so we would ask the committee to carefully consider LB690 and advance it to the floor for General File debate. [LB690]

SENATOR LATHROP: Very well. I see no questions. Thanks, Dave. Any other proponents? [LB690]

LEAH BERNHARDSON: (Exhibit 19) Hi. My name is Leah Bernhardson. Thank you. [LB690]

SENATOR LATHROP: Oh, you have a very soft voice and you're going to have to talk a little louder for me. [LB690]

LEAH BERNHARDSON: Yes, I can speak up, sure. Sure. Thank you, Vice Chairman Lathrop and members of the committee. My name is Leah Bernhardson, the last...or the first name is spelled L-e-a-h, last name spelled B-e-r-n-h-a-r-d-s-o-n, and I'm here to testify as a proponent of LB690. I have a following list of things where I am required as a student of the age of 18 to have parental permission. These include: getting a tattoo, going on a school field trip, going out for a sport, being photographed for a publication, and getting my ears pierced, and undergoing any other medical procedure. Yet this same standard does not apply to an abortion. Last year, I was a high school member of a city campus choir at UNL. To participate in concerts, I was required to provide verifiable consent for my image to be released by that entity. Yet this same standard does not apply to abortion. To get my ears pierced, I also needed parental permission. According to one location that provides free ear piercing--Claire's--they say on their Web site, all customers must provide written consent to get their ears pierced and a parent or guardian must consent in person for customers who are minors. Though piercing my ears poses a risk of infection, this risk is much slighter than those posed by an abortion. When I go to the doctor, I must have parental consent for any procedure that is performed. This will apply until I reach the age of 19. Parental consent is necessary even when relatively minor procedures, like getting stitches, having a mole removed, or having a wart removed, are performed. Yet this same standard does not apply to abortion. I mentioned several times that abortion poses a risk to the health and well-being of those undergoing the procedure. I'd like to summarize these to include emotional or physical distress or, excuse me, psychological distress, excessive bleeding, and damage to the womb. This information was obtained through MedlinePlus, a medical Web site sponsored by the National Library of Medicine and

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National Institutes of Health. To summarize, the provision of parental consent for abortion is important. Abortion is something that alters the mental, physical, and emotional state of those who undergo this medical procedure. At barely 18, I see parental consent for this procedure extremely applicable and extremely important for me and my peers. This is why I urge you to consider LB690. Thank you. [LB690]

SENATOR MCGILL: Thank you, Leah. Are there any questions? No. Thank you very much. You did a good job. [LB690]

LEAH BERNHARDSON: Thanks. [LB690]

SENATOR MCGILL: Next proponent. [LB690]

GREG SCHLEPPENBACH: Hello again, Senators. I guess there's not a Vice Chair present so it will be... [LB690]

SENATOR MCGILL: Yes, I am the Vice Vice Chair. (Laughter) [LB690]

GREG SCHLEPPENBACH: Oh, you are the Vice Vice Chair. Senator McGill, members of the committee, is that true? [LB690]

SENATOR LAUTENBAUGH: Yes. [LB690]

SENATOR MCGILL: It is. That's what we call me actually. (Laugh) [LB690]

SENATOR LAUTENBAUGH: And I'm Vice Vice Vice, if it comes up. (Laughter) [LB690]

GREG SCHLEPPENBACH: We won't read anything into that. Members of the committee, my name is Greg Schleppebach, S-c-h-l-e-p-p-e-n-b-a-c-h. I'm here on behalf of the Nebraska Catholic Conference to express our support for LB690. I'm just going to mention a few things and divert from my testimony, because much of it has already been said. I actually do have some statistics. Senator Council, you'd asked some of the question about the numbers of abortions prior to and following enactment of our parental notification law. I'm probably one of the few geeks in the state who actually has this kind of data. But there was...I looked through the...the state requires reporting of abortion, an annual report, and so this is based on that annual report, which I have copies of going all the way back to '75 or '74. There was...there's been a steady decline in the numbers of teen abortions over the last 25 years in Nebraska, but there was a precipitous drop from 1990, which is a year before enactment of the parental notice law, and 1992, the year following. In 1990, there were 707 abortions of those teens 18 years old or less, and in 1992 there were 459 abortions of teens 18. That's a 35 percent drop. Certainly correlation doesn't equal causation, but I'm not sure of any other event that occurred in that time frame in Nebraska that would have caused such a precipitous drop

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as 35 percent. The other point that I would like to make is that I'm deeply concerned about you can also...you can look at the age of those who are having abortions and every year there are about anywhere from a dozen to a couple of dozen abortions on young girls who are age...under the age of 15. My understanding is this is the age at which you're talking statutory rape. This is very, very troubling, and it's my understanding and I'm quite concerned that in fact many of these are likely cases of statutory rape. I mean certainly the odds are that some if not many are and that they are not being reported. It's my belief they're not being reported to law enforcement authorities. Our current parental notice law provides some assurance of parental involvement, but LB690 would better ensure this involvement, I think, with the notarized consent or...notwithstanding, Senator Council, your point that it doesn't guarantee authenticity. But we believe that this would better prevent imposters and others from receiving notification or involvement in lieu of parents. So we encourage you to support LB690. [LB690]

SENATOR MCGILL: Any questions? Senator Council. [LB690]

SENATOR COUNCIL: Yes. And thank you, Greg, for responding to my question and so it's cool to be a geek under certain circumstances. (Laughter) And my question though goes to...and it's not really a question, it's more of a comment, because I'm familiar with the statistics, too, in terms of number of abortions, what ages. I'm also cognizant of the number of teen pregnancies, period, under the age of 15. And just to make the point that I don't hear the outcry about statutory rape charges in those situations where these young women under the age of 15 are being impregnated and carrying their children to term. I mean the problem exists, period, that we have adult males impregnating young women, 15 years of age and under, because I shared with you my personal experience of being a guardian ad litem for a young woman who gave birth at 12 and no charges were filed against anyone. So I mean that's problematic. But I'm struggling and anyone...and, Senator Brasch, you can find me. I mean these references to you have to have...you have to have parental consent to get a tattoo and parental consent to have your ears pierced, is that by state law? Can somebody get it for me, because I am not...I'm just serious. I'm confessing my ignorance. I didn't know that that was state law. So if someone would provide me with the copies, I'd greatly appreciate it. Thank you. [LB690]

SENATOR MCGILL: Any other questions? Seeing none, thank you, Greg. [LB690]

GREG SCHLEPPENBACH: You bet. [LB690]

SENATOR MCGILL: Any other people here who are proponents? Okay, we can move on to opponents. [LB690]

TRACY DURBIN: (Exhibit 20) Well, Vice Vice Chair McGill and committee members,

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thank you for entertaining my comments once again today. My name is Tracy Durbin, T-r-a-c-y D-u-r-b-i-n, and I am director of quality and risk management for Planned Parenthood of the Heartland and I'm speaking in opposition to LB690. The vast majority of teenage girls, particularly younger teens, do involve a parent or other appropriate adult in the decision to receive abortion care. At Planned Parenthood, we routinely encourage each young woman to involve her parents. But no law can mandate good family communication and such laws are unnecessary for a stable and supportive family, but they are ineffective and cruel for an unstable, troubled family. Oftentimes, a teen who doesn't talk with a parent has good reasons not to, and usually a teen is very capable of accurately predicting her parent's reactions. Many come from a family where such an announcement would exacerbate an already volatile or dysfunctional situation. Common reasons a teen may cite for not involving a parent are she fears she'll be kicked out of the house, she fears she'll be physically abused by her parents, her parents have beaten her before, she doesn't live with either parent, her parents abuse drugs or alcohol, or she's a victim of incest or has run away from home for a good reason. Other factors that threaten the health and safety of the young woman: forced parental involvement laws can delay a teen's access to abortion care which can result in her seeking to terminate a pregnancy at a later stage. Although abortion is a very safe medical procedure, the risks and costs do increase with gestational age. A teen in a desperate situation may do desperate things. In order to avoid the requirements of the law, young women may attempt to self-abort, seek dangerous illegal procedures, or harm herself. When contemplating changing our law from notification to consent, there's an additional consideration. Under a notification law, a minor may be more likely to inform a parent about her decision to seek abortion care. But requiring consent that gives the parent veto power will likely lead to more parents being left in the dark because the constitutionally required judicial bypass option becomes much more attractive. As noted before, the majority of teens involve their parents in their abortion decision. At Planned Parenthood, our experience is that at least 90 percent of teens who come to us for abortion care bring a parent with them. And I might add that teens are a small minority of the population we actually serve for abortion services. The majority of our abortion patients fall into the 20- to 35-years-old age range. The other 10 percent of teens either have a good reason not to tell a parent or will refuse to tell a parent no matter what. We already have a law requiring mandatory parental involvement and there's no compelling reason to change it to mandatory consent. A young woman would be better served and our laws more effective if we stopped putting so much time and energy into the issue of abortion and focused instead on policies that prevent unintended pregnancies. LB690 is an example of a policy that does nothing to address the core problem but creates potential harm for young women. I urge you to indefinitely oppose LB690. [LB690]

SENATOR MCGILL: Any questions? Senator Coash. [LB690]

SENATOR COASH: Thank you, Senator McGill. Thank you, Ms. Durbin. With regard to

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the parental notification, what does Planned Parenthood accept as acceptable documentation of notification? If a young woman comes in and is a minor and wants that procedure and you're now required...they have to have parental notification at this point. I understand this bill takes it to consent. [LB690]

TRACY DURBIN: Uh-huh. Correct. [LB690]

SENATOR COASH: What will you accept as far as, you know, I am Susie's mom and I know she's here, signature? What do you accept? [LB690]

TRACY DURBIN: We accept one of three things. [LB690]

SENATOR COASH: Okay. [LB690]

TRACY DURBIN: Either the parent has to come in and we do check the ID and the parent signs an attestation form and then the child also signs an attestation saying that that's their parent; or they have to bring in a judicial bypass form, an order by the court; or they have to...we have to notify them by registered mail, return receipt, certified mail, return receipt. We have to send that out and it has to be received by them within 48 hours before the procedure. [LB690]

SENATOR COASH: So you sent it to the parent. [LB690]

TRACY DURBIN: The parent. [LB690]

SENATOR COASH: And do you...we're kind of in an age right now where lots of children have different last names than their parents and... [LB690]

TRACY DURBIN: True. [LB690]

SENATOR COASH: ...hyphenated names and that kind of a thing. So do you go through any process to verify that the parent that you're sending that notification to is actually the parent because of the...you understand my question. [LB690]

TRACY DURBIN: I understand where you're coming from and, as a parent who raised two daughters, I understand exactly what you're saying. And currently under the parental notification law, there's no really good way to confirm that. We're not investigators. We're a healthcare agency. And our experience is that most of the time, over 90 percent of the time, the young women are bringing their parents with them, sometimes both parents with them. So the times that we have to send a letter by certified mail is rare. The times that we have to accept judicial bypass is even rarer, which is why we feel that with the parental consent law, you know, we already have 90 percent of the people coming in with parents. And the 10 percent that don't are going to

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do judicial bypass or not tell the parent at all. We don't feel that the parental consent law is going to increase that number. [LB690]

SENATOR COASH: Okay. Just for clarity, with that small percentage that the notification is made through by mail,... [LB690]

TRACY DURBIN: Uh-huh. [LB690]

SENATOR COASH: ...it's the patient's...it's their word, this person is my mom and send it certified mail to that person. [LB690]

TRACY DURBIN: Yes. [LB690]

SENATOR COASH: Okay. [LB690]

TRACY DURBIN: And typically, we're sending it to the same address as the patient, so we're assuming that that's actually the parent. [LB690]

SENATOR COASH: Okay. Thank you. [LB690]

SENATOR MCGILL: Other questions? Did you have one, Scott. Senator Lautenbaugh. [LB690]

SENATOR LAUTENBAUGH: Thank you, Vice Chair. You listed several concerns here about children may come from a family where such an announcement would exacerbate an already volatile or dysfunctional situation, teens cite concerns about being kicked out of the house, physical abuse, etcetera, etcetera. Don't all those apply to the existing notification law? [LB690]

TRACY DURBIN: The judicial bypass law? [LB690]

SENATOR LAUTENBAUGH: I mean the existing law that we have now. If you're notifying parents, wouldn't all those concerns come into play anyway? [LB690]

TRACY DURBIN: Yes, they would. [LB690]

SENATOR LAUTENBAUGH: So they really aren't specific to what we're doing here today with this possible extension to consent more so than they do now. [LB690]

TRACY DURBIN: I think what we're concerned with is we would probably see an increase in teens choosing to try the judicial bypass route and going to court to get that bypass, so there would be an increase in those. [LB690]

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SENATOR LAUTENBAUGH: And that's available. [LB690]

TRACY DURBIN: It is available. [LB690]

SENATOR LAUTENBAUGH: And would remain available with this law. [LB690]

TRACY DURBIN: It's available. It's not always easy for a teen to navigate the system. [LB690]

SENATOR LAUTENBAUGH: Thank you. [LB690]

TRACY DURBIN: Uh-huh. [LB690]

SENATOR COASH: To follow up on that, if a young woman comes in and wants...doesn't want you to send a letter and doesn't bring her...a parent and wants to go the route of the judicial bypass, as part of your service do you assist the young woman in navigating that judicial system? [LB690]

TRACY DURBIN: We can't assist them. We're not attorneys. We can't provide legal advice. [LB690]

SENATOR COASH: Okay. [LB690]

TRACY DURBIN: But we certainly do have attorneys in the area that are sympathetic to the plight of those young women and we refer them to them. And also a young woman can go to the county clerk's office, the clerk of the court's office, and pick up the paperwork herself and try and navigate that and speak to the judge on her own. [LB690]

SENATOR COASH: Okay. Thank you. [LB690]

SENATOR MCGILL: I have a quick question myself. So 90 percent bring a parent with them; 1 or 2 percent go through the judicial process,... [LB690]

TRACY DURBIN: Uh-huh. [LB690]

SENATOR MCGILL: ...so maybe 8 percent or whatever are the ones you're sending notification to. What kind of feedback do you get from parents? Do they call you at all? Do they...I mean do you track at all, you know? [LB690]

TRACY DURBIN: I don't believe that we track this. [LB690]

SENATOR MCGILL: Yeah. [LB690]

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TRACY DURBIN: If we did, I would know about that. [LB690]

SENATOR MCGILL: Yeah. [LB690]

TRACY DURBIN: There have been instances when parents have showed up at the clinic. Frankly, most of the time when we let teens know that we're going to have to notify a parent if they don't bring one, they tell us, I'm just going to tell them anyway. That's what happens most of the time. [LB690]

SENATOR MCGILL: Okay. So I was wondering if some of them gave push back or...I'm sure a few of them probably push back on the whole idea but that some just become involved. Okay. Are there any other questions? No. Thank you very much. [LB690]

TRACY DURBIN: Thank you. [LB690]

SENATOR MCGILL: Any other opponents to LB690? [LB690]

SUE ELLEN WALL: Good afternoon again. My name is Sue Ellen Wall, W-a-I-I. I am the mother of two and the grandmother of five and spent years in the '70s with a panel of women who would go around talking to parents, panels...groups of parents, about how important it is to be the person who tells your children about sexuality. I followed my youngest son through law school and for the last 12 years I have done judicial bypasses here in Lancaster County. I've done about 34 of them. When I first started, we would do...I think I got as high as case number 24 or 26, 27, about two dozen a year. In the last three or four years, I did one last July, and it was case number four. I can't tell you exactly why the applications for judicial bypasses have dropped but it has dropped fairly significantly...well, very significantly. The best that Planned Parenthood people can tell me is that more parents are understanding the value and the importance of taking care of their children and are more approachable and will agree to support the girl. The dream of some of the proponents about these wonderful parents who want to help their children don't exist in the girls that I have talked to over the years. I've come to the conclusion, from my little corner of the world, that the girls who choose to carry the child to term or to ask their parents are girls who know they have supportive households. Very oftentimes the parent who's most opposed to abortion is the mother who gives some sort of strict order about it, if you get pregnant you're going to get kicked out, and they have evidence of that from older sisters or older cousins to whom that has happened, and that's one reason why they're there. Very often, Father is not in the household or, if he is, he's just amazingly quiet and deferring to Mother. So then I say, well, did your mother explain to you about sexuality and intercourse and birth control, and the answer is almost uniformly: No, she said don't do it, and if you get pregnant we'll kick you out. So these are not girls who have supportive households. They're certainly not going to have the baby and keep it, and they will come to us for assistance. They, most of them, come there, the ones I admire the most are the ones who say, she

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probably wouldn't disapprove but my mom has so much on her plate with my little brothers and sisters and so much stress trying to support us all, I can do this, I can make this decision. The standards we have, I think, to determine the maturity of these girls are quiet appalling. I know very few parents who want their daughters out working full-time at 15 and having independent living experiences. I think most mothers would find that a pretty appalling idea, but those standards were written by judges, probably most men. The standard we use in Nebraska is a 25-year-old case from Utah and that needs some work. And if you want to help, I would respectfully suggest to Senator Brasch that some steps forward are steps off the cliff, and I would strongly suggest that you leave the system as it is. It works. It serves the need, and the need for it is beginning to be a solution looking for a problem. [LB690]

SENATOR MCGILL: There questions from the committee? I had one but I lost it by the time we were done talking. I'm mad at myself. Well, seeing none, thank you very much. [LB690]

SUE ELLEN WALL: Thank you. [LB690]

SENATOR MCGILL: Any other opponents? Welcome back. [LB690]

LAUREL MARSH: (Exhibit 21) Hi. Good afternoon again. My name is Laurel Marsh, spelled M-a-r-s-h, and I appear here today on behalf of ACLU Nebraska. I'm in the lucky position of having had almost all of my questions already asked by Senator Harr, so I will sign in, in opposition to LB690 for ACLU Nebraska. I will point out one thing. There is a current case with a very similar parental consent law that is just now occurring in the state of Pennsylvania. I think if you Google it and you type in parental consent and Supreme Court, you will have several news articles that come up on this current case and it may be something that you would want to watch as you are looking at this specific subject. And otherwise, I have questions. [LB690]

SENATOR MCGILL: Are there questions? Senator Council. [LB690]

SENATOR COUNCIL: Thank you, Senator McGill, and I was going to pose this question to Senator Brasch as well upon her closing because someone distributed this map and noted that two states have parental consent laws that are enjoined in litigation or the states' attorney general has issued an opinion against enforcement, that's California and New Mexico. And I was going to ask you whether you knew whether there were any comparisons between those consent laws, which are subject to these injunctions and litigation, and what is found in LB690. [LB690]

LAUREL MARSH: I have not looked at that but I would be pleased to do so. [LB690]

SENATOR COUNCIL: All right. Okay. Thank you. [LB690]

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SENATOR MCGILL: Any other questions from the committee? No. Thank you very much. Any other opponents to LB690? Anyone here neutral? [LB690]

JULIE SCHMIT-ALBIN: Madam Vice Vice Chairman, members of the committee, my name is Julie Schmit-Albin with Nebraska Right to Life and we have visited with Senator Brasch about LB690 and our concerns on Section 4. We did not want to appear in an opposition position because we can support the bill if Section 4 is addressed with regard to expanding the universe of people who can provide consent to the grandparents, stepparents, and the older brother and sister. So, as I said, we visited with Senator Brasch several times and she's agreeable to pursuing that concern. We would have a real concern if it came out of committee as introduced because right now, as introduced, in its introduced form, we couldn't support it. But if there's a commitment on the floor that she could get that addressed, we would be able to support it. [LB690]

SENATOR MCGILL: Okay. Thank you. Any questions? Thanks. Thank you. Oh, Senator Harr. [LB690]

SENATOR HARR: Thank you. And, you know, when you take it from notice to consent, you give that person a veto power, I would argue. Would you agree with that? [LB690]

JULIE SCHMIT-ALBIN: When you take it from notification...well, from our... [LB690]

SENATOR HARR: To consent, yes. [LB690]

JULIE SCHMIT-ALBIN: From our perspective, I mean we support the effort to go to consent, but for all intents and purposes, we feel that notification is already consent and I think it's already working in that way. [LB690]

SENATOR HARR: Okay. But you would understand there would be...there's a situation where...this area is so harry and awful. I hate everything around this area. But in notification, you're right, but there is an instance where you could have a parent who says, you know what, I just...I don't agree with you but I'm going to support...I'm going...you can go; I don't consent to it; go. So now we go from notification to consent and that gives that parent de facto, whether it existed before, it gives them a veto power to say no. And I realize there's a judicial bypass in here but I don't want young girls going to this...through this procedure alone. This is, you know, nobody wants an abortion. If you know someone who wants to, I don't. I mean it's a traumatic, traumatic procedure. So I would rather, personally, and this is my issue, if we're going to go from consent to notification, that's fine. I have no problem with that. But gosh darn it, let's have some family there, if we can have family. This is a bad situation. Let's not try to make it worse by having then to go outside the family and go to a judicial bypass. If we could, personally, and this is a policy issue for us, it's a policy issue for you, but my

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personal belief is I want family there. I want support of the family. I don't want to isolate that young woman who already feels isolated enough. And so I understand you're coming in neutral, but at first I was a little surprised by that language but the more you think...more I think about it, with an open mind, the situation, and I put myself in that 16-year-old girl's place, the more I understand why they passed...why that code language, model language exists out there and actually the more comfortable I become with that. And that's really, I guess, not a question but more of a comment on that. If you want to respond, I'll let you. [LB690]

JULIE SCHMIT-ALBIN: Well, I think when, you know, our parental notification statute went through in the early '90s, I mean, there is the specific relationship between the parent and child, and you're extending that and broadening that to encompass...I mean the older brother and sister in the vein of the sexual abuse or child abuse allegation. [LB690]

SENATOR HARR: Well, with stepparent or grandparent, yeah. [LB690]

JULIE SCHMIT-ALBIN: Right, and stepparent and grandparent. And so it kind of goes beyond what you're trying to get at in parental involvement and the special relationship between parent and child, and we just don't want to see more people, a bigger universe of people opened up who can give consent. [LB690]

SENATOR HARR: Yeah, and I understand that. I understand that side of it. But there's a reality side of it. You know, a lot of people just do not have relationships. There's a breakdown in our families and a lot of people just don't have relationships with their parents but they do with their grandma and grandpa, mainly their grandma. That's just...it's a fact of life. And so that's in there. And also I have the issue of...and I call it the "Precious" situation. You're familiar with the movie Precious... [LB690]

JULIE SCHMIT-ALBIN: Uh-huh. [LB690]

SENATOR HARR: ...where the daughter is raped by her father. [LB690]

JULIE SCHMIT-ALBIN: Right. [LB690]

SENATOR HARR: Mom more or less turns a blind eye and/or sides with Dad. [LB690]

JULIE SCHMIT-ALBIN: Uh-huh. [LB690]

SENATOR HARR: Well, now that girl feels isolated and now we're pushing her to the courts and even further away from family. You know, if there was a grandmother there who could provide some comfort to that child in that situation, I think that's, as a society, that's the route we really want to go. Is there going to be abuse? Possibly, but I think

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any system you have out there, there's abuse. But what we want to do is create a public policy that looks out for the best interests of that child... [LB690]

JULIE SCHMIT-ALBIN: Uh-huh. [LB690]

SENATOR HARR: ...in the most number of times. So while I respect you coming in neutral on this and not coming in opposed, I really...(inaudible) I like this language so...and that, again, my own personal preference, but thank you. [LB690]

JULIE SCHMIT-ALBIN: Uh-huh. Nothing precludes that child, that minor, from, if she's not close to her parent or guardian, from, you know, consulting with the grandparent that she's close to, the brother, the sister. Nothing precludes that. Our concern is the consent, opening it up that the brother, sister, grandparent, stepparent could then give consent. So she can now go, and we visited, Senator Brasch and I visited about this. [LB690]

SENATOR HARR: And you're right and she can, but this gives them an incentive to reach out to that stepparent, to reach out to that grandparent, to really talk to them about the situation that's going on. And maybe that grandparent can talk them out of it, because if that child right now is in that isolated position, they've decided, you know what, I can't handle this, I have to go through a judicial bypass. Well, judicial bypass doesn't provide counseling. [LB690]

JULIE SCHMIT-ALBIN: Uh-huh. [LB690]

SENATOR HARR: You now provide that incentive to go to Grandma, to go to Stepdad, stepparent, whatever, and that person at that point can provide the counseling and say, you know what, this is an awful situation, nobody wants to be in it, I understand your, you know, why you're doing what you're doing but let's think this over; are you taking a bad situation and making it worse? And so now you've given the incentive to go reach out to family as opposed to the incentive to...I mean to a certain degree you disincentivize them because now they're reaching to the court so they don't have to reach to Grandma and Grandpa. [LB690]

JULIE SCHMIT-ALBIN: Well, I would maintain that if they're close to the outside family members, they're going to go to them anyway. But it's, again, we just would have a real problem if the language isn't addressed on Section 4. [LB690]

SENATOR HARR: Okay. And that's fair. Yeah, it's a policy issue, so I appreciate that. Thank you. [LB690]

JULIE SCHMIT-ALBIN: Thank you. [LB690]

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SENATOR LATHROP: Any other questions? Thanks, Julie. Neutral? Anyone else in a neutral capacity? Seeing none, Senator Brasch. Oh, there you are. You're welcome to close. [LB690]

SENATOR BRASCH: I wanted to thank everyone here on the committee and those who came here to testify and I did want to answer a few questions. Regarding the Pennsylvania case that was brought up earlier, the case is not about the constitutionality of the law but about how the appeals courts handle the appeals of judicial bypass. It deals with internal proceedings and it is a closed case now. And if AUL filed the brief, and I don't know how to pronounce this word, a-m-i-c-u-s, attorneys? [LB690]

SENATOR LATHROP: Amicus. [LB690]

SENATOR COUNCIL: Amicus. [LB690]

SENATOR HARR: Yeah. [LB690]

SENATOR BRASCH: Okay. So does that answer...leave that...is there closure there? The next is on, Senator Council, these two states, the reason that they are enjoined in litigation is because of their state constitution. It's constitution based. There isn't any pending liability or lawsuits but it's the state constitution is what I believe our research has shown. [LB690]

SENATOR COUNCIL: Okay, thanks. So there's some question as to whether the state constitution prohibits or prevents... [LB690]

SENATOR BRASCH: Right. [LB690]

SENATOR COUNCIL: ...a consent requirement. [LB690]

SENATOR BRASCH: Yes. [LB690]

SENATOR COUNCIL: Okay. [LB690]

SENATOR BRASCH: Yeah. And as I said earlier, I visited with each of you before I came here. My legislative aide has been so diligent and so helpful and other people along the way I am truly grateful because, sincerely, I am carrying this because I care, not about a cliff somebody is going to fall off of. I want to make sure that these young women have someone and family especially, if they have the family available, to know that they have a wellness check, whether it's the next day, the next month, a year after: Are you okay, do you need a hurrah, do you need a shoulder to cry on? You know, back to the tattoos and procedures that, you know, we protect our kids, you know? We

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protect them against everything. An old Ukrainian slogan or saying or proverb is that if I would have known where I was going to fall down, I would have laid hay. Well, as a mom, as a grandmother, I want to lay hay for young women. I'm not challenging your beliefs. Please, truly believe that sincerely. Questions? [LB690]

SENATOR MCGILL: Thank you. We trust your sincerity. [LB690]

SENATOR LATHROP: Senator Council. [LB690]

SENATOR COUNCIL: Yeah, and on that note, I want to state publicly for the record, Senator Brasch, that you're the first who's brought one of these types of bills in advance to try to explain what you're...I mean to me personally, to try to explain what your objective was and what your concerns were, and I truly respect and appreciate that. And it's a recognition on your part that while, you know, we may disagree on some points, that the way for us to move forward as a society is to engage in civil discourse, and you were very willing to do that and I applaud you for that. And I shared with you a couple of my concerns. One is your statement, and genuine and sincere, that you want, you know, this young person, this young woman surrounded by caring and concerned family who can guide and protect her. And my response was, well, why isn't that happening when these parents are being sent notification? Why isn't that, you know, occurring? And what more, you know, are we then putting people in...young women in the kind of positions where, you know, you create more dysfunction or create more opportunities? Second, and it remains a concern even if you keep Section 4 in or take Section 4 out, the bill says that the parent or guardian shall consider only the woman's best interests when considering granting consent, but neither of the procedures really address whether that was considered. One, if there's evidence of abuse, the other is if the determination of the young woman being mature enough, there's no mechanism for a determination as to whether the parent or guardian's denial of consent was based upon the best interests of the child. And I know, like I say, reasonable minds will disagree. In your opinion, any discussion of not carrying a child...of carrying a child to term and encouraging that is in the best interests of the child, but we...many of us disagree on whether that should occur in the case of rape, in the case of incest. And so what is the best interest? And we don't have any way of determining that or any judicial review of that. So I'm just trying to be as candid and as forthright with you as to the reasons why I have...I still have concerns about LB690. [LB690]

SENATOR BRASCH: Uh-huh. [LB690]

SENATOR COUNCIL: Thank you, Mr. Vice Chair. [LB690]

SENATOR BRASCH: Thank you. [LB690]

SENATOR LATHROP: All right. I think that's it. [LB690]

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SENATOR BRASCH: Okay. [LB690]

SENATOR LATHROP: That will close our hearing on LB690. (See also Exhibit 11) I will say this, that this is...these...we deal with a number of issues in this committee and we've dealt with immigration bills and we've dealt with drunk driving and a number of things in the five years I've been doing this, and this is one that frequently is one that people come in feeling very strongly about emotionally, and I want to compliment you all on the way that the hearings were handled today. I thought it was done in a very civil way and I appreciate that. [LB690]

SENATOR COUNCIL: Absolutely.

SENATOR LATHROP: You're all to be commended for your tone and your approach. So thank you.

SENATOR MCGILL: Yeah, thank you.