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Judiciary Committee  
November 01, 2013

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[DOMA]

The Committee on Judiciary met at 9:00 a.m. on Friday, November 1, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on the Defense of Marriage Act. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; and Amanda McGill. Senators absent: Les Seiler.

SENATOR ASHFORD: (Recorder malfunction)...let me just explain how we're going to conduct our hearing today. There...we have...the time of the hearing is from 9:00 until 2:00. We are not going to break for lunch. We will have some kind of a, maybe, 10- or 15-minute break, kind of halfway through the time and...but I don't intend to break for lunch so that we can...not just because it's Friday, but kind of because it's Friday, (laughter) we will break at 2:00. The issue we're going to be discussing today is the legal ramifications of U.S. v. Windsor on citizens of the state of Nebraska, Nebraskans generally. And as this issue is in its essence...has many legal questions that are raised, I am going to focus at least the first part of the hearing on some of these legal issues, and in that regard I have asked a number, well, not a number, a few experts and we've spent a number of weeks trying to locate people who have expertise in the various...in these...on the legal matters that relate to the Windsor decision on Nebraskans. And so we're going to start out with those individuals. Now many of the...and part of the reason why we're starting with those individuals is so we can set the legal framework of our discussion as we go forward. The...and some of these individuals have to leave and leave the state, and so they're going...is another reason why I'm putting them up first. Each...we're going to go with the five-minute time parameters for our discussion. Usually, it's three; we're going to go five. At 2:00, you know, we are going to conclude. So how many in the room today intend to testify? Okay, we should be able to get through everybody without any problem, maybe even before 2:00, so...and the members of the committee are very likely to ask questions. That is outside the five minutes, so...but we, as far as the testimony or comments that you wish to make, we'd

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like you to confine those to five minutes. We have a little light system that will turn yellow when we ask you to start...we'll ask you to start summarizing and then, red, we'll ask you to stop. Let...Senator Chambers. [DOMA]

SENATOR CHAMBERS: I would just like to put a comment or two into the record. I suspected there would be a large turnout today, but I didn't know it would be the size that it is. I was unaware that we would have what I would call a panel of experts who will go into detail about various aspects of the law that will be affected by this decision striking down what I consider one of the worst, nuttiest, "lamebrainest," discriminatory acts ever enacted by a nutty, lamebrain collection of people known as the Congress. Because I was not aware that we would have people who were knowledgeable here, I had brought a series of columns that I wrote for The Omaha Star, which is an Omaha newspaper, obviously, giving my views. I am not going to have to read any of that because there are others who will cover the waterfront in a way that I'm sure will be understandable to everybody whether or not their positions are agreed with. But I like to let people who are not familiar with me and my position know where I stand. In 1996, I offered a bill to this backward Legislature to legalize same-sex marriage. My view was that this Legislature is a teaching entity as well as a lawmaking body, that we have an obligation--this is my opinion, one man's opinion--we ought to be on the cutting edge of the sickle moving forward rather than the blunt rear end of the sickle, facing backward all the time. This is one instance when the U.S. Supreme Court behaved in such a way that it vindicates the rights of all people. In no way does the decision handed down by the court interfere with or impede the marriage of any individual or any collection of individuals. What it does is say that in this country, under the laws of this country, following the best aspects of the U.S. Constitution, we'll embrace everybody and see that the same dignity and respect accorded heterosexual married couples will apply to same-sex couples who are moved by the same emotional, spiritual, and whatever other kind of movements will cause two people to temporarily go insane and fall into what they call love. The people who are of the same sex are going to have the opportunity to experience the ecstasy of marriage and the opposite of divorce. So when you come up

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here today, knowing that I have freely expressed my view, I hope nobody will feel in any way intimidated. If you are opposed to same-sex marriage, you have as much right, and you've always had the field to yourself anyway, to express that opposition. To people who support the concept of same-sex marriage: You have now been given status--in other, more civilized parts of the country--the right, and the expectation to follow wherever your heart leads you. This thing of love is something that I do not understand. I do not understand being moved by the heart since I have none. But my mind tells me that there must be something to it because so many people--in fact, people that I respect--have a heart. So the hearing, I feel, can do a great service to this state. Every word that you utter will be recorded; it will be transcribed, made a part of a permanent record. So when you speak, think, if you can, about how you might want what you are saying today to be viewed by future generations. And that's all that I have to say. Thank you, Mr. President--Mr. Chairman. [DOMA]

SENATOR ASHFORD: (Exhibits 1 and 2) Chairman. President? Chairman is fine, thank you, Senator Chambers. And I'm...we are today in the Ernie Chambers Hearing Room, so it's appropriate that Senator Chambers made the introductory comments. (Laughter) Senator Davis is here. Welcome, Senator Davis. Senator McGill is here, and Senator Mark Christensen is here as well. Jen Piatt is our legal counsel, and Oliver VanDervoort is our clerk, so...and there may be other members. I believe other members are going to be coming during the time of the hearing. So let's begin. The first testifier I have on my list is Robin Maril. And, Robin, would you...if you'd state your name and where you're from and...so we have it for the record. And as Senator Chambers rightly stated, all of this will be preserved for many, many years, so. [DOMA]

ROBIN MARIL: Good morning. My name is Robin Maril and I'm the legislative counsel for administrative advocacy at the Human Rights Campaign in Washington, D.C. HRC is America's largest civil rights organization working to achieve lesbian, gay, bisexual, and transgender equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBT citizens and realize a nation that achieves fundamental

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fairness and equality for all. On behalf of our one-and-a-half million members and supporters nationwide, I am honored to submit this statement into the record of today's hearing addressing the impacts the recent Supreme Court decision, United States v. Windsor, and the impacts of federal recognition on same-sex married couples living in Nebraska. This summer, in United States v. Windsor, the Supreme Court invalidated Section 3 of the Defense of Marriage Act, or DOMA, which restricted the federal interpretation of marriage to only different-sex marriages. Following this decision, the federal government now recognizes same-sex married couples and spouses for a number of federal purposes including taxation, Social Security, and spousal benefits for federal workers and members of the military. In determining whether a couple is legally married, federal programs either look to the laws of the state where the couple lives or to the laws of the state where the couple married. This means that, although Nebraska does not recognize same-sex marriage, legally married same-sex couples in Nebraska will be recognized by the federal government for many benefits. As a result, same-sex couples living in Nebraska will be forced to navigate conflicting recognition requirements on the federal and state level. For example, for federal tax purposes, the IRS now considers same-sex couples to be married if a couple married in a state where the relationship would be recognized. Although Nebraska law requires taxpayers to use their federal filing status to file their state income tax, the Nebraska Department of Revenue issued special guidance that same-sex married couples, taxpayers, will be required to file as individuals, as if they were unmarried. This conflict places an additional burden on same-sex married couples who will not only now forfeit state marriage benefits but will often pay additional costs in order to comply with complex state requirements. Same-sex couples living in Nebraska will also face even harsher effects of Nebraska's nonrecognition law when it comes to federal safety-net programs, like Social Security, that look to the laws of the state where the couple lives to determine eligibility. Social Security currently provides critical benefits for families following the death or disability of a spouse. For many this monthly payment is a lifeline and can provide spousal benefits of up to \$20,000 a year. However, despite a lifetime of contribution to the system, surviving same-sex spouses living in Nebraska will be

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considered ineligible to receive benefits because they are not considered married by their home state. Despite federal recognition this lack of state recognition places an already vulnerable population, especially those who are elderly, at a greater risk of poverty, isolation, poor health outcomes, and a reliance on public assistance. As a result of this conflicting state law Nebraska's same-sex married couples will not only be forced to face a complex legal landscape but will often be turned away from the critical federal benefits and resources that other same-sex couples have access to simply because of where they live. Thank you so much. I'm more than happy to answer any questions. [DOMA]

SENATOR ASHFORD: Do we have any questions of Robin? Senator Chambers.  
[DOMA]

SENATOR CHAMBERS: Are you a lawyer, you said? [DOMA]

ROBIN MARIL: Yes, sir. [DOMA]

SENATOR CHAMBERS: Okay. And I'm not going to discuss in detail what the Opinion of the court was. But at least one of the dissenters was of the opinion that, with the mood that the court took that day, it would just be a matter of time before, across the board, same-sex marriages are going to have to be recognized and, especially, since the court bottomed its decision on liberty and equal protection of the law under the Fifth Amendment of the U.S. Constitution,... [DOMA]

ROBIN MARIL: Um-hum. [DOMA]

SENATOR CHAMBERS: ...the very differences that you are mentioning, the disadvantages and disabilities that will fall on same-sex couples in certain states like Nebraska. [DOMA]

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ROBIN MARIL: Um-hum. [DOMA]

SENATOR CHAMBERS: Do you envision the possibility of those issues being raised in a properly framed lawsuit that might result in the Supreme Court saying that no state can fail to recognize the validity of a same-sex marriage? [DOMA]

ROBIN MARIL: I think that is very highly possible. I think, looking at issues like Social Security, especially where the harm is so great and the disparity is felt so disparately based on just sheer geography, I think that...I think it's inevitable that a lawsuit will be brought at some point. I think that, really, the Supreme Court is sometimes and unpredictable body, so I think that it's a question of what that will be. But I think that we do believe that it is a matter of time. [DOMA]

SENATOR CHAMBERS: That's all I have. Thank you. [DOMA]

SENATOR ASHFORD: Just one question, and I was...in looking at the New Jersey track of cases that started in the lower court, Supreme Court, (inaudible) can you...are you familiar with the recent New Jersey decision? Can you just trace what happened there very briefly? It went...what did the Supreme Court say and what did they base their opinion, if you would, because it was a little different, I recall, than the decision sent, for example, in the Iowa Supreme Court, and it was...it took the case in a different way. And can you explain? [DOMA]

ROBIN MARIL: Sure. I'm not 100 percent sure. I'm more of a federal attorney, but I'm happy to get you more information on state-level work. But from what I understand, they did just rule that, looking at a civil union versus a marriage, since the rights and benefits were...had parity, that it was not constitutional to have two separate, parallel standards. [DOMA]

SENATOR ASHFORD: (Inaudible). Did they...did...okay. And maybe someone else later

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can talk about it. But were...did they talk about two classes of...did they use the word "class," do you know? [DOMA]

ROBIN MARIL: I'm not sure that New Jersey did. I know that the Supreme Court did refer to civil unions and domestic partnerships as, I think it's, "skim milk" marriages. So I think that that's definitely interesting that even the highest courts are understanding that anything that is not marriage is a subpar institution. [DOMA]

SENATOR ASHFORD: Is it a separate class that's being...the law is singling out? [DOMA]

ROBIN MARIL: Yes. Yeah. [DOMA]

SENATOR ASHFORD: Okay. And anybody else coming later that has some more information on that, I'm interested in that whole idea. Anyone else? Thank you, Robin. Thanks for coming out here, all the way out here. [DOMA]

ROBIN MARIL: Thank you. [DOMA]

SENATOR ASHFORD: Senator Steve Lathrop has joined us. Senator Lathrop is here. All right. Kate Dittrick. Kate is from Omaha, is a lawyer at Fraser Stryker. Welcome. [DOMA]

KATE DITTRICK: Thank you. Chairperson Ashford and the rest of the committee, I am Kate Dittrick. I am an attorney shareholder at the law firm of Fraser Stryker in Omaha. Oh, yes, sorry. There you go. Sorry. [DOMA]

SENATOR ASHFORD: I'm sorry. I forgot to mention we've asked people to sign the sheets. I apologize for not saying that first. Okay, go ahead. [DOMA]

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KATE DITTRICK: (Exhibit 3) Sure. I'm not testifying on behalf of any group or representing any client today. I am testifying solely in my personal capacity at the invitation of Senator Ashford's office. Specifically, I'm here to talk about the impact of Windsor on Nebraska employers. I am an employment and labor attorney, and I advise employers on issues such as wage and hour matters, discrimination matters, leave administration such as bereavement, vacation, Family Medical Leave Act policies. And I see the Windsor decision as having two major impacts on Nebraska employers. One is the potential for increased litigation, and the second is the increased administrative burden on Nebraska employers. Regarding the increased litigation, I do believe, as Senator Chambers mentioned, that the manner in which the Windsor decision was decided, as well as the other decision that was decided on Prop 8 that same day by the Nebraska...by the United States Supreme Court leaves the Nebraska state definition of marriage vulnerable for challenge. I also believe that increased litigation can occur based on the Nebraska Fair Employment Practice Act which prohibits discrimination on the basis of marital status. That statute defines marital status as the status of a person whether married or single but does not explicitly refer back to the Nebraska Constitution's definition of marriage, so I believe that leaves open to interpretation what marital status means. Regarding the administrative burden, every policy or benefit that an employer provides that relates to an employee's spouse now requires an employer to assess, first, which law applies to that particular policy or benefit and then, secondly, what is considered the definition of spouse under that particular law. The federal government defines spouse differently in different...under different laws. For example, the Department of Labor defines spouse for benefit purposes as you are considered to have a spouse if your marriage is recognized by the state in which the marriage was celebrated. However, the Department of Labor, the same entity, defines spouse differently under the Family Medical Leave Act. I've brought today with me some guidance on the FMLA, the Family Medical Leave Act, that defines spouse as...you are considered to have a spouse if your marriage is recognized by the state in which the employee resides. So that creates the other burden for employers in administering the FMLA, in which case they have to assess not only if the employee was married under a



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law...under a state that recognizes marriage but, also, where the employee is currently residing to determine if that employee is entitled to the benefit. Now for certain policies that employers issue, they can always provide more generous benefits than the employee may be entitled to. So for example, an employer can grant FMLA, Family Medical Leave Act, to an employee who is not legally entitled to the FMLA. So they can make it easier on themselves by saying, we're going to grant this to a broader group of employees in order to make the administrative process move easier. Those are the FMLA guidances. However, on other issues, the employee doesn't...the employer does not have that much flexibility. For example, issues with tax. My colleague here today, Brian Bartels, from my firm is going to discuss tax and benefit issues, in which case employers' hands are much more tied than they are with the other policies that I discussed. I'm happy to answer any questions that the committee has today, and I thank you for the opportunity to testify. [DOMA]

SENATOR ASHFORD: Senator Chambers and then Senator... [DOMA]

SENATOR CHAMBERS: I'm going to get to a question... [DOMA]

KATE DITTRICK: Sure. [DOMA]

SENATOR CHAMBERS: ...but just a little preliminary. When the Congress, when the subcommittee of the House Judiciary Committee... [DOMA]

KATE DITTRICK: Um-hum. [DOMA]

SENATOR CHAMBERS: ...had hearings on DOMA,... [DOMA]

KATE DITTRICK: Um-hum. [DOMA]

SENATOR CHAMBERS: ...I was given a special invitation to come, and it was a

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last-minute thing, because they said they needed somebody who could speak learnedly and well on the other side, being against it, the whole concept of DOMA. [DOMA]

KATE DITTRICK: Um-hum. [DOMA]

SENATOR CHAMBERS: There was a congressperson on that subcommittee whose last name was Barr. They were, people who were speaking, congresspersons and others, making references to religion... [DOMA]

KATE DITTRICK: Um-hum. [DOMA]

SENATOR CHAMBERS: ...and the example of same-sex people living as married and the negative impact on children. [DOMA]

KATE DITTRICK: Um-hum, um-hum. [DOMA]

SENATOR CHAMBERS: And I mentioned without calling Barr by name that there is at least one person on this subcommittee who comes from a state where they have what's called common-law marriage. [DOMA]

KATE DITTRICK: Um-hum. [DOMA]

SENATOR CHAMBERS: It's recognized. [DOMA]

KATE DITTRICK: Um-hum. [DOMA]

SENATOR CHAMBERS: They're heterosexual but they're not, in fact, married if marriage means you go through this ceremony. [DOMA]

KATE DITTRICK: Um-hum. [DOMA]

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SENATOR CHAMBERS: So what kind of example is that for the children,... [DOMA]

KATE DITTRICK: Um-hum. [DOMA]

SENATOR CHAMBERS: ...to see two unmarried people living together, procreating, and so forth? And that was to show the hypocrisy of what they were doing. But under certain federal programs, are not common-law marriages recognized as valid for the purposes of those programs... [DOMA]

KATE DITTRICK: Um-hum. [DOMA]

SENATOR CHAMBERS: ...and the two people have not gone through a marriage ceremony? [DOMA]

KATE DITTRICK: Um-hum. That is correct. For example, I believe, under the Family Medical Leave Act, in the guidance that I provided they do define spouse as included under the definition of the state in which the employee resides, including if that state does recognize common-law marriage. That's correct. [DOMA]

SENATOR CHAMBERS: Thank you. [DOMA]

KATE DITTRICK: Yep. [DOMA]

SENATOR CHAMBERS: That's all that I have. [DOMA]

SENATOR ASHFORD: Senator Lathrop. [DOMA]

SENATOR LATHROP: Can I ask you a question? [DOMA]

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KATE DITTRICK: Yes, of course. [DOMA]

SENATOR LATHROP: Your firm primarily consults with businesses? [DOMA]

KATE DITTRICK: Correct, yes. [DOMA]

SENATOR LATHROP: This may be a little bit off topic... [DOMA]

KATE DITTRICK: Okay. [DOMA]

SENATOR LATHROP: ...in terms of what you came here to talk about. But can you tell us, do...there are businesses, particularly in Omaha and some in Lincoln, that recruit nationwide. [DOMA]

KATE DITTRICK: Correct. [DOMA]

SENATOR LATHROP: To what extent does Nebraska's current law affect the ability of those to recruit nationwide, if you can tell us? Or do you hear those concerns when you consult with or give advice to businesses in this state? [DOMA]

KATE DITTRICK: I haven't addressed that issue yet. I'll tell you that most employers that I've worked with right now are still trying to work out how to rectify these different laws and what their employees are entitled to. Many of the employers have decided, in order to ease that burden, to provide benefits even if the employee is not entitled to, so to provide a...you will...to take sick leave, for example, for a same-sex spouse, even if the law does not recognize that. Therefore, they can advertise that to employees nationwide that they are recruiting to say, even if Nebraska law doesn't recognize, we will still provide you that same benefit that you might get in a California employer or somewhere else that does recognize that. My colleague, Brian, is going to talk about the effect, however, on certain benefits that result in different taxation. For example,

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healthcare insurance. If you provide a benefit to a same-sex spouse that's not lawfully recognized by the state, then that is...creates imputed income to the employee, so it may have some adverse effects on the employee when the employer says, come to me, as a Nebraska employer, and I'll offer you all the benefits that another state does. They can't...they legally can't do that all the way because there are some...those tax consequences that are there as well. Does that answer your question somewhat?  
[DOMA]

SENATOR LATHROP: Maybe. [DOMA]

KATE DITTRICK: Okay. (Laugh) [DOMA]

SENATOR LATHROP: Maybe I'm asking a question about conversations you have, not specific conversations. I'm not trying to invade the attorney-client relationship. [DOMA]

KATE DITTRICK: Right, sure, sure. [DOMA]

SENATOR LATHROP: But generally, is there...does it affect recruiting in the state then for these businesses you consult with? [DOMA]

KATE DITTRICK: I believe it may. It may. Employers who don't want it to affect, that's when they offer the increased benefit to everyone coming in. But it absolutely could, sure. [DOMA]

SENATOR LATHROP: Does that solve the problem for those employers? [DOMA]

KATE DITTRICK: I would say not completely because you have that taxation issue. So even if they say, okay, we're going to add, provide you with all the same benefits you could obtain elsewhere, for their recruiting purposes, they can't provide all the same benefits because there's those negative tax consequences. [DOMA]

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SENATOR LATHROP: Okay, thank you. [DOMA]

KATE DITTRICK: Sure. [DOMA]

SENATOR ASHFORD: Thank you, Kate. [DOMA]

SENATOR DAVIS: Brad, can I ask a... [DOMA]

SENATOR ASHFORD: Yes, Senator Davis. [DOMA]

SENATOR DAVIS: In talking about this insurance issue a little bit,... [DOMA]

KATE DITTRICK: Sure. [DOMA]

SENATOR DAVIS: ...so how does the employer...when they provide that insurance,...  
[DOMA]

KATE DITTRICK: Um-hum. [DOMA]

SENATOR DAVIS: ...how does that work with deduction, with a write-off for the  
employer as a deduction? [DOMA]

KATE DITTRICK: I'm not a tax attorney or a benefit attorney. My colleague, Brian, who  
is going to speak next, is. [DOMA]

SENATOR ASHFORD: We can't wait for Brian. (Laughter) [DOMA]

KATE DITTRICK: Brian is going to be able to answer all of your questions on that. My  
limited understanding is that if you provide a benefit--for example, health insurance--to a

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same-sex...a person who is married but the state does not recognize that same-sex marriage, then the cost of that benefit that's attributable to the same-sex spouse is imputed income that's imputed to the employee. I'm sure Brian is going to be able to explain it much better though. [DOMA]

SENATOR DAVIS: And I can see that. I'm wondering how the employer treats that because, theoretically, that would not be a deductible benefit, I wouldn't think. It would be a gift. [DOMA]

KATE DITTRICK: Correct. So they have to include it in the employee's income on their W-2. [DOMA]

SENATOR DAVIS: Okay. [DOMA]

KATE DITTRICK: Yeah. Brian can speak to that much more eloquently than I. [DOMA]

SENATOR ASHFORD: But you've spoken on some things, too, so don't defer everything to Brian. [DOMA]

KATE DITTRICK: Yes, correct. [DOMA]

SENATOR ASHFORD: Senator Chambers. [DOMA]

SENATOR CHAMBERS: I don't have a heart, but I have a seventh sense. The five everybody knows of. [DOMA]

KATE DITTRICK: Um-hum. [DOMA]

SENATOR CHAMBERS: The sixth is supposed to be ESP. [DOMA]

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KATE DITTRICK: Okay. [DOMA]

SENATOR CHAMBERS: The seventh is the most important, a sense of humor, and sometimes it kicks in. I'm beginning to see your colleague. It reminds me of the story of the billy goats gruff. There was a troll under a bridge. And the little billy goat gruff came tripping over the bridge and the troll said, who is that walking over my bridge? And he said, it is I, the little billy goat gruff. He said, I'm going to come and eat you up. He said, wait for my bigger brother. And it went on until, finally, the big billy goat gruff came. And he was thunderous in the noise he made when he came across the bridge. It shook. It rattled, and the only reason it didn't roll was because it was fixed. And so the troll said the usual: I'll come eat you up. And the big billy goat gruff said, come ahead, I'm your even change. And as it turned out, he was. He destroyed the troll. So I just want Senator Lathrop and my colleagues to beware of what you ask for because you may get it. But that's all. Thank you. I can't wait for Brian. [DOMA]

KATE DITTRICK: I have full confidence in my colleague here that he can destroy the troll. [DOMA]

SENATOR ASHFORD: And that's...we...we're looking forward to your colleague coming up right now, I think, unless there are any other questions. [DOMA]

KATE DITTRICK: Okay, other questions? Thank you. [DOMA]

SENATOR ASHFORD: Thanks, Kate, for your testimony. Brian. Senator Coash has arrived. Welcome, Colby. [DOMA]

SENATOR CHAMBERS: While our testifier gets ready, we have rearranged Senator Coash's...the letters in his name, and it spells "chaos." (Laughter) [DOMA]

SENATOR ASHFORD: Yes, Brian. [DOMA]



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BRIAN BARTELS: (Exhibit 4) Good morning, Chairman Ashford, members of the Judiciary Committee. My name is Brian Bartels, and I'm testifying today on...at the invitation of Senator Ashford's office. As my colleague, Kate Dittrick, just mentioned, I'm an associate attorney at Fraser Stryker PC LLO in Omaha where, among other things, I advise employers on employee benefit matters. I'm testifying today on my own behalf and not on behalf of Fraser Stryker or on any client. The Windsor decision recognizes that the definition of spouse affects more than a thousand federal laws, and some of those federal laws include tax laws and the laws that affect employee benefit matters. My colleague, Dan Wintz, and I recently published an article in Nebraska Lawyer Magazine, which you are receiving a copy of, that discusses some of the implications for certain employee benefit and employee benefit-related matters following Windsor. It's important to note that after that article was written and published, the Internal Revenue Service issued Revenue Ruling 2013-17 and that, subsequently, the U.S. Department of Labor issued additional guidance regarding how the term "spouse" should be treated in a certain employee benefit plan context. And both a copy of Revenue Ruling 2013-17 and the Department of Labor guidance has been provided for you. The importance of Revenue Ruling 2013-17 is that it provides that, for federal tax purposes, as used in the Internal Revenue Code and elsewhere in the United States statutes, the term "spouse," following Windsor, now refers to an individual who is legally married to a person of the same sex. The legally married part is important because the IRS says that the two individuals need to be married in the state that, at the time, recognizes same-sex marriages. Then the revenue ruling goes on to say that, for federal income tax purposes, individuals who are legally married in a state in which they can be married that are then subsequently domiciled in a state that does not recognize same-sex marriages are still considered to be legally married for federal income tax purposes. So to bring this closer to home, you could have two individuals of the same sex who are married in Iowa, move over to Nebraska, live and work in Nebraska. For federal income tax purposes they're treated as married but for state purposes they're treated as not married and that, as we're going to see in a minute, is going to create

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some complications potentially for both the individuals and for employees. Kate mentioned that one of the major employee benefits that is provided right now by many types of employers, both small employers and large employers, is employer-provided health insurance coverage. The Internal Revenue Code provides that an employer can provide health insurance coverage to its employees on a tax-free basis. The employee does not include in his or her gross income the amount of coverage that the employer pays for. The treasury regulations that are issued under that section of the Internal Revenue Code extends such favorable tax treatment to an individual's legally married spouse. And so following the Windsor decision, individuals who are legally married in a state that recognizes same-sex marriage now can have tax-free coverage under their employer's health plan provided to their legally married, same-sex spouse, regardless of the state that they are actually domiciled in. However, this creates a complication for employers who have employees working in multiple states and have operations in multiple states. Large employers, as I said, typically offer health insurance benefits to their employees that extends to their spouses and, presumably, now their legally married same-sex spouses. At the federal level, the amount of the coverage that is provided to the legally married same-sex spouse is excluded from gross income for federal tax purposes. However, depending on the state in which the individual is working, there may be state imputed income for state-level tax purposes. And so employers are just beginning to determine what states they're operating in, where they have employees, whether or not the state in which the employee is located in recognizes same-sex marriages, civil unions, domestic partnerships, or a combination of those and is then having to determine how does the state level of each state treat those type of benefits for state-level income tax purposes. And, you know, if you have a large employer that's operating in, you know, 40, 50 states, obviously, that's going to be a very large burden to track where are all these employees; how does the state, you know, recognize their relationship or their marriage; and then what is the state-level income tax consequences for the various benefits that are being provided. I'm more than happy to answer any questions, and I thank you for the opportunity to testify.

[DOMA]

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SENATOR ASHFORD: Let me just ask...and then we'll...oh, there will be some other questions, I'm sure. But in Nebraska we don't recognize civil unions or domestic partnerships. [DOMA]

BRIAN BARTELS: That's correct. [DOMA]

SENATOR ASHFORD: So we have the extreme situation. [DOMA]

BRIAN BARTELS: Yes. [DOMA]

SENATOR ASHFORD: There's no recognition, so... [DOMA]

BRIAN BARTELS: Correct. [DOMA]

SENATOR ASHFORD: ...of any kind. [DOMA]

BRIAN BARTELS: Correct. [DOMA]

SENATOR ASHFORD: So let's take a...could you give us a concrete example of a domicile versus residency for tax purposes? Just pull out an X person out there and explain how that would work in Nebraska because we don't have any kind of recognition. So what you're saying is that under the federal...under this IRS ruling... [DOMA]

BRIAN BARTELS: Yep. [DOMA]

SENATOR ASHFORD: ...that if we had some sort of...or are you saying, if we had some sort of recognition of these unions short of marriage, that...what would happen then? [DOMA]

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BRIAN BARTELS: The Revenue Ruling 2013-17 is very clear that the only, for federal tax purposes, the only relationship that's recognized as a spouse is a legally married spouse. [DOMA]

SENATOR ASHFORD: Okay. [DOMA]

BRIAN BARTELS: And so it has to be, you know, two people of the opposite sex or two people of the same sex who get married in the state that recognizes that relationship. If you have a domestic, you know, partnership or a civil union, that is not considered to be a spouse or marriage for federal tax purposes. Only a marriage is treated as a marriage. [DOMA]

SENATOR ASHFORD: Okay, so what happens in Nebraska then with no recognition? Then they're,... [DOMA]

BRIAN BARTELS: Right, so... [DOMA]

SENATOR ASHFORD: For federal tax purposes, what... [DOMA]

BRIAN BARTELS: For federal tax purposes, if we have individuals...let's say we have a same-sex couple who is married in Iowa. They then move to Nebraska, live in Nebraska, work in Nebraska. For federal tax purposes they are treated as married. However, at the state level, because of the article in the constitution that says we don't...that the state of Nebraska does not recognize that marriage, they are treated as single individuals. And it's important to note that the Nebraska Department of Revenue on October 24, 2013, issued Revenue Ruling 22-13-1 that begins to address this very issue. And so... [DOMA]

SENATOR ASHFORD: How does it begin to address it? [DOMA]

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BRIAN BARTELS: It says that for state tax purposes individuals who are legally married for federal income tax purposes are still treated as single individuals under Nebraska law, and so...and please note, this is very new guidance. We haven't fully digested it, but it's my understanding... [DOMA]

SENATOR ASHFORD: Well, I'm just trying to get it out on the table. [DOMA]

BRIAN BARTELS: Sure. But it's my understanding that the individuals, even if they're legally married, let's say, in Iowa but live over here in Nebraska and work in Nebraska, that they will be required to file separate, single individual tax returns for Nebraska income tax purposes. [DOMA]

SENATOR ASHFORD: So if you're a high-income person living in Des Moines and the company you're working for wants to transfer you to Nebraska, you would pay...you would not get any...you would pay...how would that with Nebraska income tax? [DOMA]

BRIAN BARTELS: Well, we'd have to, you know, really sit down and look at what is their...basically, do several sets of tax returns. We'd do the federal income tax return... [DOMA]

SENATOR ASHFORD: And then the Nebraska one. [DOMA]

BRIAN BARTELS: ...as federal, you know, filing married; then we would do a Nebraska...theoretically, we'd probably have to do another federal return showing both individuals, federal, filing separately, as if they're single persons, not married. And then, based on those separate federal tax returns, they would fill out their single Nebraska tax returns. So we'd have to compare what are the results of their taxation if they file, you know, federal married and Nebraska married versus if they filed federal separately and Nebraska separately. And at the bottom of that revenue ruling, the Nebraska

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Department of Revenue said it's planning on rolling out additional guidance and additional instructions on how the situation is going to be treated, so that's why I say it's kind of a work in progress. [DOMA]

SENATOR ASHFORD: Okay, I think I get it. Senator Chambers, then Senator Davis. [DOMA]

SENATOR CHAMBERS: When this case came before the Supreme Court it involved two women who had lived together for a long, long time. They couldn't get married in the United States, so they went to Canada. And when they got married and came back to New York, even though New York did not permit, legally, same-sex marriages to occur there, they recognized the marriage of these two women. When one died and left her estate to her spouse, she paid; the spouse paid the inheritance tax, several hundred-thousands of dollars. [DOMA]

BRIAN BARTELS: Correct. [DOMA]

SENATOR CHAMBERS: Then she sought a refund and could not get it, and that put the matter before the courts. Now when I was talking about a properly framed case, the court, it seems to me, was limited in the reach of its decision based on the type of case that was presented to it, and it did not rule on whether or not same-sex marriage as such is protected by the U.S. Constitution and, therefore, any state law to the contrary notwithstanding, the federal constitution would prevail and any state law or even constitution that did not recognize same-sex marriage, if it recognized heterosexual marriage, those laws would be struck down because you couldn't have a two-tiered system of marriages in the same state. Now what you've given us today are very concrete difficulties not only for the couples but even for a state agency which has no choice, in my opinion, other than to rule the way you read to us that it's being handled in Nebraska. But on the basis of that--and you don't even have to answer if you don't want to--somebody, it seems to me, could bring a challenge and show that similarly situated

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people are treated differently. They're treated similarly by the federal law in terms of these benefits, but the caveat is that you have to gain entree to the totality of the benefit by hailing from a state where the marriage is legal. Now maybe I'm misunderstanding, but let me ask this question: Could a person from Nebraska, where same-sex marriage is not recognized, claim, even for federal purposes, the benefits that currently go to same-sex couples in states where their marriage is recognized by the state as legal? And maybe the question, the way I've asked it, is garbled and it's not clear what I'm asking. [DOMA]

BRIAN BARTELS: If you could clarify, that would be helpful. (Laughter) [DOMA]

SENATOR CHAMBERS: Okay. [DOMA]

SENATOR ASHFORD: That doesn't happen often, Brian. [DOMA]

SENATOR CHAMBERS: Okay, same... [DOMA]

SENATOR ASHFORD: You're charting new territory here. [DOMA]

BRIAN BARTELS: I appreciate that. [DOMA]

SENATOR CHAMBERS: Same-sex couples in a state that recognizes their marriage will carry the tax benefits for federal purposes even to a state that does not recognize their marriage. [DOMA]

BRIAN BARTELS: Right. Revenue Ruling 2013-17 says that for federal income tax purposes, if two individuals of the same sex are married in a state that legally recognizes that marriage and then they move to a state and become domiciled in the state that does not recognize their marriage, for federal income tax purposes they're still treated as married. [DOMA]

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SENATOR CHAMBERS: Right. But in that state, for the...where the tie-in is to the federal law, Nebraska says, you still are going to be treated as individuals for state purposes. [DOMA]

BRIAN BARTELS: Correct. I believe that's correct under the current guidance. [DOMA]

SENATOR CHAMBERS: Could that create the situation where people are treated differently and not given equal protection of the federal law? [DOMA]

BRIAN BARTELS: You know, I don't know the answer to that off the top of my head. [DOMA]

SENATOR CHAMBERS: See, he shouldn't have made me clarify; then it would seem like I was in the wrong. I don't know the answer either, but I thought maybe you would have given some thought to it. [DOMA]

BRIAN BARTELS: No, I'm sorry. [DOMA]

SENATOR ASHFORD: Yes, Senator Davis. [DOMA]

SENATOR DAVIS: So you've heard my question before, but I'll kind of repeat it. [DOMA]

BRIAN BARTELS: Sure. [DOMA]

SENATOR DAVIS: So we have a same-sex couple getting benefits, health benefits, and it's imputed income to the employee. But how is the employer able to treat that as a deductible benefit? Wouldn't it be treated as a gift instead because it's not a recognized right? [DOMA]



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BRIAN BARTELS: You know, that's a really good question that I, personally, haven't addressed with any clients. You know, off the top of my head, one of the issues would be whether or not that payment, for federal tax purposes, under Section 162 which, I believe, is the reasonable and necessary business deduction, whether or not providing that type of employer-provided health insurance coverage would be deductible as an ordinary and reasonable necessary business expense. I just don't know the answer to that without doing some research, if there's any guidance on that or... [DOMA]

SENATOR DAVIS: I think that's a very good question. [DOMA]

BRIAN BARTELS: Yeah. [DOMA]

SENATOR DAVIS: And then the second question would be sort of an issue of arbitrariness. If we have a law in the state of Nebraska that does not recognize same-sex marriage and, yet, Senator Christensen and Senator Coash are a couple and you give that, and then Senator Lathrop and Senator McGill are a couple and you don't give the benefits, isn't that an arbitrary choice that would be, possibly, a potential lawsuit? [DOMA]

BRIAN BARTELS: That creates a situation that was similar in the Windsor decision, actually, where, you know, had it been an opposite-sex couple that was married, you'd get a different tax result than if you had a same-sex couple being married. And so I could see a court applying similar reasoning as they did in Windsor to find the result that you're indicating. [DOMA]

SENATOR DAVIS: How are states that have civil unions dealing with these issues? [DOMA]

BRIAN BARTELS: That I'm not necessarily aware of. The guidance we've really been

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focusing on is the federal guidance which...that says that, for federal tax purposes and for federal employee benefits purposes, you know, if you're a legally married...a same-sex couple legally married in a state that recognizes that marriage, you're going to be treated as a spouse under the Internal Revenue Code and get some of the benefits that come along with that, such as the favorable tax treatment for employer-provided healthcare, and then there's other exemptions as well in the article that we've provided. You know, for civil unions, the Internal Revenue Service in that revenue ruling indicated that domestic partnerships and civil unions are not recognized as marriages for federal purposes. And so those individuals that are in a partnership of some sort or a civil union of some sort are not treated as married, so they don't get the federal tax benefits. Certain states that recognize civil unions or domestic partnerships, I believe, have amended their tax laws to say that we're going to treat these individuals as if they're spouses for federal tax or for state-level tax purposes so they can try to, kind of, equal out the tax treatment as if these individuals were married for state tax purposes. But again, that's a very state-specific, in-depth inquiry that would have to be done. [DOMA]

SENATOR DAVIS: Okay, thank you. [DOMA]

SENATOR ASHFORD: Senator Davis has really brought out a point that I've been trying to think about, and it's a good question. If you...so New Jersey had this very situation. [DOMA]

BRIAN BARTELS: Um-hum. [DOMA]

SENATOR ASHFORD: They had civil unions in their law, and the New Jersey Supreme Court overturned the...I think they overturned. I think that's what they did. I mean, they essentially repealed or overturned on constitutional grounds the civil union statute, I believe, that that...do you know of that? [DOMA]

BRIAN BARTELS: I haven't been following the New Jersey decision very closely.

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[DOMA]

SENATOR ASHFORD: And I don't know if anybody else here can talk about New Jersey, but they were faced, sort of, with what Senator Davis has suggested... [DOMA]

BRIAN BARTELS: Yep. [DOMA]

SENATOR ASHFORD: ...is a quandary. So let's say Nebraska were to adopt civil unions and in the statute would provide for certain tax benefits or whatever or equalize the tax benefits. [DOMA]

BRIAN BARTELS: Um-hum. [DOMA]

SENATOR ASHFORD: It still, under the New Jersey decision, the way I read it, is that the federal law though would not grant you the...you... [DOMA]

BRIAN BARTELS: Correct. But the way...yeah. [DOMA]

SENATOR ASHFORD: If you live in Nebraska, always in Nebraska, a civil union, Nebraska changed the law, federal...under the decision that we're dealing with here that there would be still a federal issue on taxation, you would still not be able to benefit from those federal benefits. Is that right? [DOMA]

BRIAN BARTELS: Yes, that's correct. [DOMA]

SENATOR ASHFORD: Okay. [DOMA]

BRIAN BARTELS: The revenue ruling that I've been referring to that I gave you a copy of... [DOMA]

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SENATOR ASHFORD: Right. [DOMA]

BRIAN BARTELS: ...discusses that that, for federal purposes, to be treated as a spouse under, you know, federal law, you have to be legally married under the state in which you're being married. And so if you have a civil union or a domestic partnership, for federal purposes, under that revenue ruling you are not treated as married. [DOMA]

SENATOR ASHFORD: And so, in fact, I mean, there...to simplify, there is a significant harm for a class of individuals or certain individuals in the...in a state. Either they're...the harm is on the tax side either from the federal revenue ruling, as a result of the federal revenue ruling, or, on the state law side, if...no matter what...depending on what they do. So there's either a state harm, federal harm, or both state and federal on... [DOMA]

BRIAN BARTELS: Correct. There is a potential difference in tax treatment. [DOMA]

SENATOR ASHFORD: And there's no rational reason for that difference. [DOMA]

BRIAN BARTELS: The... [DOMA]

SENATOR ASHFORD: I mean, I think that's what the New Jersey case... [DOMA]

BRIAN BARTELS: Well, the Windsor decision discusses at length,... [DOMA]

SENATOR ASHFORD: Right. [DOMA]

BRIAN BARTELS: ...you know, whether or not it's justified under the law to define spouse in a certain way. [DOMA]

SENATOR ASHFORD: So there's significant harm, monetary harm. And when...and so when the Supreme Court talks about equal protection, talks about harm, you know, in

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many instances they're talking about, you know, the monetary harm or fiscal harm to the individual,... [DOMA]

BRIAN BARTELS: Correct. [DOMA]

SENATOR ASHFORD: ...as opposed to...and, obviously, they're talking about physical harm as well, but harm to an individual because of who they are... [DOMA]

BRIAN BARTELS: Right. [DOMA]

SENATOR ASHFORD: ...and what their marital status is,... [DOMA]

BRIAN BARTELS: Correct. [DOMA]

SENATOR ASHFORD: ...is, I think, what drove the case, the Supreme Court case, so... [DOMA]

BRIAN BARTELS: Yes. [DOMA]

SENATOR ASHFORD: Senator Chambers. [DOMA]

SENATOR CHAMBERS: Excuse me. I want to gnaw on this bone just a little longer. [DOMA]

BRIAN BARTELS: Sure. [DOMA]

SENATOR CHAMBERS: And maybe somebody following you, because you do specialize in the tax area, could answer it. Before DOMA, New York recognized same-sex marriage, then eventually they authorized them. The Supreme Court in that Windsor case said: By creating--speaking of DOMA--two contradictory marriage

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regimes within the same state, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law. And I'll stop there for now. It's been flipped now that DOMA has been struck down. And for purposes of federal law, in the realm we're discussing it, they are treated as married; but for the purpose of state law, in the states where they don't recognize it, they are treated as unmarried. So what we've done now is just flipped it. If it, because of the double or the contradictory regimes created by DOMA, led to the striking down of DOMA, the properly framed lawsuit, in view of the Windsor decision, could perhaps lead to the striking down of a state constitutional provision which by its operation deprives individuals of benefits under the federal law. I'm not asking you to answer that, but I just want to read a little bit more. Senator Ashford mentioned the monetary and fiscal concerns. But the court added to this statement that I just read: thus--it's what DOMA does--diminishing the stability and predictability of basic personal relations, relations the state has found it proper to acknowledge and protect. That's for a state that would protect same-sex marriage. By this dynamic DOMA undermines both the public and private significance of state-sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition. The differentiation demeans the couple, whose moral and sexual choices the constitution protects, and whose relationship the state has sought to dignify. The court is speaking highly of the states who wanted to dignify and uphold this relationship so, by implication, there is a condemnation of those states which have laws that demean, stigmatize, and in other ways disparage the same-sex relationship. So somebody...if I practiced law, I would bring the action, and here's how I might can do it: I, not because of religion, am legally a minister because I was ordained by that outfit in Illinois which will do that because there were people that wanted me to perform weddings. And I've performed a number of weddings in Nebraska--not of same-sex couples--and they're valid. If a same-sex couple came to me to perform a wedding I would perform it. Then, if it were not recognized, we might go to court and use that as a way to bring in all these other arguments to show that, in view of the Windsor decision and the impact of it in terms of granting benefits under federal law but which Nebraska, in its narrow-minded way, has

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contrived to withhold from people, the federal should trump the state and these things should be struck down. There was a case from California, as you might remember, that would have dealt directly with whether or not the state could prohibit same-sex marriage, but the people who brought it didn't have standing to bring it, so we have to create standing in Nebraska. And if there are any forward-thinking lawyers who are not fearful and would like to collaborate with me and we can find a same-sex couple who want to be married, we have to take this bull by the horns and not let Nebraska forever, in every way, be backward, a place that is barren when it comes to morality, tolerance, respect for all people, who are so narrow-minded that they say anybody who speaks for tolerance for others are somehow infringing on their right to discriminate and be hateful. I am willing to do it in the same way I offered a bill to legalize same-sex marriage. I brought a lawsuit to get the chaplain out of the Legislature. A lot of things I do go beyond what my personal predilections are. But I'm looking at people who are disrespected, who are humiliated not because of something they did but because of what they are. They did not choose their genetic makeup. And when a society is going to attach disabilities to people because of what they are, they are excusing those people from the human race; they are making them nonpersons, "unpeople," or throwaway things, rather than human beings. And I want the people in this state to know that they can be as hateful as they choose. They can say that people should not be allowed to rent property where they and their family can live because they are so racist and hateful; who can say, because they hate President Obama more than they love Christ, that we are going to deny medical coverage to people who are working but cannot afford it and that denial will be based on political motives. There's somebody who is going to stand against that and try to fight it, and maybe I'll lose. But what about all these little songs they give to us in school? Live in fame or go down in flames, it's hard to do that if you're fighting for a flag that does not guarantee that it's the land of the free for everybody. So if there's any lawyer out there and any couple, we should get together and collaborate and try to force Nebraska to, at least, have the appearance of being civilized, a society that has evolved beyond the Dark Ages, the Middle Ages, and the period of the Inquisition and the burning of so-called witches. You are my sounding

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board but, if you are that lawyer, just say, aye-aye. (Laughter) [DOMA]

BRIAN BARTELS: Senator Chambers, fortunately, you're also going to be hearing today from Susan Koenig who is an attorney and a friend of mine who practices in marriage and divorce law among other areas. And so I'm sure she'll have some very interesting comments along those lines for you. [DOMA]

SENATOR CHAMBERS: So you're the middle-sized billy goat gruff that said,... [DOMA]

BRIAN BARTELS: Exactly. [DOMA]

SENATOR CHAMBERS: ...wait for my big sister. [DOMA]

BRIAN BARTELS: (Laughter) Pass it down to Susan. [DOMA]

SENATOR CHAMBERS: Okay. [DOMA]

\_\_\_\_\_ : Yeah, wait for the next... [DOMA]

SENATOR ASHFORD: All right. [DOMA]

SENATOR CHRISTENSEN: Senator Ashford. [DOMA]

SENATOR ASHFORD: Yes, Senator Christensen. [DOMA]

SENATOR CHRISTENSEN: Thank you, Chairman. Not necessarily a question to you,... [DOMA]

BRIAN BARTELS: Sure. [DOMA]



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SENATOR CHRISTENSEN: ...but Senator Chambers has made some statements and he said he'd be willing to listen and I guess I'm going to state a little bit the opposite. The United States is a republic. It is by the people and for the people. And so it's the people's choice and that's why we have the states with the rights to choose, and the feds have clearly said that. But the other point I want to bring out is Senator Chambers talked about bad genetics, and I guess I don't believe it's in genetics or we wouldn't see people that are...were heterosexual become homosexual and those that were homosexual become heterosexual. We have seen switches both ways. So if it's bad genetics, then it wouldn't...people wouldn't be flipping and going both ways. So I just wanted to state the other side of that, that Senator Chambers brought up, and go from there. Thank you. [DOMA]

SENATOR ASHFORD: Senator Chambers. [DOMA]

SENATOR CHAMBERS: There is no scientific evidence that people flip and become homosexual who are not or, if they are homosexual, they cease to be. They might change their conduct because they know how hateful people are and put on the appearance of what is being called "straight." But here's what I'm getting to: Senator...my colleague to my left pointed out that, in his view, this is a republic and the people have a right to choose. If he would read the Windsor case, the court talked about the power and the authority of the state based on history and tradition to have almost--almost--exclusive jurisdiction over marriage and domestic relations. Those are not federal issues. Then they add, the states may--then they put the important language--subject to these requirements, and the requirements relate to the constitution. The state of Mississippi said, as did the state of Nebraska, that a black person couldn't marry a white person or a white person marry a black person, and they were heterosexual. And the state said that, but there was a court that said, but the constitution says no. And it just happens that, the two people, their name was Loving, so it was kind of appropriate. And it happened to be a white man who wanted to be married to a black woman. And one thing my colleague, Senator Christensen, that

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George Washington, Thomas Jefferson, Patrick Henry, and all of the rest of them had in common with me: We all love black women. (Laughter) And Thomas Jefferson, it's anecdotal, just like George Washington supposedly threw a silver dollar across the Potomac or cut down the cherry tree and never told a lie--and that's the biggest lie ever told. Thomas Jefferson, he did have children with a teenage girl, which would be statutory rape now. That's what happened to the women who were among my forbearers. Ms. Jefferson said, Thomas, leave those black women alone. And he said, Ms. Jefferson, I'll leave you alone first. And when this guy, de Tocqueville, came here and praised America so much, he said he went to various plantations and he saw these little children running around, black children and white children. And the only difference was in their complexion; otherwise, they looked exactly the same. It's like children toasted to a greater degree than others, but they all came from the same loaf. So white men's religion did not prevent them from mixing their blood with ours. I should be the color closer to the color of this microphone than I am to the color that I am. And I didn't get this color from black people jumping over fences, going to bed with white women but black...white men laying their white women aside and jumping over a fence and coming down to the slave huts and impregnating black women. And he wants to say, liberty and justice for all. When that song was written we were enslaved. When the man said, our flag was still there, it was not my flag. It's the home of the tree and the land of the slave for us. And because so many bad things have happened to us that I don't want anybody to experience the feelings and the thoughts that I've had and that I continue to have...so any person or group that I see set upon and mistreated because of what they are I have an obligation to do something about it. When I was younger I was in a holiness church called fundamentalist. And as I grew up there were bad names for people who were homosexual; many of them started with "f"--faggot, fruit, funny, fairy. And growing up in an environment, I didn't ever refer to anybody by those things but it was a part of what was in my mind. And I thought of homosexuals as evil people, as bad as what I think of Catholic priests now who assault little children, and bishops, and even Popes who cover for them--evil. But as I began to understand what was happening to people because they were homosexual, I didn't even have to go through all of this stuff of religion or

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anything else. When I saw people demeaned, I saw them attacked physically and killed, it changed my conduct. And whereas I had never mistreated anybody who was supposed to be of that orientation, I never did anything to help anybody; I never told people, leave that person alone, because, frankly, I had never seen anybody when I was growing up who could be called homosexual. Tim Hall was the first senator because of a constituent in his south Omaha district asked him to bring a bill prohibiting discrimination based on sexual orientation in employment. And I told him, Tim, as hateful as these people are, no person should stand alone on an issue like that, so I'll cosponsor it with you. And then I took it over. And one of the points I made to my Catholic friends...I do have some friends who are Catholic. It's a good thing that the Catholic Pope and the hierarchy were not as hateful as people in the Catholic church now who want to maintain and retain the right to discriminate against people because of their sexual orientation because, had the church been as backward as that, you wouldn't have the Sistine Chapel because Michelangelo, a homosexual, was not so hell-bound and evil that the Pope said, we cannot hire you to decorate this ceiling; we want you to paint the creation; we want you to depict the fall, that picture of that finger coming out of Heaven, touching that finger on the Earth; we want you to depict the last judgement; we want you to depict the redemption; yeah, we know you're a homosexual, but we've got a little sugar in our britches sometimes, also, we understand things like that. And if people would read history and come to an understanding of the way things are, they wouldn't state, throughout history, homosexuality has always been condemned. It has been throughout all of society. Lord Byron, when they went to Eton and some of these exclusive English universities that produced the great literary people, homosexuality was practiced. Among the SS, whose symbol was the death's-head, homosexuality was rife, the Waffen-SS of the Nazi regime. So if people just came to an understanding they would not misrepresent what has actually happened; they would leave other people alone. And I'm glad that people who have the attitude and mind-set that Senator Christensen has will express it so that people can hear it and see what people actually think. We were having a discussion about a bill of Senator Christensen, and I wanted to offer an amendment to it. And Senator Christensen had pointed out that

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he had a neighbor who was homosexual and he talked to him. And you know what somebody who is of that orientation told me? Maybe the people in his district didn't know and Senator Christensen was bringing that person out of the closet. Maybe they did know, but the fact that this kind of dread can automatically surface shows that throughout this society it is known how much hatred there is toward people who are even thought to be homosexual in orientation. They can be brutalized, as was the man in the Old Market in Omaha, Nebraska, a short time ago. And I will say what I've got to say in these settings because this is where these issues should be resolved. I don't go to people's churches and express my view; I don't go to their temples and express my views; I don't go to their mosques and express my views; I don't go to their synagogues and express my views. I deal with legislation and not salvation. Since they deal with salvation they should not try to put religion in politics. If we kicked religion totally out of politics, religion is not hurt. Don't let them pray in the Legislature, don't let them pray in a town council or anywhere else, and nothing is hurt in religion. They can still go to all their churches, believe what they want to, say what they please. But when they bring that into the political realm, not only do they contaminate it, but it shows a great disrespect for other people. And if this is the land of the free and everybody is to be embraced, then simply because a group constitute a numerical majority doesn't mean they have a right to impose their will on others no matter how hateful, no matter how disrespectful, no matter how disregardful it is. That happens in this state and it happens in the Legislature, but I'm going to stand against it and speak against it. And when we have a setting like this and people come here, they're going to hear what I have to say or they can walk out. They don't have to stay in here, and I won't be offended. But at any rate, what we have going on here today is the presentation of concrete harms that befall people because of a constitutional amendment such as Nebraska has. And what these ignorant people in Nebraska have not caught onto yet is that the ones who put Nebraska into a backwards situation find the state so backward that they leave; the ones who did it left here because the state is so backward. The one who got them to adopt term limits has left here. They've gutted their Legislature, they've put into the constitution a discriminatory, demeaning provision, then they left. So the harm that

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people do will live long after they are gone. I'm going to try to stop it, and I will also mention that, in disregard of what this constitution of Nebraska says, I'm going to offer a bill this coming session to legalize same-sex marriage. And when my religious friends tell me, they want to instruct me that God put marriage in place and God decreed that marriage should be between one man and one woman, I'll ask them, what about the Old Testament patriarchs--Abraham, Isaac, Jacob--who had multiple wives and mistresses? How about Kings Solomon and David? David, whom God referred to through his scriptures as the apple of his eye, had many wives, many concubines, so they lie on God when they say God said one man and one woman. Even in the New Testament where they love St. Paul--and this my Catholic friends ought to pay attention to--he said, a bishop should be the husband... [DOMA]

\_\_\_\_\_: Whose testimonies are we here to hear today? [DOMA]

SENATOR CHAMBERS: ...of one wife. [DOMA]

\_\_\_\_\_: (Inaudible.) [DOMA]

\_\_\_\_\_: Am I going to get to testify? [DOMA]

SENATOR CHAMBERS: The bishop should be... [DOMA]

SENATOR ASHFORD: Senator Chambers, Senator Chambers, hold on a second. Senator Chambers,... [DOMA]

\_\_\_\_\_: I mean, really, are we going to get to testify? [DOMA]

\_\_\_\_\_: (Inaudible.) [DOMA]

SENATOR ASHFORD: Ma'am, would you...here's the deal. The members of the

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Legislature have an opportunity to say whatever they want to say on the floor and in the hearing. That's the way we do business here. I would ask you to sit down. [DOMA]

\_\_\_\_\_: Is the purpose to gather testimony though... [DOMA]

SENATOR ASHFORD: The purpose is... [DOMA]

\_\_\_\_\_: ...from the public, from the experts? [DOMA]

SENATOR ASHFORD: The purpose...we're going to gather testimony from the public and we're going to gather testimony from others who are here to...who are professionals to talk about the issue. So I don't want anybody...any outbursts, and I would ask you to please sit down. [DOMA]

\_\_\_\_\_: Well, will I have a chance to testify then? [DOMA]

SENATOR ASHFORD: Yeah, just...we're going to go through the process that I... [DOMA]

\_\_\_\_\_: So even if we go beyond 2:00, I will... [DOMA]

SENATOR ASHFORD: Senator Chambers has the floor and, as long as Senator Chambers wants the floor, Senator Chambers will have the floor. [DOMA]

\_\_\_\_\_: I'm not trying to be disrespectful. [DOMA]

SENATOR ASHFORD: I know you're not, and I'm just trying to ask the... [DOMA]

\_\_\_\_\_: I'd just like to be able to testify. [DOMA]

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SENATOR ASHFORD: I'm asking people here...that's the way we do business here. We have public hearings on every bill; we have public hearings throughout the interim. And we, the members of the...49 members of the Legislature--Senator Christensen, myself, Senator Coash, everybody in this room--we have...if we want to give an hour-long speech, we can give it, and that's the way we do business here. And I appreciate the fact that you're here and we'll go on from there, but I don't want anybody...any outbursts or other discussion. [DOMA]

SENATOR CHAMBERS: And the senators are free to counteract anything that I say, and I intend to listen to everybody who is here today and will speak. But Paul said a bishop should be the husband of one wife, which implies that some had more than one wife. So before they start holding the Bible to me to justify harm to other people, they're going to eat the whole roll. And I've been in this Legislature for decades and I've sat through people coming up here and testifying and referring to homosexual people in terms of bestiality, that they probably have sex with animals, they probably have sex with their children. This is the kind of stuff that comes from the audience, and I listen to it and I have never shouted anybody down as people have come here and tried to shout me down. Now if we are what people claim that America is, then no matter how much we may dislike what somebody is saying, they can walk out. I've already said that. There is nobody at that door who would prevent anybody from leaving. And when people are testifying and saying hateful things, I don't get up and walk out. I'm here to listen to what they say. But what they don't realize: I remember what they say and I bring it up at times like this and throw back to them what they have said. Now if I was speaking for the church, if I was condemning homosexuality, if I was talking about Sodom and Gomorrah, there would be people out there muttering, amen, amen, because it's what they want to hear. They need to be exposed to what somebody like me will say. And when they come where I'm present, that's what they're going to hear, whether we're talking about gun legislation, where they fill up the room with people who love the guns and they will shout out also because they don't like what I say. They think that I'm a shrinking violet, that I'll cut and run. But we use words here and we try to put

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things into the record so that the public will have an understanding of the developmental discussion that leads to legislation that we offer. It also provides for the court what's known as a legislative history to explain why what was done was done. And in the Windsor decision, the U.S. Supreme Court said that Congress was very clear and straightforward in declaring why they want to change this definition. And what they did with DOMA was to take this dictionary act and, as you pointed out, changed the definition of spouse and, by so doing, they altered and determined how over 1,000 federal laws should be interpreted. And the entire realm or universe of rules, regulations, and interpretations that existed for the purpose of demeaning people who are of the same sex and want to marry, for the purpose of discouraging states from allowing same-sex marriage, for the purpose of telling states, do not recognize a same-sex marriage that was legal in another state, that's what Congress made clear and that's what the U.S. Supreme Court brought out in its decision and it's why people ought to read these Opinions written by the court and not just what talking heads said, or newspapers. I read and I pay attention. Even though these laws are not fair to us, I feel the best chance for people situated in a vulnerable position is to know what the law says. And sometimes, the very language of the law designed to hurt us can contain our salvation if we rightly divide it and present it. And that's one of the reasons, when the lady stood up, that I said what I said at the beginning. Whether people favor same-sex marriage or oppose it, they should feel free to express those views but like they were taught in grade school, wait until your turn comes, as they're taught in Sunday school, wait until your turn comes. But they who are so religious, so moral, want to be able to kick the rules aside that they don't like and say, our rules are what ought to be imposed and we want to impose them and if we don't have the votes to get you out of the Legislature and keep you out of the Legislature we'll shout you down at the hearings. Not so. Those kinds of things, those kind of outbreaks have as much impact on me as the sweat of a gnat has on the Rock of Gibraltar. And sometimes people can provoke me to say more than what I intended to say, but I will have my say. [DOMA]

SENATOR ASHFORD: Thank you, Senator Chambers. Susan. Well, wait a second.



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Dave Brown has to leave, so Dave can...then Susan after that. Has Dave Brown left? I don't know. Oh, there's Dave. [DOMA]

BRIAN BARTELS: Thank you. [DOMA]

SENATOR ASHFORD: Thanks. [DOMA]

DAVE BROWN: My apologies. I have a prior engagement I need to leave to after this testimony. Thank you for the opportunity to testify. My name is David Brown. I'm an immigration attorney. I've been practicing in the area for 15 years. I'm managing partner of Brown Immigration Law. I'm not here on behalf of any particular client. I'm here at the invitation of the committee. In practicing for 15 years I've seen a lot of things in relation to immigration law and I work with a lot of multijurisdictional international companies. I work with a lot of startup companies as well, so I kind of run the gamut of clients I deal with. From my perspective this issue is settled. The decision that came out has been enacted by Department of State, by USCIS, ICDP, all of these different acronyms that deal with immigration, because they are federal bodies. And so from my perspective this issue is settled. I think from a practice perspective though, over the years, what I've seen, and it goes to some of the issues that all of you have raised, we dealt with someone who was coming in to be the top six executive at a very large, multibillion-dollar company. It turns out he had a same-sex partner and when he accepted the opportunity, because he was in senior leadership in Europe, he didn't understand that, when I spoke to him about immigration laws at the time, that his same-sex partner wasn't viewed as his partner. And so that was definitely a concern for him and I had to go through the process of explaining how we do this and how we get his partner in. And they've been married in Europe for about six years at that point and so everything they did was together and, of course, this person is coming with them. We went through the process of explaining everything. They're...the Department of State wouldn't, obviously, recognize the marriage, but they would issue what's called a B1/B2 visa, and that spouse could come in for a period of up to six months, perhaps a year if

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we're lucky, each time. And they'd have to go and come back or we'd be able to extend them while they're here. After two trips in, that senior executive left the company and went back to Europe as CEO. That senior executive, CEO of the European branch, that senior executive has since gone to another company and is CEO of that company. That individual, on their second entry with their partner, was subjected to secondary questioning and screening by CBP and basically asked, you know, why do you think the two of you can come here, why are you...why do you see yourselves as being able to bring your partner in here, because we don't view you as married? That was a difficult situation for this executive and they were very upset with how the U.S. government treated them, how they treated their partner and, as a result, that particular transfer failed and that individual went back to Europe and then, ultimately, left the company because in...where this person was at in their career, their only opportunity was to go upward, and they had to go to a bigger company in Europe because their opportunity in the U.S. was thwarted. That's, obviously, an unusual circumstance. But I do deal with those cases where individuals have that issue and, I guess, my concern from a state perspective is, now that this is settled at the federal level, you're going to have individuals who will come over, like you suggested, from Iowa to Nebraska, we may have people coming from Europe looking at Nebraska, and it's only at the point in time when they look at the fine print that they're going to realize there is an issue, perhaps, for them in terms of the tax or marital implications and things like that. From a startup environment, when I used to deal with clients, I used to be the youngest in the room 15 years ago when I started. At 43 years, I am typically the oldest in the room for a lot of my clients, and that always baffles me. For most of my smaller startup clients, they don't care about race, gender, or marital status; none of that is an issue. The issue is ideas; they're big about ideas. And if they've got a concern that someone can't be here because they feel like they don't have the rights that other employees have, I think that's an issue for our startup community; I think that's an issue for our larger corporate clients that have that concern. So I came here with that testimony in mind and, obviously, from a federal perspective I feel quite good in my practice area now. I'm able to handle a lot of client issues that I couldn't handle before. The only other thing I wanted to add was,

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with Prop 8 in California and the issue that happened in 2008, I actually dealt with clients who wanted to move to Canada. I originally was born in Canada. I've naturalized now as a U.S. citizen. I still practice Canadian immigration law, and I've actually moved gay couples to Canada based on their interest in moving out of California. So I've seen firsthand where people have felt the burden of not being treated as equal and decided to go somewhere else. [DOMA]

SENATOR ASHFORD: Thanks, Dave. Do we have any questions of Dave? Senator Chambers. [DOMA]

SENATOR CHAMBERS: Just so it won't seem like I've played favorites, you had said you had an engagement prior. That's why you had to come up early. [DOMA]

DAVE BROWN: Yes. [DOMA]

SENATOR CHAMBERS: So I'm going to not question you. (Laughter) [DOMA]

DAVE BROWN: Thank you. Thank you. I'm giving an award to an employee and I don't want to not be there. [DOMA]

SENATOR ASHFORD: Very good. Thank you. Susan. Thanks, Dave. [DOMA]

SUSAN KOENIG: (Exhibits 5 and 6) Good morning, Senator Ashford, members of the committee, Senator Chambers, with the big heart that you try to hide and don't fool most of us. I live and work in the Seventh Legislative District here in Omaha. I'm the founding attorney of Keonig/Dunne Divorce Law where I am of counsel. As one of four attorneys, I speak for our firm. I've been an active member of the State Bar for 32 years. My law partner, Angela Dunne, and I coauthored the book which you're going to get a copy of now, Divorce in Nebraska: The Legal Process, Your Rights, and What to Expect. The second edition just came out this year. Family law has been the foundation of my

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career. I've represented the wealthy, the indigent, parents, children. I've drafted premarital agreements, negotiated separations for married and unmarried couples, and I've litigated landmark cases from a trial to the Nebraska Court of Appeals and the Nebraska Supreme Court on matters involving legal rights of same-sex couples. I'm hoping that qualifies as the forward-thinking lawyer. I was divorced 20 years ago, widowed 2 years ago. I am intimately familiar with the rights, the privileges, and the responsibilities of having and not having a legally recognized marriage in Nebraska whether the marriage endures for decades or ends abruptly. Senator Chambers spoke to the stability and predictability that marriage affords for Nebraska families, and I'd like to speak to that today because I think that that is at the heart of what we're looking at. So setting aside the civil rights issues which have already been discussed--and I know there will be another time, perhaps, for you all to be looking at that--I want to talk about this uncertainty for Nebraska citizens, for employers, for agencies, and for businesses. From my vantage point, as someone who works with families, the reason I've given you a copy of our book is because you will see the broad range of rights and responsibilities that legally recognized...people in legally recognized marriages have here. I particularly bring your attention to chapters 10 through 14 which cover the areas of alimony, division of personal property and real estate, benefits based on a spouse's employment--insurance, retirement, and so forth--division of debts, and taxes. So we've got in Nebraska our Chapter...as you know, Chapter 42 of our Revised Statutes that sets forth the rights and duties of married couples, the legal process for asserting those rights, and the factors to be considered. Layered on top of that we have decades of decisions from the Court of Appeals and the Nebraska Supreme Court that answers all these questions, from do I have a right to be in my family home of 30 years, you know, maybe even the one I built, if my name isn't on the title, am I entitled to alimony after 15 years of being a stay-at-home mother for our children while my spouse traveled for work or, perhaps, while I took care of my mother-in-law who is aging and ill? So we've got this huge body of law that relates to the five areas outlined in chapters 10 through 14. This book answers a hundred questions around those rights and responsibilities, but we do not have the same answers for same-sex couples whose marriages are not recognized

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here in Nebraska. Of particular concern to me as someone who has litigated custody for many years is the vulnerability of our minor children when...and I'm not going to go into the custody issues because that's for a different forum, but this is related to property law. When a family separates, one of the first things that happens is a temporary award of custody of the children. Where are those children going to live the minute one of those parents decides that there is going to be a separation? Well, if a parent in Nebraska is awarded temporary custody, the court has the authority to say, you can stay in the house with the children. There is no structure for that if that marriage is not legally recognized, so a child could find their parents separating and find themselves immediately homeless because there is no legally protected right if the marriage is not recognized. So we're going to have tons of litigation. Everyone has spoken to that. And I could go on and on, but I see our time is growing short here. But there is nothing that promotes litigation more than uncertainty. You see the complexity of the rights and responsibilities. That's why a book has been written on it that answers, you know, 400 questions around it. We have now thrown people into the court system because we're not affording those rights with clarity for them. So I'd be really happy to take any questions about the practical side of this. [DOMA]

SENATOR LATHROP: Thanks, Susan. We'll start with Senator Davis. [DOMA]

SENATOR DAVIS: Okay. So if we have a couple whose marriage has been recognized in another state and they end up moving here, and these actions take place. What laws apply? [DOMA]

SUSAN KOENIG: Well, the one thing we know is that they don't have a form for getting a divorce here in Nebraska. We've already had one trial court, when District Court Judge Rehmeier issued the ruling: I can't give you...I can't give you a divorce because we don't even recognize your marriage, so we're not going to be able to tell you what to do with that pension you have, what to do with your health insurance--a major benefit that is often addressed in divorce decrees, extending on health insurance through the

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spouse's employment. You know, employers can give these benefits that attach to family members, but if there's no court to go to, to see that they're enforced, there's nothing to keep that provider, which, of course, places this economic burden on the state, which you all should be very interested in. What's going to happen to these families when there's no accountability and a long...you've got a long-term marriage and you can walk away from it without being held accountable for supporting that family that maybe has been made dependent? So number one, you can't get a divorce. And number two, you will be forced into multiple forms of litigation to be able to assert those rights. So say, for example, I want you out of my house. If I were...if my marriage were recognized, you know, this could be my marriage because what if I were bisexual, you know, like I've been married twice but, you know, just to address your question of how does that happen. That's one of the possibilities. But so if I were married, I could go to the court and say, I'd like to have temporary possession of the home. If I'm not married what I can go...if I have my title is on...my name is on the title to the house, then I can go into county court and I can seek restitution and I can ask to have the person be removed from my home. If I want my personal property back, I can file a replevin lawsuit and go through all of that and try to establish which credit cards were used to buy the big-screen TV and who bought the dining room furniture. And then, let's see, if I want to get a part of the pension, I don't even have a place to go with that. And what if I sold my house and put \$50,000 into a remodel of, you know, for a room to put your children in, in the house or have my children come visit? That money is gone. Where do I...where is my relief? We don't know. [DOMA]

SENATOR DAVIS: So... [DOMA]

SUSAN KOENIG: The bottom line is uncertainty, unpredictability, instability, increased litigation, a lot of work for law firms like ours. [DOMA]

SENATOR DAVIS: So the only real way for these things to be resolved is to have some sort of an agreement before you come into a state without a...that does not recognize

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marriage. Would that be true? Or in... [DOMA]

SUSAN KOENIG: That's one solution, but the question then becomes, as it relates to, say, benefits through a spouse's employer, how does one enforce that? You know, perhaps I've entered into an agreement with my same-sex spouse and she said, I will keep you on...I will give you 25 percent of my pension or...my pension--that's the best example--if our marriage or our relationship ends. Fast-forward 12 years later, the relationship ends. I've got my contract that says you're going to give me this, but then the employer says, well, that's not a spouse, it's not a spousal benefit. Or you know, let's say a better example would have been a survivorship benefit, give me a survivorship benefit. And the employer says, no, I'm not going to do it. [DOMA]

SENATOR DAVIS: Okay. What if you have a heterosexual couple that's been together for 25 years? Are there any rights that accrue to those parties? [DOMA]

SUSAN KOENIG: Absolutely, and those are what are set forth in this book. You'll see them. There are a lot of them, a lot of them. And... [DOMA]

SENATOR DAVIS: Rights to pension, alimony, those kind of things? [DOMA]

SUSAN KOENIG: Pension, health insurance, retirement, interest in personal property, interest in real estate, possible interest even in inheritance, so there are huge, huge benefits. What should happen with tax returns, what should happen with your points on your hotels and travel, there's just...it's huge, huge, lots of rights and benefits and responsibilities, you know,... [DOMA]

SENATOR DAVIS: Sure. [DOMA]

SUSAN KOENIG: ...to pay debt. Division of debts, I mean not (inaudible) debts, but it's a whole nother area. What happens if you run up the credit card debt and the credit

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card is in my name but you've run up the debt and there are \$20,000 of debt? Well, if our marriage is legal and recognized, I can go to the court and say, you know, you spent that over at the casinos and on, you know, your new girlfriend, and you should have to pay that \$20,000. [DOMA]

SENATOR DAVIS: But now common law marriages, would that...is that... [DOMA]

SUSAN KOENIG: Common law marriages are recognized and would be protected. [DOMA]

SENATOR DAVIS: So those things would all apply to a common law marriage of some kind. [DOMA]

SUSAN KOENIG: Yes. Yes. [DOMA]

SENATOR DAVIS: Okay. And I've got one other question but I can't think of what it is right now, but when I...okay. What about states where there are civil unions? How is it done there? [DOMA]

SUSAN KOENIG: We don't know. [DOMA]

SENATOR DAVIS: Don't know. [DOMA]

SUSAN KOENIG: Yeah, we don't know. We don't know,... [DOMA]

SENATOR DAVIS: Thank you. [DOMA]

SUSAN KOENIG: ...yeah, other than we're seeing, like New Jersey, the courts saying these are not being treated as the same and that's not okay. [DOMA]



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SENATOR DAVIS: Thank you. [DOMA]

SUSAN KOENIG: Yeah. [DOMA]

SENATOR ASHFORD: Senator Lathrop. [DOMA]

SENATOR LATHROP: I suppose, you know what, while you're talking, Susan, it occurred to me that a person could get married in Iowa, or a couple, come to Nebraska. They split. We don't recognize the marriage. They go through no divorce. That person could then marry a second time in New Hampshire or somewhere, wherever else they recognize it, go to Iowa, back to Iowa, and there's somebody that has two marriages going on and none in Nebraska. [DOMA]

SUSAN KOENIG: I think that, in theory, that is accurate. [DOMA]

SENATOR LATHROP: And that's the legal spot you get in. [DOMA]

SUSAN KOENIG: Uh-huh. Right. [DOMA]

SENATOR LATHROP: Okay. [DOMA]

SUSAN KOENIG: Right. [DOMA]

SENATOR ASHFORD: Yeah, I mean... [DOMA]

SUSAN KOENIG: How do we know who was where and where...? [DOMA]

SENATOR LATHROP: And you can't get a divorce in Nebraska to get rid of spouse number one. [DOMA]

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SUSAN KOENIG: Right, we can't even make it right. [DOMA]

SENATOR ASHFORD: Yeah, you can't resolve that conflicts issue. I mean, you've got conflicts of law conundrum. I mean how do you...anyway. What happens, maybe you answered this in your earlier comments, in an adoption? You're married in Iowa or somewhere and you have adopted children. You come here,... [DOMA]

SUSAN KOENIG: Yeah. [DOMA]

SENATOR ASHFORD: ...there is no...you have no legal right to,... [DOMA]

SUSAN KOENIG: Yeah. [DOMA]

SENATOR ASHFORD: ...at least under current law, you have no legal right to adopt. [DOMA]

SUSAN KOENIG: Yeah. [DOMA]

SENATOR ASHFORD: What happens then? [DOMA]

SUSAN KOENIG: So when... [DOMA]

SENATOR ASHFORD: Well, what happens...I guess the scenario would be, again, if you have a dispute between the two spouse or...I mean, what happens with the child? What...? [DOMA]

SUSAN KOENIG: Yeah. So there is a state law, the Nebraska Uniform Child Custody Jurisdiction Act, the UCCJEA. [DOMA]

SENATOR ASHFORD: Right, that's the conflicts issue, right? [DOMA]

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SUSAN KOENIG: Yeah. Well, but it also identifies which courts have jurisdiction to hear custody matters... [DOMA]

SENATOR ASHFORD: Right. [DOMA]

SUSAN KOENIG: ...and for whom, and that's that Russell v. Bridgens case I referenced here in my testimony. [DOMA]

SENATOR ASHFORD: Okay. So you've already talked about that. [DOMA]

SUSAN KOENIG: Right, but that took...but that took, that's an example of a case that took an appeal all the way to the Nebraska Supreme Court because it was a lesbian couple who adopted outside of Nebraska, came...one was...no, there's a birth from... [DOMA]

SENATOR ASHFORD: Well, they recognized the adoption. But what happens...okay. All right. So what happens if there's a dispute between the parties? [DOMA]

SUSAN KOENIG: So one files litigation under the UCCJEA, not for a divorce but for a custody determination. [DOMA]

SENATOR ASHFORD: Okay. So that can be done. [DOMA]

SUSAN KOENIG: Uh-huh,... [DOMA]

SENATOR ASHFORD: Okay. Okay. [DOMA]

SUSAN KOENIG: ...so that can be addressed. [DOMA]

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SENATOR ASHFORD: Okay. Thank you, Susan. [DOMA]

SUSAN KOENIG: Thank you. Thank you. [DOMA]

SENATOR CHAMBERS: Excuse me. [DOMA]

SUSAN KOENIG: Oh, yes. [DOMA]

SENATOR ASHFORD: Yes, Senator Chambers. [DOMA]

SUSAN KOENIG: Yes. [DOMA]

SENATOR CHAMBERS: Do you envision any way--and I'm not going to ask you to lay out all the details now, nor I--envision any way that, with the rationale in that Windsor case, could be the basis for a lawsuit that would actually attack the legitimacy of a constitutional amendment like Nebraska's, which prohibits recognition of same-sex marriages? [DOMA]

SUSAN KOENIG: I do. [DOMA]

SENATOR CHAMBERS: Now when Utah wanted to become a state, people in this country felt like polygamous marriages were wrong; they shouldn't happen. A funny thing: They believed to such an extent that the full faith and credit clause of the constitution was so valid that they told Utah, before you can become a state, you have to disavow polygamous marriages. So if at that time Congress believed that the full faith and credit clause would make any state recognize a polygamous marriage that took place in Utah, where it was legal, it was legal in Utah, if they became a state, the provisions of the constitution would require any state to recognize as legal those marriages that were legal in Utah. The question I posed to that committee, subcommittee, when I testified, and they never answered it: What has happened now so

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that the full faith and credit clause of the constitution, which is not altered, will allow a state to say it will not recognize a marriage that was legal in another state? What becomes of the full faith and credit? Well, as often happens, it just was not answered. But I do feel there might be a basis. But rather than take all the time now, I'll talk to you at some point and just get some thoughts and ideas. [DOMA]

SUSAN KOENIG: Thank you, Senator. I will say that up until 2000, of course for decades, the full faith and credit clause had been applied to marriages across the country and that's when we saw the change, yeah. Thank you all so much. [DOMA]

SENATOR ASHFORD: Thanks, Susan. Tom Whitmore. Tom. [DOMA]

TOM WHITMORE: Good morning. [DOMA]

SENATOR ASHFORD: Good morning. [DOMA]

TOM WHITMORE: Mr. Chairman, members of the committee, my name is Tom Whitmore. I'm an attorney in Omaha, Nebraska. I have my own firm, Whitmore Law Office. We work primarily in the area of wills, trusts, and estates. And I was asked to...I don't have any particular axe to grind here and there's no bill in front of this committee at this point. So I'm here just to provide information and the information that I'm focused on...that's just my notes. The information that I'm focused on... [DOMA]

SENATOR ASHFORD: Anything that's on the desk gets removed if you don't...  
(Laughter) [DOMA]

TOM WHITMORE: Well,... [DOMA]

SENATOR ASHFORD: You have to place it right in front of you or... [DOMA]

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TOM WHITMORE: So I have here a provision from the Constitution of Nebraska,...  
[DOMA]

SENATOR ASHFORD: No, that's okay. (Laugh) No, that's fine, go ahead. I'm sorry.  
[DOMA]

TOM WHITMORE: ...United States Constitution, if anybody is curious what they say.  
[DOMA]

SENATOR ASHFORD: Once in a while I just...I just insert these little things. Go ahead.  
[DOMA]

TOM WHITMORE: So a spouse in Nebraska is entitled to a lot of rights in the probate context, and this is...probate is, as you all know, a process for settling the affairs of a deceased person through the courts. So that deceased person may or may not have a will. If the deceased person does not have a will, we have laws called the intestate laws which say how that person's property is to be divided. To show you the importance of a spouse in this regime, if the parents are living, the spouse gets the first \$100,000 and 50 percent of the remainder of the estate, assuming there are no children. If there is no...if there are neither parents nor children, then the spouse gets 100 percent of the estate of the deceased person. If there are children that are only children of the surviving spouse, then the surviving spouse gets \$100,000 plus 50 percent of the deceased person's estate. If there's one child who's not...the surviving spouse is not a parent of that one child, then it's just a 50/50 split between the surviving spouse and the children. So that's the importance of a spouse under our intestate law. If there's a will and no personal representative is named in the will, the spouse has the first priority to be the personal representative. That is very significant, because the personal representative is the person who's in charge of administering the estate. They're entitled to possession of the estate and they go through the process of paying the debts of the deceased person and distributing the assets, and they control the timing of that. One of

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the assets that the personal representative controls is the home, and if...now I've had situations like this where, the one I'm thinking of, the particular client died shortly after the couple was married. It was a marriage between a man and a woman. The man had a heart attack and dropped dead and a few weeks after their marriage. He hadn't changed his document, so his life insurance was payable to his former spouse, who he divorced. And the home was...his home was in his name alone. His wife had not been brought into the...put on the title yet. And his children, his son actually became the personal representative. He wanted to exclude this new wife from the home and he had the power to do that. So that's just an example of how important that is. And the other-- notice the yellow light is on--the other important area is the inheritance tax where we see a situation with any domestic partnership, whether same sex, you know, different sex. If there's a domestic partnership and the...one of the owners of the...one of the partners dies, that domestic partner doesn't have any rights unless those have been provided in documentation, such as will, power of attorney, healthcare power of attorney, and so on. So it's an extremely complicated area. And I think you've heard from each of the lawyers who have come forth how unpredictable we are. If the Nebraska provision on...that refuses to recognize out-of-state marriages between same-sex couples becomes...it becomes impossible to intelligently counsel those people. [DOMA]

SENATOR ASHFORD: Thanks. So are you saying that on a...if you have a same-sex couple married in another state change their residence to Nebraska, on the inheritance tax side of the ledger there is no spouse? [DOMA]

TOM WHITMORE: There's no spouse. [DOMA]

SENATOR ASHFORD: So the...and if there are no children and no will, what happens then? [DOMA]

TOM WHITMORE: So the... [DOMA]

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SENATOR ASHFORD: Well, it goes through the other...it goes through the other...  
[DOMA]

TOM WHITMORE: ...as if there's no marriage, then it goes according to, you know, to children, if any; if not, siblings; if not siblings, parents. [DOMA]

SENATOR ASHFORD: Okay, then the other...then the other people. Yeah. [DOMA]

TOM WHITMORE: And the other one is left out. And the importance on that inheritance tax is the difference between no inheritance tax on transfers to the spouse at death.  
[DOMA]

SENATOR ASHFORD: So there would be the inheritance itself, of course, because there's no exemption, correct? [DOMA]

TOM WHITMORE: There's no exemption. And in fact, it's the most burdensome rate with only a 10 percent deduction and an 18 percent rate, which probably includes the house, so. [DOMA]

SENATOR ASHFORD: So even if there was a will, the inheritance tax... [DOMA]

TOM WHITMORE: Inheritance tax would still... [DOMA]

SENATOR ASHFORD: ...that would kick in and there would be an inheritance tax. So you have state tax, aside from a death, you have state tax situation in Nebraska, we've already discussed, and you have now an inheritance tax situation where there is no exemption. [DOMA]

TOM WHITMORE: Exactly. [DOMA]



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SENATOR ASHFORD: So...okay, thank you. Any...Senator Chambers, then Senator Davis. [DOMA]

SENATOR CHAMBERS: You had, I think you said, a copy of the Nebraska constitutional provision. [DOMA]

TOM WHITMORE: I do. [DOMA]

SENATOR CHAMBERS: Okay. So you're familiar with it. Do you think, with the language of that provision, a statute could be crafted which would not run afoul of it which would say that for purposes of application of the probate code a marriage recognized in any other state, for purposes of application of the code, will be recognized in Nebraska? [DOMA]

TOM WHITMORE: It would not. [DOMA]

SENATOR CHAMBERS: Couldn't? Okay. [DOMA]

TOM WHITMORE: It would not, because the language of the statute is only a marriage between a man and a woman shall be valid or recognized in Nebraska. And it's that "or recognized" that throws out all the other... [DOMA]

SENATOR ASHFORD: So that means it couldn't..."recognized" means it's from another place. [DOMA]

TOM WHITMORE: ...throws out all the other 14 states. [DOMA]

SENATOR ASHFORD: Okay. All right. So they have to be "or recognized" so... [DOMA]

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TOM WHITMORE: Yeah. [DOMA]

SENATOR ASHFORD: Okay. Senator Davis. [DOMA]

SENATOR DAVIS: So what about for federal estate tax purposes? How is the federal system going to interpret the decision in this matter? [DOMA]

TOM WHITMORE: So the Windsor decision itself is based on the federal estate tax exemption for gifts between spouses, so there's no federal estate tax on a gift... [DOMA]

SENATOR DAVIS: Between spouses. [DOMA]

TOM WHITMORE: ...between spouses, nor is there a gift tax on that. So the...that's one of the things... [DOMA]

SENATOR DAVIS: So if... [DOMA]

TOM WHITMORE: That is specifically what Windsor dealt with. [DOMA]

SENATOR DAVIS: If we had people that, and I think Senator Chambers, I just want to clarify that, if we had people that had a marriage that was recognized in Nebraska but they had moved to...or in Iowa but had moved to Nebraska, they would still, under the federal return, be entitled to spousal benefits. [DOMA]

TOM WHITMORE: Exactly. Under Windsor, the federal law would apply to that federal estate tax. [DOMA]

SENATOR DAVIS: Okay. [DOMA]

TOM WHITMORE: It's one of the thousand laws that it applies to. [DOMA]

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SENATOR DAVIS: And the same question I've asked everybody else: What about civil unions? Do you know how that would work? [DOMA]

TOM WHITMORE: A civil union, you know, the two notable states...California has a civil union statute and also has had this controversy about Proposition 6. And Proposition 6, unfortunately, the Supreme Court failed to rule on that, but that was an opportunity for them to address specifically that issue. That the civil union states, I'm not sure of a lot of the specifics of those statutes. I think they probably vary quite a bit. There are a number of states that have those, so I can't really respond specifically. [DOMA]

SENATOR DAVIS: And Senator Chambers asked you the question about modifying the statute. If you included the word "civil unions" in that, would that qualify, do you think? [DOMA]

TOM WHITMORE: It would not, because it goes on. It says "the uniting of two persons of the same sex in a civil union, domestic partnership, or similar same-sex relationship shall not be valid or recognized in Nebraska." [DOMA]

SENATOR DAVIS: Okay. [DOMA]

TOM WHITMORE: So it's, you know, really square on the equal protection argument. Yes. [DOMA]

SENATOR DAVIS: Thank you. [DOMA]

SENATOR ASHFORD: Senator Chambers. [DOMA]

SENATOR CHAMBERS: I don't want to just parse words in one sense, but in another sense I do. Would you read that again about the civil...that catalog or enumeration of

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relationships not recognized? [DOMA]

TOM WHITMORE: Yes. "The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska." [DOMA]

SENATOR CHAMBERS: Now when they say "or similar same-sex," they're talking about two people of the same sex, obviously. A partnership located in Nebraska would be a domestic partnership, wouldn't it? [DOMA]

TOM WHITMORE: A domestic partnership, sure, it could be between a man and a woman or two women or two men... [DOMA]

SENATOR CHAMBERS: Could that prohibit... [DOMA]

TOM WHITMORE: ...agreeing to share living arrangements and so forth... [DOMA]

SENATOR CHAMBERS: Could that prohibit the legal...could that make illegal a domestic partnership which exists for business purposes? Is there anything in that constitutional amendment that defines "domestic partnership" so that it would not exclude a business partnership comprising two people of the same sex? [DOMA]

TOM WHITMORE: It's ambiguous in that regard. It doesn't say for the purpose of living arrangements or conjugal relations or any of that. It just says "domestic partnership, or other same-sex relationship." So it could possibly invalidate a business partnership. [DOMA]

SENATOR ASHFORD: Uh-huh. [DOMA]

SENATOR CHAMBERS: And it could be overbroad or vague. [DOMA]

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TOM WHITMORE: Exactly. [DOMA]

SENATOR CHAMBERS: And people who read that might not necessarily know exactly what it would apply to from the language of it. [DOMA]

TOM WHITMORE: Under the right circumstances, I could see two lawyers taking opposite views on that language, yes. [DOMA]

SENATOR CHAMBERS: That's all I have. Thank you. [DOMA]

SENATOR ASHFORD: Thanks, Tom. Thanks. Jon Rehm. Jon is here. [DOMA]

JON REHM: Good morning. My name is Jon Rehm. I am here on invitation of the committee. I am a lawyer, practice in Lincoln and Omaha. I do workers' compensation and fair employment for employees, so I bring...I am going to testify on how I believe the Windsor decision affects the interests of my clients in both of those contexts. I agree, to some extent, with the first testifier who stated that the Windsor decision will likely probably open up litigation on family status under the Nebraska Fair Employment Act under marital status. In addition, I think Windsor will reinforce and strengthen the proposition that gays and lesbians and transgendered people have some protections under fair employment statutes under what's called sex-plus discrimination. Sex-plus discrimination was originally kind of broad. It was originally articulated in the Price Waterhouse decision in 1989 where a woman, a quote unquote, macho woman, who was working for an accounting firm, won what's called a sex discrimination case because she failed to live up to her gender stereotype. That theory has been expanded by six circuit courts, including our circuit court here in the federal circuit court, including the Eighth Circuit Court of Appeals, to include at least the perception of sexual orientation. I think the case of Lewis v. Heartland Inns of America, which is the Eighth Circuit case of 2010, is instructive. In that case, a woman, who was described by her

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boss as an Ellen DeGeneres type and who wore men's clothes, who otherwise a good employee, was fired. The Eighth Circuit Court of Appeals said that that fit under sex-plus discrimination. And I think that's important to Nebraska because Nebraska, it's not...basically, Nebraska state courts will follow what the Eighth Circuit does in regards to our Fair Employment Practice Act. So I think that that is there, is there right now. The Eighth Circuit case really sided quite a bit to the Smith v. City of Salem case, which provides a really good...it's a Sixth Circuit case from 2004, which provides real detailed discussion of that. I think that it's more likely that Nebraska state courts will find sexual orientation fits in with under sex-plus discrimination kind of for the reasons that have been stated before. The Windsor case relies partially on Fifth Amendment equal protection for its support. Title VII, which is the federal employment statute, is based in part on Fifth and Fourteenth Amendment equal protection grounds. So I mean I think that, you know, if the Supreme Court says in one context that...says that...discriminate...that in Windsor that discrimination against gays and lesbians runs afoul of the Fifth Amendment, I think that courts are going to find that more likely that it falls under...even under the Nebraska Fair Employment Practices Act, even if sexual orientation isn't explicitly in our statute, even though it's explicitly not in Title VII... [DOMA]

SENATOR ASHFORD: So that's a federal... [DOMA]

JON REHM: It is. [DOMA]

SENATOR ASHFORD: ...application. It would apply, it would supersede the state. That's an example of a federal interpretation of... [DOMA]

JON REHM: Yeah. I mean and the states aren't bound by federal, aren't bound by federal courts in interpretation of our Fair Employment Practices Act, but they just look... [DOMA]

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SENATOR ASHFORD: But you're saying Nebraska courts would follow that. [DOMA]

JON REHM: Generally, that's kind of the rule, is that they generally look towards. It's persuasive authority rather than binding authority. So I take a little bit of issue with this, the expansion...with this being too burdensome on business in the context of the fair employment standards. To some extent, businesses already have the burden in Nebraska of dealing with sexual orientation discrimination under sex-plus. Plus, as anybody can tell you who does this, it's pretty hard to win a discrimination case, period. There was a study done by an Atlanta lawyer, Amanda Farahany. I can't cite it but if you just Google it, it's there. Most of these cases get thrown out on summary judgment before they even get to trial. It's interesting from a marketing perspective, you know, what it costs, like ten...if you want to market for fair employment cases, what you pay for per lead or per call or for per click in comparison to a personal injury or workers' comp, it's like 10 percent. So I mean, they are difficult cases to win. And, frankly, I think the trend in employment law, if you look at the Nassar case, Gross v. FBL, is the Supreme Court...federal courts have no problem expanding the class that's protected, but they're going to make it harder to win. They going to use "but for" causation, at least with Nassar on Title VII retaliation, as well as Gross v. FBL on age. So, you know, workers' comp is interesting. I think there's a reasonable controversy of law as to whether same-sex spouses can recover death benefits under Nebraska statute 48-124. The case of Spitz McCannon v. T.O. Haas Tire, a 2012 case which I think came out of McCook or that area, says that while...what it was, was that the spouse had...they were married, a common law marriage in Colorado and allegedly, and the husband was trying to claim the benefits. And the court held that since Nebraska doesn't recognize common law marriage, they look to where...look to that state for their definition of common law marriage. And in the case of Spitz, their relationship didn't actually fit a common law marriage under Colorado standards, so they couldn't recover. I think kind of the controversy is under 48-124, the language about who is considered to be actually...or concluded to be dependent is based...you know, it's not gender neutral, a wife upon a husband and also a husband upon a wife. So I think that there's a dispute as to

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whether, you know, somebody, the proverbial person living in Iowa gets married, comes over to Nebraska, one of them gets killed, whether they're covered or not. [DOMA]

SENATOR ASHFORD: Well, it's unclear then, right? [DOMA]

JON REHM: Yeah. [DOMA]

SENATOR ASHFORD: It's unclear at this point. [DOMA]

JON REHM: Sure. Well, I think it's a reasonable controversy. [DOMA]

SENATOR ASHFORD: Right. [DOMA]

JON REHM: I think that the Windsor case makes it more likely that they should be covered, so. [DOMA]

SENATOR ASHFORD: Okay. Any questions? Now is Rod your... [DOMA]

JON REHM: Yes, I am. I guess I'm the fair employment section at Rehm, Bennett and Moore, one lawyer of six. [DOMA]

SENATOR ASHFORD: How's he doing? [DOMA]

JON REHM: What's that? [DOMA]

SENATOR ASHFORD: How's he doing? [DOMA]

JON REHM: Doing real well. [DOMA]

SENATOR ASHFORD: Good. [DOMA]



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JON REHM: So... [DOMA]

SENATOR ASHFORD: Thanks. [DOMA]

JON REHM: ...he probably wants me back in the office. [DOMA]

SENATOR ASHFORD: All right. Thank you. Jill. [DOMA]

JILL LISKE-CLARK: Morning. My name is Jill Liske-Clark. I am a small business owner in Grand Island and I have been invited to share with you a small business perspective on what the Windsor decision means for Nebraska's small businesses. To be honest, I think after listening to the previous testimony, I'm going to leave today more confused than when I came about what I can and can't do as a small business owner, and this is certainly no fault of the previous testimony but certainly is derived directly from this disconnect between federal law and state law. Now I think my small business is typical of others in our state and there are certainly hundreds and thousands just like my own that just have a few or no employees. So if there is a human resources question in my business, I am the human resources department. If there is a legal question in my business, I am the legal department. So as you can imagine, it's very confusing, as a small business owner, to now figure out is an employee married or is an employee not married, and what does that mean for how I need to treat this employee in terms of benefits packages and family leave and such. I would guess that most small business owners in the state perhaps have never heard of Windsor, don't know anything about DOMA. They're like myself, trying to muddle through the regulations and make a living. And I can easily imagine how a small business owner could run afoul of the law completely inadvertently. And those litigation costs are very real. Even if you win, there is a cost associated with it. And when it comes to hitting the bottom line, many businesses really can't afford any additional costs like that. In addition, in terms of those benefits plans, well, previously it was a bit more straightforward. In administering a

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benefits plan you have single employees, you had married employees. Now we essentially are looking at three classes of employees: single employees, opposite-sex married employees, and same-sex married employees or employees whose marriage is federally valid. Again, those will imply additional administrative costs to administer those benefits plans, real costs to a business owner. Whether it's litigation or administration costs, those funds are going to be diverted from investing in expanding your business or starting a new business. And that's something that I don't think Nebraska's economy can afford. So again, this disconnect is problematic for Nebraska's small businesses and I hope that there is some way that the process and the policies can be streamlined going forward. [DOMA]

SENATOR ASHFORD: Thank you, Jill. I don't see any questions. Thanks for coming. Amy, and then Al Riskowski, and then Jim Cunningham after that. [DOMA]

AMY PECK: Good morning. My name is Amy Peck. I'm an immigration lawyer with Peck Law Firm in Omaha, Nebraska. I'm testifying on behalf of myself and not any clients. I am an elected director of the American Immigration Lawyers Association, which is a 14,000-member bar association. It's a national bar. Also, I'm on the board of the American Immigration Council and have served various liaison functions for the last 27 years for my organization. But I'm here to talk about how the Windsor decision will affect family immigration benefits for immigration, same-sex couples. So the federal government, just a little background, it has exclusive jurisdiction to regulate and legislate immigration matters. So as to who gets to immigrate and when they get to immigrate, that is all a matter of federal law. So the Windsor decision had immediate effect. So a little background to help you understand why: The immigration process for same-sex couples or married couples when one person is a U.S. citizen or a legal permanent resident, which is a green cardholder, and the other one is foreign born, it starts when the U.S. citizen or legal permanent resident files an immigrant visa petition. So the immigrant visa petition will be approved if you have two things. Number one, you can show that the marriage is legally valid where it's celebrated. In other words, you're

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not a polygamist; if you've been divorced, that divorce is final; things like that, that is a legitimate marriage. And number two, that the marriage is bona fide, in other words, that you really like each other; you're not just getting married for green card purposes. So prior to Windsor, a U.S. citizen who married a same-sex, foreign-born person could not sponsor the same-sex spouse for legal permanent residency. This caused the couples to try various ways to stay together, often resulted in hardship when they had to be separated. Now after Windsor, U.S. Citizenship and Immigration Services, which is the agency that is in charge of adjudicating these petitions, it has specifically addressed the issue that's relevant to today. Basically, Citizenship and Immigration Services has stated that it will recognize the same-sex marriage between a U.S. citizen and a foreign-born spouse no matter where the couple lives. So basically, a same-sex couple who's married in Iowa and then comes to live in Nebraska will have their marriage recognized for federal immigration purposes, so the foreign-born spouse will be able to apply for permanent residency based on that marriage to the U.S. citizen or legal permanent resident spouse. So our office, in fact, had the first case, our first case approved a couple weeks ago. The story was featured in the Omaha World-Herald. I also mentioned that the same-sex couple must also prove the bona fides of their marriage in order to have the immigrant visa petition approved. Proving the marriage is bona fide is done by showing that you have, like, commingled finances, you file joint tax returns, maybe life insurance, health insurance in both names, that you live together, things like that. But this is very difficult for many of our clients. We have current cases that we're handling now where a Nebraska employer has refused to list the same-sex partner on insurance. We have one where the employee is actually afraid to ask for the same sex...for her spouse to be on insurance because she works for a religious organization and she's afraid she'll be fired. We have a case where a local newspaper has refused to run a marriage announcement of a same-sex couple. All this is evidence that we would use in a case. Landlords have refused to put both names on leases. So, you know, and I learned some things from previous testimony about, you know, you can file federal but not state tax returns, you can receive state benefits in some cases but not others, things like that. But this all affects my cases because it's very confusing.

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We're trying to build our case where the federal law does allow same-sex couples to file for immigration benefits. So we have another case where a highly paid Canadian executive married his same-sex spouse, but they're reluctant to move to a state where the marriage won't be recognized. They're very educated and they understand that state law governs so much of daily life, you know, property ownership to adoption, parental rights, child custody, healthcare eligibility, and inheritance. And our clients are considering staying in Canada and not moving that business to the United States and to the state because of state law uncertainty. So to summarize, for immigration purposes, same-sex marriages are already de facto recognized in Nebraska because federal immigration law allows same-sex partners to achieve permanent residency, which means the foreign-born spouse can live here permanently, work here permanently. But the quality of that life is greatly affected by the state law which governs how they live and how they're allowed to prosper. So we'd see directly that Nebraska loses opportunity and revenue by failing to recognize marriages that are valid for federal immigration purposes. [DOMA]

SENATOR ASHFORD: Okay. I don't...and these cases arise primarily when one is seeking...not primarily but often, when one is seeking immigration status. [DOMA]

AMY PECK: That's correct. They're seeking legal permanent residency. [DOMA]

SENATOR ASHFORD: And it's hard, and so in those cases can be...there's a board or an adjudication process... [DOMA]

AMY PECK: Yes. [DOMA]

SENATOR ASHFORD: ...to determine that or a hearing process, I guess, not so much an adjudication but... [DOMA]

AMY PECK: Right. So you file the immigrant visa petition,... [DOMA]

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SENATOR ASHFORD: Right. [DOMA]

AMY PECK: ...and it's heard in front of a... [DOMA]

SENATOR ASHFORD: A judge, immigration judge. [DOMA]

AMY PECK: ...immigration officer. [DOMA]

SENATOR ASHFORD: Officer. [DOMA]

AMY PECK: That's right. And so you... [DOMA]

SENATOR ASHFORD: And you have to present evidence and... [DOMA]

AMY PECK: That's correct. [DOMA]

SENATOR ASHFORD: Okay. Amy, thanks very much for coming. [DOMA]

AMY PECK: Thank you. [DOMA]

SENATOR ASHFORD: Al Riskowski, and then Jim Cunningham. [DOMA]

AL RISKOWSKI: Senator, I appreciate the opportunity. I do want to speak to the lawsuit filed against the state of Nebraska. Could Dave Bydalek from our office take my place at this point? He's more equipped to speak to Windsor... [DOMA]

SENATOR ASHFORD: Sure, he can take your place, if you wish. [DOMA]

AL RISKOWSKI: ...than I am. [DOMA]

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SENATOR ASHFORD: Okay. I was going to have you come third anyway, but now Al is out, right? (Laughter) You've missed your... [DOMA]

AL RISKOWSKI: I just have to wait for... [DOMA]

DAVE BYDALEK: Al is very kind. I don't know if I'm more equipped. [DOMA]

SENATOR ASHFORD: Okay. [DOMA]

DAVE BYDALEK: But, members of the committee, thanks for this opportunity to speak here today at this hearing. My name is Dave Bydalek. I'm an attorney and the policy director of the Nebraska Family Alliance. [DOMA]

SENATOR ASHFORD: Let me just say one thing. After Al and Jim Cunningham, we're going to take a 15-minute break. [DOMA]

DAVE BYDALEK: Okay. The issue raised in this interim study, as I read it,... [DOMA]

SENATOR ASHFORD: Or not Al. I'm sorry. [DOMA]

DAVE BYDALEK: ...yeah,... [DOMA]

SENATOR ASHFORD: Go ahead. [DOMA]

DAVE BYDALEK: ...was intended to discuss the effects on Nebraska of the Windsor decision striking down Section 3 of DOMA. Some assume that the Supreme Court found a new right to same-sex marriage when it issued the Windsor decision, but we believe that nothing could be farther from the truth. Instead, the decision declared that the federal government erred in its, quote unquote, unusual deviation from the usual

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tradition of recognizing and accepting state definitions of marriage. The Supreme Court said the federal government can't infringe on each state's right to define marriage, because by history and tradition the definition and regulation of marriage has been treated as being within the authority and realm of the separate states. Far from undermining state laws, including Nebraska's, that define the marital relation, the highest court affirmed in Windsor the states' sovereignty to enact them as the virtually exclusive province of the states. Those attempting to redefine marriage have framed the Supreme Court's decision as declaring that same-sex marriage should exist in every state, but the Supreme Court's recent ruling only reaffirmed its past decisions, decisions that quite clearly reaffirmed the states' constitutional role in crafting marriage policy. The fact that some states have embarked upon same-sex marriage while some states have chosen to wait is perfectly within their authority as states. Moreover, none of these laws penalizes, let alone criminalizes, same-sex couples, far from it. These laws leave same-sex couples free to plan their lives together and to employ a variety of tools in so doing, including joint tenancies, advanced healthcare directives, powers of attorney, beneficiary designations, wills and trusts. Nebraska's marriage law cannot meet the requisite factors to be declared unconstitutional because it does not create novel disabilities or intrude upon the traditional spheres of the state. On the contrary, Nebraska's law defining marriage exists to safeguard a time-honored definition, which it enacted properly when it's...within its rightful authority. So in conclusion, if the people of other states want to recognize same-sex marriage, that is their right as sovereign states. Similarly, if Nebraska and 37 other states want to promote marriage as the union of one man and one woman, they are free to do so. The DOMA decision said as much. It said that what relationships constitute marriage is a question for each state to decide under its reserved powers. Thanks. [DOMA]

SENATOR ASHFORD: Okay. Al. Yes, Senator Davis. [DOMA]

SENATOR DAVIS: Here's my question: If a heterosexual couple gets married in California and they move to Nebraska, we don't ask them to redo their marriage, do we?

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I mean we just accept the fact that that is a legitimate marriage. [DOMA]

DAVE BYDALEK: That's correct. [DOMA]

SENATOR DAVIS: So aren't we recognizing marriage laws from another state? [DOMA]

DAVE BYDALEK: We are. [DOMA]

SENATOR DAVIS: And so how can we recognize that in one format and not the other? Aren't we cutting the pie in sort of an unusual manner? [DOMA]

DAVE BYDALEK: Well, one of the previous testifiers talked about the full faith and credit clause, and, generally speaking, states must recognize validly enacted laws of other states, unless there is a particular policy that's strongly rooted within the laws of the state that is being passed to recognize that law. And that's really why a lot of these constitutional amendments were passed, for that particular reason. So the full faith and credit clause, you don't have to recognize other state laws that go against the strong public policy interests stated by the state that is being asked to recognize those laws. [DOMA]

SENATOR DAVIS: You don't think that is going to be a very litigious issue to deal with? [DOMA]

DAVE BYDALEK: No doubt that there is going to be a lot of litigation from this. And as Senator Chambers had remarked, I think there's going to be some litigation regarding what Windsor actually means, how some people interpret it. So, yeah, I think that it will probably end up in some sort of constitutional litigation of some sort. [DOMA]

SENATOR DAVIS: Thank you. [DOMA]



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SENATOR ASHFORD: Let me just ask quickly, what is the harm to recognizing same-sex marriages? [DOMA]

DAVE BYDALEK: Well, you're opening a huge can of worms that's beyond... [DOMA]

SENATOR ASHFORD: Well, what's your opinion? No. No, no, I'm not...I don't want to...because I think that's the fundamental question. [DOMA]

DAVE BYDALEK: Right. [DOMA]

SENATOR ASHFORD: I mean I'm not asking...I'm not trying to trap you in an answer. Your opinion is important. I mean what is the harm to recognizing this? It's not a gotcha question. [DOMA]

DAVE BYDALEK: Well, I, yeah, yeah,... [DOMA]

SENATOR ASHFORD: I'm trying to ask a question. [DOMA]

DAVE BYDALEK: ...I understand. And, Senator Ashford, I appreciate we've talked at length about stuff like this. [DOMA]

SENATOR ASHFORD: No, I just want to know what you think the harm is. [DOMA]

DAVE BYDALEK: Yeah. Well, I think it's not so much the harm. I think it goes to what Justice Alito said in his dissenting Opinion. It's between two competing views of marriage, the conjugal view and the consent view of marriage. And traditionally, why has the state even cared about the institution of marriage? It's been historically not because they care about whether people love one another. I remember--I've been married for 25 years--when I got our marriage license they didn't ask you whether you loved the other person. I think it stems from the idea that when men and women unite, it

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produces children. And the state has a very, very important interest to see that those children are cared for and brought up to be productive citizens. And so the marriage does something for the state that the state can't do for itself. I mean we've looked at the mess that we have with the foster care system and state wards and broken... [DOMA]

SENATOR ASHFORD: Those are heterosexual. [DOMA]

DAVE BYDALEK: ...and broken, and I agree. I agree. [DOMA]

SENATOR ASHFORD: (Laugh) We can't even...we can't even approve foster care. [DOMA]

DAVE BYDALEK: But here's what it does. Marriage, marriage, if people stay faithful in their marriages, men, women raising their biological children, that does something for the state that the state can't do for itself. And that's why...that's the public... [DOMA]

SENATOR ASHFORD: Okay. And that's your view and that's... [DOMA]

DAVE BYDALEK: And that's the public purpose of marriage. And... [DOMA]

SENATOR ASHFORD: Well, that's your view. Yeah. [DOMA]

DAVE BYDALEK: ...what we can do...what we, and there are a whole lot of corollaries from that and really with the resolution, that was kind of outside the context of the resolution. So I just wanted to speak to the DOMA decision. [DOMA]

SENATOR ASHFORD: No, but I...no, and that's fair and I'm not...again, I think your opinion, as Senator Chambers... [DOMA]

DAVE BYDALEK: Uh-huh. [DOMA]

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SENATOR ASHFORD: ...said at the very beginning of this, your opinion is your opinion and it needs to be heard and...because we have to weigh... [DOMA]

DAVE BYDALEK: Uh-huh. [DOMA]

SENATOR ASHFORD: ...what the benefit, the denial of benefits and the denial of rights... [DOMA]

DAVE BYDALEK: Uh-huh. [DOMA]

SENATOR ASHFORD: ...to certain Nebraskans versus what is the harm by not allowing those rights and benefits to be allowed. [DOMA]

DAVE BYDALEK: Uh-huh. [DOMA]

SENATOR ASHFORD: And that is a fundamental question that we deal with... [DOMA]

DAVE BYDALEK: Uh-huh. [DOMA]

SENATOR ASHFORD: ...not just on this issue but we deal with it all the time, I mean in this committee, and, you know, what are the rights, responsibilities, and benefits of a citizen or a noncitizen who lives here. [DOMA]

DAVE BYDALEK: Right. [DOMA]

SENATOR ASHFORD: I mean we talk about it all the time. So your view on what the harm is, is important,... [DOMA]

DAVE BYDALEK: Uh-huh. [DOMA]

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SENATOR ASHFORD: ...because you're, you know, you're an attorney. You represent a group that advocates positions, which it's fair that you do that. [DOMA]

DAVID BYDALEK: Uh-huh. [DOMA]

SENATOR ASHFORD: That's what you need to do. But I think having that on the table is important, whether or not we're talking about DOMA or not, just what is the harm? [DOMA]

DAVE BYDALEK: Right. [DOMA]

SENATOR ASHFORD: So that's the reason I asked the question. [DOMA]

DAVE BYDALEK: Absolutely. [DOMA]

SENATOR ASHFORD: Yeah, Senator Lathrop. [DOMA]

DAVE BYDALEK: And I...and I appreciate the... [DOMA]

SENATOR ASHFORD: And I mean we may disagree,... [DOMA]

DAVE BYDALEK: Yeah. [DOMA]

SENATOR ASHFORD: ...but I think your...but that doesn't mean that your...it's not important, that your opinion is not important... [DOMA]

DAVE BYDALEK: Right. Well, thank you, Senator. [DOMA]

SENATOR ASHFORD: ...just because I may not agree with you. [DOMA]

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DAVE BYDALEK: Yeah. [DOMA]

SENATOR ASHFORD: Senator Lathrop. [DOMA]

SENATOR LATHROP: Dave, I agree that the central...that the takeaway from that particular decision is it's up to the states to decide what they want to do. [DOMA]

DAVE BYDALEK: Uh-huh. [DOMA]

SENATOR LATHROP: And a lot of states' rights people would appreciate that decision, and it leaves us in a, you know, it leaves us in sort of a patchwork in terms of a country. Some states are going to recognize it; some states don't. As I listen to the lawyers, we have the question about where do we want to be as a society on same-sex marriage in terms of establishing policy. But as I listen to the lawyers--and, frankly, I didn't think about it before we got here today--it does create problems or disparities in treatment. And so if you have a heterosexual couple that marries in Iowa and a same-sex couple that marries in Iowa and they both come into Nebraska and they have children...obviously, the same-sex couple is going to adopt some kids, maybe not obviously, but they have children. [DOMA]

DAVE BYDALEK: Uh-huh. [DOMA]

SENATOR LATHROP: And after 20 years, like half the marriages in this country, they split. We can, as a court system, the lawyers in this state can take that heterosexual couple and work through their property, we can work through the support of the spouse, who may have stayed home, sacrificed a career to raise the children. We can work through who's going to raise the children, who's going to visit the kids, all the issues that relate to property, to support, and to how the children are going to be raised going forward. To the same-sex couple we say to them, if you stayed home and raised the

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children to promote the career of your spouse, tough, you're out on your own. We're not going to make the first person, your spouse when you got married in Iowa, we're not going to make that person support you going forward; you're on your own. We won't even dissolve that relationship so that they can both go their same ways. I'm going to make another point. When I listened to the probate lawyer, and I don't do probate work but I did a little bit when I was starting out, one of the things about probate law is, Mr. Whitmore here will tell you, most of his focus is on saving taxes. And that inheritance tax, if I'm married and I die, my spouse gets everything I own without paying a dime of inheritance tax. [DOMA]

DAVE BYDALEK: Uh-huh. [DOMA]

SENATOR LATHROP: If I'm a same-sex person who got married over in Iowa, came here and died, my partner would have to pay 18 percent after a small deduction. If I'm a heterosexual couple and I'm married, I can't cut my wife out of my estate, right? I have to give her, we both learned this in probate,... [DOMA]

DAVE BYDALEK: Oh, I forgot most of everything I learned in probate, so. (Laugh)  
[DOMA]

SENATOR LATHROP: Well, then I'm going to remind you, and I think you'll agree with me, that the law sets up an elective share for a spouse, who will say, you know what, you can't give your estate to your girlfriend, I get some share of it, or to your kids from a first marriage, I get some share of it. And that's to protect that spouse from being left out in the cold, right? And we have transfers that can happen from one spouse to the next. And so what I'm listening to is, from a lawyer's point of view, we got a mess. Or we say to these people, as one lawyer said, it might have been Susan, you can go over to the county court and file a replevin action to sort out your personal property and go over to the district court on the contract actions, and you better have a joint tenancy if people are dying. And so that leads me to this question, because this is kind of my takeaway

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from what I've heard to this point in time: Is there a way for the state to (A) not...to find a hybrid place, which is we are not going to permit, we will continue to not permit same-sex marriages in the state of Nebraska, but if you come here we will recognize it because there are legal implications? And does that offend the moral questions that are raised by this entire issue? Because there's a whole population of people, and I can tell you, I know that there are big corporations and I know there are...and I'm just going to say, university professors who would come to this state to do what they do and bring their talent and their spouse with them, and we have no way of sorting out when things go south... [DOMA]

DAVE BYDALEK: Fair question. Yeah, I mean... [DOMA]

SENATOR LATHROP: ...or how they're going to sort out their stuff when one dies. [DOMA]

DAVE BYDALEK: And I understand exactly the kind of situations that you're talking about. I think most fair-minded people would basically say, we understand that people develop very strong, loving relationships with one another, they want to share their lives together regardless if they're heterosexual or homosexual. If there are ways, other than redefining the institution of marriage, what marriage means, that's the public versus the private purposes, where we can with powers of attorney, beneficiary designations, private contractual dealings make it easier for people to deal with those situations, I think that would be a great option to explore. I don't think that because of these difficulties that exist we necessarily need to redefine what Nebraska citizens believe is the definition of marriage. [DOMA]

SENATOR LATHROP: And I'm not suggesting, when I talk about having some kind of a something in the middle, I'm not suggesting that we redefine what a marriage is in the state of Nebraska but recognize when someone comes here from a state that has defined it in a different way and recognizes a same-sex marriage, that the people that

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land here have what they expected when they left Iowa. [DOMA]

DAVE BYDALEK: Well, and, you know, I think quite a bit of research needs to be done into what avenues might be available to do that. I'd be willing to work with your office if somebody wanted to say let's... [DOMA]

SENATOR LATHROP: I'm just asking the question because... [DOMA]

DAVE BYDALEK: Yeah. [DOMA]

SENATOR LATHROP: ...we seem to be you either have to be here or here, and after I get done listening to a morning of lawyers, I'm thinking that there's sort of a middle place too. [DOMA]

DAVE BYDALEK: Yeah. As a lawyer, I don't really love listening to lawyers either so... [DOMA]

SENATOR LATHROP: I didn't say I didn't. [DOMA]

DAVE BYDALEK: Yeah. [DOMA]

SENATOR LATHROP: (Laughter) I kind of enjoy it but... [DOMA]

SENATOR ASHFORD: You're in the wrong committee then. [DOMA]

DAVE BYDALEK: That's right. That's right. [DOMA]

SENATOR LATHROP: Well, that maybe is the question I have after all this. [DOMA]

DAVE BYDALEK: Thanks, Senator. [DOMA]



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SENATOR ASHFORD: Okay. Thank you. [DOMA]

DAVE BYDALEK: Thank you. [DOMA]

SENATOR ASHFORD: Jim Cunningham, and then we're going to take a 15-minute break until quarter or, you know, around quarter of 12:00 or so. [DOMA]

JIM CUNNINGHAM: (Exhibit 7) Senator Ashford and members of the committee, good morning. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Conference, which represents the mutual interests and concerns of the Archdiocese of Omaha, the Diocese of Lincoln, and the Diocese of Grand Island on matters involving public policy under the direction of the diocesan bishops. I didn't realize that I was on a list, but I do have some prepared testimony. [DOMA]

SENATOR ASHFORD: You're always on a list, Jim. [DOMA]

JIM CUNNINGHAM: I do have some prepared testimony that I'd like to offer. First, I want to say I thought Dave Bydalek's answer to you, Senator Lathrop, was extremely well done because you can't sit here today and listen to the issues that have been raised not to realize that there are some serious legal and public policy issues that have resulted from the Windsor decision. In the year 2000, the Nebraska Catholic Conference, in order to protect traditional marriage from being redefined, urged support for initiative measure 416 which, by virtue of approval by just about 70 percent of the Nebraska voters, became Article I, Section 29 of the Nebraska State Constitution. As the future unfolds, if efforts are undertaken to repeal or alter Article I, Section 29, it should be expected that the Nebraska Catholic Conference, again acting on behalf of the three dioceses under the direction of the diocesan bishops, is likely to urge opposition to such efforts. If more narrowly focused, issue-related legislation is

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proposed in this context of the aftermath of the Windsor ruling, the bishops and the members of the conference will review such legislation thoroughly and make judgments deemed appropriate and necessary, which we will always stay in communication about with respect to this committee. The positions of the Catholic Conference on these serious matters are not motivated by any animosity or hatred or bigotry or unjust discrimination toward anyone. Rather, they stem from a firm belief in what marriage is--the universal institution that is ordered...that in its ordered nature unites a man and woman with each other and with the children that may be born from their union, and in the service that marriage brings to society and the common good. Marriage isn't simply a label that can be attached to different types of relationships. Instead, marriage reflects a deep objective reality, the reality of the unique, fruitful, lifelong union of mutual and exclusive fidelity between a man and a woman, ordered by its very nature to the good of the spouses and the procreation and nurturing of children. This reality has been historically understood for a millennia. Marriage as the union of one man and one woman benefits society. It has great public significance and rightly matters for public policy and for the protections and privileges it receives. It benefits society, first, by what it is--a covenant of love and life between husband and wife. Marriage also benefits society by giving children the best possible chance to be born into a situation in which the mother and father are committed to each other. Not every married couple is blessed with children, but every child has a mother and a father. Marriage safeguards the rights and responsibilities of husbands and wives to each other, the rights of children to a mother and father, and the rights and responsibilities of fathers and mothers to their children. Reading through the majority Opinion in Windsor, one could be excused for thinking that marriage's purpose is to validate adult's feelings for one another and to make sure that they feel that their relationships are worthy and not second class. Gender, of course, has no rational connection with this. In contrast, the definition and understanding of marriage held by many, many has everything to do with gender and sexual difference, because at its heart is the uniting bond of husband and wife, a union open to the gift of life. Marriage is unique. It is unique for a reason, based upon its defining elements of sexual difference and complementarity. Just as oxygen and

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hydrogen are essential to water, sexual difference and complementarity are essential to marriage. The attempt to redefine marriage to include two persons of the same sex denies the reality of what marriage is. It is as impossible as trying to redefine water to include oxygen and nitrogen. Thank you for your attention and consideration. [DOMA]

SENATOR ASHFORD: Thank you, Jim. Senator Chambers. [DOMA]

SENATOR CHAMBERS: Mr. Cunningham, you and I have been in this arena, in this forum for several decades. [DOMA]

JIM CUNNINGHAM: That's correct. [DOMA]

SENATOR CHAMBERS: Sometimes we're on the same side and we're almost unbeatable then, almost. [DOMA]

JIM CUNNINGHAM: Almost. [DOMA]

SENATOR CHAMBERS: And at other times, as in this case, we're on opposite sides. [DOMA]

JIM CUNNINGHAM: I understand. [DOMA]

SENATOR CHAMBERS: My view is that the attitude of society at large toward all matters related to homosexuality is far different from what it was when I first came to the Legislature about 40 years ago. So that indicates an evolution in society's attitude. Whether we like it or not, that attitude is changing. I saw an article yesterday or a couple of days ago. I read The Wall Street Journal. I read everything, even that, Rupert Murdoch notwithstanding. And in other newspapers it was mentioned, Fortune 500 are reaching out to transgender persons. No company in years past would even have acknowledged that these are people, that they can do worthwhile things, and that they

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ought to have a job. If they had people of that orientation, they would have told them keep it to yourself, because it comes out then I'll have to fire you. So this evolutionary process seems to be working more toward what I'm interested in than what the official position that you represent is. When I read the comments of Pope Francis, if I were a religious person, I'd say to him what Agrippa said to Paul: Almost, Francis, but not quite, thou persuadest me to be a Catholic. His attitude toward so many things is so different, even the question of homosexuality. He said that the church has to stop being so concerned with same-sex marriage, abortion, and contraception. He didn't say it this way. He was much more elegant. But I say, get your nose out of other people's crotches, get your ears away from their bedroom door and your eye away from the keyhole. So it doesn't matter to me that people's position and their views are different from mine. That's what they genuinely believe. That's what some people were brought up to believe. They can't conceive of any different way. But I take a much broader perspective. And I know that changes occur and there is going to be a triumph of the position I hold and the position that you hold will be relegated to one where it can no longer be said without proof as it is now that the majority of people feel this way. But how I feel does not change reality; how you feel doesn't change it; how the Legislature feels. We could pass a law this coming session and say the Earth is flat, but that does not make it flat. We could pass a law that says water comprises oxygen and hydrogen, but that doesn't change what the substance itself is. So you and I are going to be "frienemies," I think that's the word that they use. On some things we'll see eye to eye; on others we don't. And I'm aware on this issue, as with others, that you're representing the Catholic Conference and the representative conveys the message of those whom he or she is representing. So there are questions that I will put to members of the conference that I won't put to you. All I can say, from observing you down through the years, where I disagree with you and where I agree with you, well done, thou good and faithful servant. [DOMA]

JIM CUNNINGHAM: Thank you. Could I give just one response, Mr. Chairman?  
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SENATOR ASHFORD: Yes. [DOMA]

JIM CUNNINGHAM: Thank you. [DOMA]

SENATOR ASHFORD: I thought you were going to proceed without a... [DOMA]

JIM CUNNINGHAM: You might well be correct, Senator Chambers, in the ultimate outcome, but I don't think that that in any way minimizes or trivializes our right and responsibility and opportunity to speak to these very important issues and to try to speak to them in terms of valid truths that should be upheld or at least recognized in some respect. If we lose, if we're unsuccessful, then that's the outcome and we accept it. That's this process. I've been around here long enough to know that this process is what is extremely important, and it will continue. And on the point about my own representation, I certainly think that I am of a character that believes in what I'm representing, because that would be my starting point, and I always appreciate the opportunity to do that. I've been blessed in my position, is what I'm trying to say. [DOMA]

SENATOR ASHFORD: Well, the bishops are extremely fortunate, Jim,... [DOMA]

JIM CUNNINGHAM: Thank you. [DOMA]

SENATOR ASHFORD: ...to have you. [DOMA]

SENATOR LATHROP: You heard my question to Dave, and there seems to be two aspects. One would be whether we permit the state to perform same-sex marriages; the other would be the legal consequences of recognizing a same-sex marriage from a different state, where it is the law in that state, for example, Iowa. Is there a problem from the Catholic Conference point of view? [DOMA]

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JIM CUNNINGHAM: I think we probably would view that as a weakening of the protection for marriage. But honestly, Senator, we have not discussed that particular aspect and what that means in terms of the relationship between the Windsor decision and Article I, Section 29. [DOMA]

SENATOR LATHROP: I would make the comparison maybe to...and it might be a little crass, but to gambling and the difference between Nebraska doesn't recognize gambling here, casino gambling, I'll say. We don't recognize casino gambling. But the question is whether, if I go down to Vegas and I want to borrow money from the house and I lose and then I come back to Omaha and go, guess what, you can't sue me here, whether we would permit a claim in Nebraska for my gambling losses in Vegas? And by the same token, it's just a full faith and credit issue. And I look at it, as I listened to the testifiers today, and I think about someone, Jim...and I think you can appreciate this. And I've never questioned...obviously, you and I have worked on a lot of stuff over the seven years I've been here. But I think about a couple that comes from Iowa that got married. Twenty-five years later, one of them stayed home because that was part of their marital arrangement that Nebraska had nothing to do with. It started out in Iowa but they've spent all their years here, and one sacrifices a career to stay home with the kids. They find themselves with no earning capacity, no skills that were developed while the other one moved up the corporate ladder. And divorce or separation or whatever you call it when the state doesn't recognize what they went through in Iowa, and that the inequality, the unfairness, the idea that that person who made a deal over in Iowa can simply move to Nebraska and not have to live up to it, and that one person is going to be evicted, I mean left in poverty,... [DOMA]

JIM CUNNINGHAM: Uh-huh. [DOMA]

SENATOR LATHROP: ...left in poverty. I'd like to know, I'd like to know what your thoughts are, after you've had a chance to reflect on it because I think that's a simple

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fix. That's a simple fix, saying, well, it's the recognition part that we can back out of the law and allow people to litigate what they've bargained for, which is part of what goes on in a marriage, right? It's the I'm going to take care of you and you're going to take care of me, and you make that deal in Iowa, which is part contract and part sacrament, in the case of...well, it wouldn't happen in the church, but it's part contract. And they come over here and have an expectation that they can enforce it and... [DOMA]

JIM CUNNINGHAM: That is a very compelling question, Senator, a very involved question. That and some other things that I have heard today I certainly will take back to the Catholic Conference and anticipate a vigorous discussion about those. [DOMA]

SENATOR LATHROP: If they want to inject me in the middle, I'd be happy to show up. [DOMA]

JIM CUNNINGHAM: No, no, no. No, I wouldn't even mention your name. Well, if you'd like to... [DOMA]

SENATOR ASHFORD: I think it's already out there. (Laugh) [DOMA]

JIM CUNNINGHAM: ...if you'd like to come, if you'd to come as an advocate. [DOMA]

SENATOR LATHROP: I'm always interested to get in the room when that happens. [DOMA]

JIM CUNNINGHAM: The other thing that I would say is that Nebraska is not the only state in this situation necessarily, depending on what the actual wording is of some of the other constitutional and statutory provisions. But it will be interesting and enlightening to discuss this with others from other states and see what their...how they view it. [DOMA]

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SENATOR LATHROP: With the understanding that really we're talking about people getting sort of...and Nebraska enforcing the deal they struck in another state. [DOMA]

JIM CUNNINGHAM: Yeah, understood. Understood. Thank you for the question.  
[DOMA]

SENATOR ASHFORD: And being welcoming as well. I mean if there's... [DOMA]

JIM CUNNINGHAM: Understood. [DOMA]

SENATOR ASHFORD: I mean if we could be welcoming to others, it's a good thing.  
Okay, Senator Chambers. [DOMA]

SENATOR CHAMBERS: I must speak again. Mr. Cunningham, I didn't in any way mean to suggest that your view is different from those...the view of those you represent.  
[DOMA]

JIM CUNNINGHAM: I didn't take it that way, Senator. [DOMA]

SENATOR CHAMBERS: And this exchange between you and my colleague, Senator Lathrop, demonstrates it. There were questions that he had, observations he made, and you said that hadn't been discussed with the conference yet. [DOMA]

JIM CUNNINGHAM: Not that. Not that specific nature of a question, no. [DOMA]

SENATOR CHAMBERS: Right. Now if it was just asking for your personal opinion, you could have given it, but you're not here to give your personal opinion... [DOMA]

JIM CUNNINGHAM: Right. [DOMA]



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SENATOR CHAMBERS: ...but, rather, that of the conference. And that's what I meant about representing. I know the limitations... [DOMA]

JIM CUNNINGHAM: Yeah, I understood that, Senator. [DOMA]

SENATOR CHAMBERS: ...of the role that you're here in today. [DOMA]

JIM CUNNINGHAM: Thank you. [DOMA]

SENATOR CHAMBERS: And I always respect that. And sometimes I'll take advantage of it because I know that you're not as free as you would be otherwise. But I was asked by some people--I mentioned earlier that I perform weddings--to perform their wedding. One of the persons was a Catholic, not dyed-in-the-wool-hat but his mother was. So she wanted the marriage to be executed, I should use a different word (laughter), should be conducted in a church... [DOMA]

JIM CUNNINGHAM: Yeah, performed. [DOMA]

SENATOR CHAMBERS: And the priest was willing, because the priest knows me, but he had to check with the higher-ups, which I understand. And I told him, if I'm going to be a guest in somebody's house, then I will respect the rules of that person's house. And if they are too onerous, I won't come into the house. These two people really wanted me to be a part of it. The mother even wanted me to be a part of it, but it had to be in church. So here's what they arrived at, Senator Lathrop, without your intervention. I would be present, but the actual words that were uttered in the ceremony would be uttered by the priest. Then I would be given the opportunity to speak and say whatever I wanted to say and whatever I would have said, except that I won't do that. And without being disrespectful I said, if I'm the illusionist and I can perform my illusion but I can't say abracadabra or presto chango, then it doesn't matter to me. The important thing is that this be taken care of. So I do think there are ways that people who differ markedly

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can reach an accord whether neither gives up everything, where neither gets everything, because it's not strictly an either/or if there's a serious discussion and the matter is complex, because neither side may have looked at all the complexities. But when they do so, they see that there are areas between the two that do not affect the core values of either side. So these are things where negotiation can occur and maybe some kind of resolution can be reached. You had mentioned basic truths or something, and truth is a word which means different things to different people. I won't ask you what is truth, as Pilate did. But if I asked you, I wouldn't walk out as Pilate did. I would see what your answer would be, even if I didn't accept it. What I meant when I said the view that I hold will prevail, I didn't mean that people who disagree would cease to speak or cease trying to make the pendulum swing back the other way. But what I say, I don't care whether people get married or not. I've seen people who were not married rear children and do a much better job than people who had a piece of paper and had the abracadabra uttered over them. In the realm of the arts, politics, entertainment, marriage is not even considered at all. They even mention so-and-so and so-and-so are going to have their second child, and they're not married. Young people see that. Then some stodgy person in church is going to say, well, you should get married. They say, why? What is there that I can't do while I'm not married that I could do if I'm married? Well, if you're married, you can have somebody to argue with all the time, you can have your man, you can have somebody to tell you pick up your socks, clean up after yourself sometimes, take a bath more regularly, brush your teeth, gargle, and don't be so offensive and narrow-minded and watch sports and be "urping" and burping and scratching and ignoring your family. On the other hand, if you're a man, you can say, I wish the dinner were more becoming, I wish when I come home after a hard day's work you'd look like somebody who stepped out of one of these magazines. In other words, there are different things that people see and perceive when they hear something. I think the discussion that you and Senator Lathrop had was productive. I think that all the things that will be said here today are of value, because they will express a view that is out there among the people. And if we tried to silence it, that doesn't make it go away. I don't try to change people's mind. I can't change their mind. If I do change, that's a

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bonus. But the extent of my obligation that I feel is to say what I think is true at the time I'm supposed to say it. And if nobody accepts it, it doesn't matter to me. My view is that a lot of people hold positions that they did not reason themselves into, but the positions were given to them so I can't reason them out of those positions. Everybody can have their opinion. Everybody is entitled to their opinion, but not every opinion has equal value. Somebody could say on the subject of evolution or psychology or creationism or any other thing what they think, but that opinion would not have as much weight if the subject is one that requires study, education, experience, and knowledge. They can give that opinion, but it's not worth anything. So I'm listening to what people say, but as a politician, I don't deal in absolutes as religious people can do. I deal in pragmatism, practicality, and realism, and realism is what that Windsor decision is going to force us all to look at. And although the Supreme Court, the majority, ended its Opinion with this sentence, "This Opinion and its holding are confined to those lawful marriages," meaning same-sex marriages in states where they're allowed. [DOMA]

JIM CUNNINGHAM: Uh-huh. [DOMA]

SENATOR CHAMBERS: But if you read that Opinion and you read what Alito and some of the others said, they see the seeds of a coming revolution. Off in the distance, it's just a gentle rumbling, and some people might recognize it as thunder, but those trained in military matters will know it's the sound of a cannon far off, but they will surely come. And when they come, that which cannot withstand that force is going to be swept aside, not in the sense of locking people up or punishing them for their view. But as time goes on, people are going to begin to see that it's better for the society to let people live their life. Let the religious people say in their churches whatever they want to, but don't put them in a position to dictate to other people. And the Supreme Court read from the committee statement where they talked about implementing the Judeo-Christian view of morality--they want to impose their view, their narrow view, which is not even the majority view of religion in the world. There are more Muslims in the world than Christians. But in this society, Congress wants to impose the Judeo-Christian notion on

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everybody and the Supreme Court said you stated it but you're not going to do it. This far you shall you come and no farther. So here's what I'm getting at, through everything I'm saying. I have yet to hear any religious person show me where his or her religion is harmed based on who somebody down the street marries. If John wants to marry Eddie, and Mary wants to marry Betty, it doesn't...it's nobody's business. If I were to marry a man--and personally, I don't understand how that could be because of the way I view things--that doesn't mean that the person who does, the man who marries a man, feels like I feel. My final question: In view of the discussion of homosexuality and heterosexuality, will the Catholic Conference support a bill of mine that would say we no longer refer to human beings as homosexual...as Homo sapiens but, rather, "Hetero sapiens"? [DOMA]

JIM CUNNINGHAM: No. [DOMA]

SENATOR CHAMBERS: Why not? Doesn't that...accordant with what... [DOMA]

JIM CUNNINGHAM: I don't see how that's relevant or what it would accomplish. [DOMA]

SENATOR CHAMBERS: But if we did... [DOMA]

JIM CUNNINGHAM: I don't think we would want to be a part of that. [DOMA]

SENATOR CHAMBERS: But if we did it, would you then refer to human beings as "Hetero sapiens?" [DOMA]

JIM CUNNINGHAM: If it was the law and policy I don't know why we'd, necessarily, want to avoid it. [DOMA]

SENATOR CHAMBERS: That's all I have. Thank you, Mr. Cunningham. [DOMA]

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SENATOR ASHFORD: We're going to take a break, but let me just give this...Senator Davis, yes. [DOMA]

SENATOR DAVIS: Just, Mr. Cunningham, a couple of questions. We...you've heard this discussion today about...and I've kind of come back to this issue of civil unions which I understand is part of the amendment or the constitutional amendment. But in light of the decision that came down from the Supreme Court and in anticipation that, probably, this law that we have on the books may not be constitutional, do you think there is a middle ground that we could find that preserves the concept of marriage as between a man and a woman but recognizes the actual fact that we are probably dealing with a society that is going to say that there has to be some sort of recognition of the rights of homosexuals? [DOMA]

JIM CUNNINGHAM: I can't say that there is, Senator, but I certainly think that it is a point well worth a lot of discussion. I don't think it would be in terms of changing the constitutional amendment to strike civil unions, but I think from our perspective it is a valid point worth a lot of discussion. And I certainly sit here and am more than willing to admit that the organization I represent faces a great deal of challenges in terms of these issues. But I think that I'm also confident in saying that we approach them responsibly, prayerfully, and with the notion of trying to do what is best for the common good without sacrificing moral principles. [DOMA]

SENATOR DAVIS: Thank you. [DOMA]

SENATOR ASHFORD: Jim, thank you. [DOMA]

JIM CUNNINGHAM: Thank you. [DOMA]

SENATOR ASHFORD: Let me just...we're going to break until 12:15, but let me just

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make a point. I want to, as I always try to do, is compliment the members of this committee, and we have a fabulous committee and have had during our years. I want to give my friend, my Vice Chairman, Senator Lathrop...we're not...we'll have a few more months to be together. But he's been Vice Chair of the committee for these seven years and in all instances he is...Senator Lathrop holds strong values, as you know, Jim.  
[DOMA]

JIM CUNNINGHAM: Um-hum. [DOMA]

SENATOR ASHFORD: And in all instances when we arrive at these kinds of issues, whether it's stem cell research or abortion or whatever it may be, I have to applaud publicly Senator Lathrop's willingness as a Catholic and as a person of values and a very moral person to be willing to look at the entire issue. And Senator Lathrop has exhibited this throughout his tenure here, as have all the members, but I want to particularly underline the efforts that Senator Lathrop has made for the betterment of the entire state, so thank you. But thank you for your testimony. We'll be back at 12:15.  
[DOMA]

JIM CUNNINGHAM: Thank you. [DOMA]

BREAK

SENATOR ASHFORD: (Recorder malfunction)...don't we get started. And I know some of my colleagues are going to be a little late, but we'll get started. And I don't think...I think this is, maybe, the number that will be here this afternoon, so we're going to stick with five minutes' time. And I realize there are people on all sides of this issue in the room. So what I'd ask...I don't know who is who exactly, so what I would ask is that...we're all one; we're all Nebraskans. So what I want to do is try to get...well, I think we're all Nebraskans. I mean, maybe we're...there's somebody from other places. But what I want to make sure of is that, you know, everybody gets a fair shake at talking so,

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you know, if I sort of direct around to make sure that all of you get considered then that's what I'm trying to do. And it's not a perfect science so, hopefully, I won't...Al is last because he didn't take his shot earlier. (Laughter) But that's the only thing I know for sure. Other than that, why don't we...this young lady here in the white T-shirt is going to start, and then we'll go from there. [DOMA]

MARIS BENTLEY: (Exhibit 8) Thank you. I appreciate your time. My name is Maris Bentley. I reside in Omaha, Nebraska. I am a retired teacher and a school counselor. My husband, Dave, and I have been married for 37 years. We have four grown children and six grandchildren. I had originally intended to go through the document that, actually, you're going to be handed, titled "Ten Reasons Why Homosexual Marriage is Harmful and Must Be Opposed." But after prayer and reflection I decided that doing so would probably just be a waste of time. As I listened to Senator Chambers, and he told the story about the three billy goats gruff, I thought of a childhood story that keeps coming back to me, and that story is called "The Emperor's New Clothes," and probably most of you remember that story. It's a story about people who can't or won't see the truth, even when it's parading, naked, in front of them, and we really need to be examining this issue of truth. What is marriage? Why does marriage exist? Is it just at the whims of adults and the feelings of adults? Is that all marriage is about? From the testimony I hear it seems to be so. But I can tell you, as a person who has been married 37 years, that's not the case. It seems to me that those of you intent upon moving forward with this travesty will not be persuaded by arguments related to history or natural law or morality or public health or even what is in the best interest of future generations of Nebraskans. You aren't even listening to the more than 70 percent of Nebraska voters like myself who voted in favor of DOMA 13 years ago. Instead, you listen to the voices of those who claim this is a civil rights issue and that marriage must be redefined in order to bring about some false notion of equality. Our Declaration of Independence says that all men are created equal; it does not say that all behaviors are equal. We know that they are not, and that is what this debate on marriage is based on: the forced acceptance and promotion of a behavior that has been considered from the

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beginning of human history to be unnatural and immoral, not to mention unhealthy. And, no, I am not a homophobe, Senator Chambers. I am not afraid of homosexuals; neither am I hateful or a bigot. I do not hate any human being. I want to see all people treated with respect and dignity no matter whether I approve of their behavior or not. I try to live my life following my lord and savior, and that means that I am to love my neighbor as I love myself. And so then what about love? Those who identify themselves by their sexual behavior would also have us believe that this is about love but it is not. No one is denying anyone the ability to love another person. But what is love after all? It is not a feeling though feelings, good and bad, are part of every human experience. Love is not sex. There are many people we love that we do not have sex with. Ultimately, love is a choice, a choice that entails sacrifice, a willingness to put aside our egos and our selfishness for the good of the beloved. Make no mistake, this debate is really all about sexual freedom. We've already seen the destruction to marriage and family brought about by the sexual revolution. The sexual freedom that is being promoted as marriage equality is the antithesis of love, and it will only serve to further destroy the bedrock of a stable society, which is the family. Thank you. [DOMA]

SENATOR ASHFORD: Do we have any questions? Thank you, Ms. Bentley. Just a second here. Time out. Just one second. I'm going to get this...everything is going to get adjusted here. Do we have this...on this area over here...let me ask this: How many wish to testify? Let's go there. We're going to have to go to three minutes because there are going to be questions and I want everybody to get to talk. So if we could do three minutes, I know it's less than five, but if you can go to three, then, that way, we can ensure that everybody gets to speak, I think. So right over here, yeah, and then, Pastor, you'll be next over here, okay? [DOMA]

SCOTT JONES: (Exhibit 9) Thank you, Senators. I'm Reverend Dr. Scott Jones, senior minister of the First Central Congregational Church in Omaha. What a strange task, speaking before a public audience, arguing for recognition of my marriage. It is not an assignment that most of you listening will ever have to contemplate. Just imagine if you



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had to argue for why your love and your family mattered, for we all understand why people fall in love and want to make a lasting commitment to each other. We understand why a couple invites their relatives and friends to their wedding in order to recognize and bless that commitment. We understand why two people want to form a family, letting their love overflow to their children. We understand that raising children well takes an entire community working together, that parents need the help and support of a society that values and strengthens families. We also understand why society encourages people to make these commitments to one another. Loving marriages and healthy families strengthen the community. My husband, Michael, and I wed in a religious ceremony in Oklahoma in 2009, for our denomination sanctifies marriages between people of the same gender, so, Senator Lathrop, it does happen in churches. In attendance were 200 of our family friends and fellow church members. They came to bless and support us in the loving commitment we were making to one another; yet, at that time, we did not receive the legal benefits which a society supports and strengthens a marital commitment with. After moving to Omaha we were preparing for children and were optimistic about the impending court rulings, so we had a legal ceremony in Iowa. Currently, 14 states recognize our commitment and value our family. With the Supreme Court rulings we will receive some federal benefits but, as you've heard, the state of Nebraska continues to deny our family the support and encouragement and help that comes with the legal recognition of our marital vows. Our family is more valued and better protected by the law when we cross the river to shop at Menards than it is when we are in our own home. This bizarre situation is unsustainable. I'm very confused about what to do come tax time when we file a joint federal return and will puzzle over our state returns. It's clear that our tax filing will be more complicated by Nebraska law, may force us to pay higher taxes, which is ironic in a state that values lower taxes. Legal recognition of same-sex couples strengthens the loving commitments we make at our weddings; it supports us in raising our children; it values our families. Encouraging loving marriages and healthy families improves society. Why did you get married? Why was it important to have the legal recognition of your loving commitment? How has it helped your family? Your answers would be the

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same as mine. [DOMA]

SENATOR ASHFORD: Thanks, Reverend Jones. [DOMA]

SCOTT JONES: Thank you. [DOMA]

SENATOR ASHFORD: Any questions? Seeing none. [DOMA]

SCOTT JONES: Thank you. [DOMA]

SENATOR ASHFORD: Okay, Pastor. Then we'll come over here and over here and over there. There seems to be some sense of sides here, and so I'm going to...go ahead. [DOMA]

JAMES PATTERSON: Good afternoon. My name is James Patterson, Reverend James Patterson. And I wasn't sure if I was going to speak, so I might not need three minutes. But I just wanted to share, stand in support of DOMA as the citizens of Nebraska express their opinions and which is my opinion. And I see...and neither do I hold or would support any homophobic prejudices of anything of that sort. But I see a continual degeneration of our moral fibers of the nation. I look and, Senator, and you are probably a better historian than I am, but as I look back and I see what has happened to our country over...I mean the state of the family, the state of children, our society is less trusting. And the country was, in fact...I think it was one of our founding fathers who made the comment that the principles of which this country built upon was Judeo...was Christian principles when asked what were principles of which it was built upon, and those principles carried us for a long time. And over the last 50 years we seemingly have taken a significant nose plunge in the wrong...in my...and all this is my opinion--in the wrong direction. Not that anything was perfect before, because nothing will be perfect when we have mankind directing it, doing its best, however. But our state of our society, the healthiness of our society in general, seemingly, is deteriorating. And so I

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stand to...on...and there is lots of problems. I've listened to the comments of the lawyers as well, and I listened to it openly, and we need a lot of discussion and that there are problems that needs to be discussed. But, seemingly, we are not moving in a positive direction; we're moving in a negative direction societally. And it, seemingly, has accelerated the pace of negativity. So I tend to support and I stand firmly with regard to the Judeo-Christian, to the biblical principles of which we stood, and I stand for...to...in support of DOMA. So that's my statement. [DOMA]

SENATOR ASHFORD: Let me...and we've had this...we've had some conversations in the past. [DOMA]

JAMES PATTERSON: Absolutely. [DOMA]

SENATOR ASHFORD: And let me just...here is my quandary, and then I don't want to ask this in great depth because we have other people to speak. But, I mean, every generation talks about how the society is deteriorating. I mean, we went back...in the '20s it was Prohibition and marching and our society is deteriorating because of alcohol or our society is deteriorating because of something else. And it seems like every...if you look at history, American history, we go back to the beginning, and each generation has a view about why society is...and the young people are going off into the woods, whatever they do, and that it's deteriorating, and I think that's historic. I mean, people seem to think about that every generation or so and that religion, so to say. And you're a religious person and a pastor and I'm sure you do a great job of what you're doing. The job of religion, in my view, is to keep, kind of, everybody, kind of, on a moral compass that we're...you know, we love our neighbors, we take care, we follow the Ten Commandments as best we can, and that those are...those transcend generations. I mean, those views about how we treat each other transcend generations, and that's why it's a religion. And it isn't just one generation after the next, but it's a transcendent sort of thing. So when I look at my religion, Lutheran religion, you know, we teach the same values, I'm sure, you teach. We have a...but we also have...but here is my

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quandary. My quandary is when I think about the arguments that are made that, somehow, gay marriage is making...potentially could cause society to even accelerate its deterioration, that, somehow, there's something in what Reverend Jones is talking about, a loving relationship of over 20 years with children and so forth and so on, somehow, somehow, that is accelerating the pace of deterioration. What I see is something different. I see, when I view gay relationships--and I have many gay friends and many straight friends, as we all do have friends of all different sexual orientations--what I see is kind of the same thing. I mean, they want the same thing. They want to have a loving family. There's so many families that you, you know, today...I mean, two candidates for Governor both have gay siblings. So you...we have...the reality of gay relationships is with us. I don't...I just don't see anything my religion or my faith that would even remotely persuade me that giving someone who is gay the ability to have a structured relationship, something that is founded on love that brings children along in a loving way, how that even remotely is in any way worse than what we have on the...in society today where we have, it was mentioned earlier, over 50 percent divorce rate. It's actually greater than that. We have domestic abuse amongst heterosexuals. I don't think it's valid to make the comparison that somehow, because you're in a heterosexual marriage, you're somehow morally superior to someone who is in a gay relationship. You know, there's just no support for that. I mean, you can look into the Bible and you can read passages, and I respect that because I learned from the Bible too. I may read certain things differently than you do, but we read the same words. And what I read about is: Are people embracing others and creating a family, creating some sort of structure? Society, and then I'll shut up, but society, civil structure, is there to create a framework. So Nebraska has the ability to say, if you're going to marry in Nebraska you have to wait 60 days or 30 days. I can't remember; it's been so long since I got married. But you have to wait a certain length of time. There may be other things involved in filing an application aside from sexual orientation, and those are valid concerns that the state has, you know, to try to have a structure that makes sense. But when you start then going, saying, those things are important but it's also important to say that somebody of a different sexual orientation than mine, they look exactly the

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same as everybody else, they go to work, they pay taxes, they're law-abiding citizens, I, in my entire life, you know, I have searched for an answer that problem and I can come up with no other conclusion than that gay people in a loving relationship are of massive benefit to our state, to our society, and that the deterioration of the family, those are...we're talking about heterosexual families when we talk about that. They do need to be strengthened. But I don't see how saying to a gay family that if we don't allow you to marry, somehow, heterosexual families are going to be stronger, other than just, sort of, saying those words, I don't know how you get there. I mean, I...you know, and that...so...and I say this with all due respect for your views and for everybody else's views in this room. I just so fundamentally believe that if we embrace everyone's ability to have a loving family and a loving relationship that we're going to uplift our society. I can't...I just can't...there's nothing I can...to me, that's my religious underpinning; that's my faith. So I don't see how deterioration of the family in our society can in any way be related back, or sexual promiscuity, which occurs...my god, look at the cases we see all the time about date rape and all those things that occur amongst heterosexuals.

[DOMA]

JAMES PATTERSON: Can I respond? [DOMA]

SENATOR ASHFORD: You can, and I'm done with my little speech. That's probably the only one I'll give in this hearing. But I just wanted an opportunity to speak because I...because my view on gay marriage is totally, in my view, totally embedded in my Lutheran religious upbringing and my family upbringing. It's inseparable from those things. So go ahead. [DOMA]

JAMES PATTERSON: I want to say I respect. I have a lot of people behind me who want to share, and so I would love to have this conversation with you. [DOMA]

SENATOR ASHFORD: Okay. [DOMA]

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JAMES PATTERSON: But I would say this: I'm looking...I'm not just looking at a gay marriage. When I say, "with regard to the Judeo-Christian," I'm talking about the biblical beliefs. I'm looking at society in general, not just one thing. I'm looking at society in general. And, yes, we had Prohibition; we have a lot of issues. Like I said, humankind is not perfect, okay, but we have a perfect God and the Bible...the...and I'm...so my thoughts goes beyond our limited conversation, not...and, by the way, I would want Reverend Jones to have opportunity as well. But the thing about it is we...I have to be accountable to my God and he actually...and this Bible you talk about, I want to have a conversation with you, maybe personal, or any of the other members. [DOMA]

SENATOR ASHFORD: No, no, and I... [DOMA]

JAMES PATTERSON: And we could have that and maybe a lot more deeper. [DOMA]

SENATOR ASHFORD: That's fine. [DOMA]

JAMES PATTERSON: But this is not...this doesn't give me the opportunity to respond properly and consider my... [DOMA]

SENATOR ASHFORD: And I...it's...I didn't even... [DOMA]

JAMES PATTERSON: ...the people who are behind me who are waiting to share. [DOMA]

SENATOR ASHFORD: Okay, I wasn't, yeah, I wasn't questioning your faith or what you believe. [DOMA]

JAMES PATTERSON: I know; I understand that. [DOMA]

SENATOR ASHFORD: I was just taking an opportunity. And I respect your belief and

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your reading of the scripture and how you look at society. I respect it. I just wanted an opportunity to say how I felt about it and that's all. (Laugh) [DOMA]

JAMES PATTERSON: And I would love to visit with you if we can. We can make an appointment before we leave here. We can do that. [DOMA]

SENATOR ASHFORD: We could certainly visit about it. [DOMA]

JAMES PATTERSON: I would love to do that. [DOMA]

SENATOR ASHFORD: And I'd love to have you and Reverend Jones visit about it. [DOMA]

JAMES PATTERSON: Okay. [DOMA]

SENATOR ASHFORD: I mean, maybe we could sort this out. Anyway, thank you very much for coming. [DOMA]

JAMES PATTERSON: Thank you. [DOMA]

SENATOR ASHFORD: All right, and then we'll...next or first, second. (Laugh) [DOMA]

ALAN POTASH: Hi. Good afternoon, Chairman Ashford and members of the Judiciary Committee. I'm Alan Potash, regional director for the Anti-Defamation League. The ADL is a 100-year-old civil rights and human relations organization with a mission to stop the defamation of the Jewish people and to secure justice and fair treatment for all. The Plains States region of the Anti-Defamation League welcomes the opportunity to testify today before the Judiciary in support of marriage equality for all Nebraskans. The Anti-Defamation League has a longstanding commitment to protecting civil rights, including those that affect the lesbian, gay, bisexual, transgender community. These

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include addressing discrimination, hate crimes, and marriage equality. ADL is committed to ensuring that all people are afforded equal treatment under the law. To be treated equally same-sex couples must have the same access to marriage as other couples. Our advocacy reaches from federal and state courthouses to Congress and state houses around the country. ADL has filed amicus briefs in a number of cases, urging courts to hold a ban on marriage equality unconstitutional and has been a strong voice advocating against measures to deny the fundamental right. This past year the league filed briefs with the Supreme Court in both the Proposition 8 and DOMA cases on behalf of a broad, diverse group of religious organizations, emphasizing that there are many different religious views on marriage and that no one single religious understanding should be used to define marriage recognition and rights under civil law. Marriage equality is a civil rights issue. It's an issue about fundamental fairness. All Nebraskans should have an equal right to civil marriage. No Nebraskan should be denied that right or that the right to the more than 1,000 federal rights, protections, and benefits that attach to marriage solely because of their sexual orientation. Thank you again for the time to submit this testimony. [DOMA]

SENATOR ASHFORD: Thanks, Alan. Any questions? I don't see any, thank you. Over here, and then somebody over here. I'm not sure this is an accurate way of doing it, but... [DOMA]

STEPHEN GRIFFITH: (Exhibit 10) Good afternoon. I'm Stephen Griffith. I live in Lincoln. I am a minister at St. Paul United Methodist Church across the way. I'm here today representing my own views, not necessarily those of my congregation or the United Methodist Church. In conversations such as this, the principle of religious freedom is often invoked, and I would like to focus on that for just a couple of minutes this afternoon. I find no threat to religious freedom in the Windsor decision. Simply put, the ruling, as far as I can tell, has no effect on me as a minister or on my church. As a minister, I'm authorized to act as an agent of the state, to legalize marriages. I got to sign the licenses and help celebrate...help couples celebrate their weddings. But I'm not



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required to do that. I'm free to conduct or not conduct religious marriage ceremonies. Likewise, couples aren't required to have a religious ceremony. I can refuse to conduct a religious wedding if I see fit and I have done so. A couple may not agree to participate in the required counseling sessions; they might object to the religious content of my ceremony; or they may ask me to include words or actions not consistent with my church's teaching. I may even not be confident of their intent to make an unconditional lifetime commitment to one another. There are many reasons I might decide not to marry a couple whether straight or gay. My refusal though doesn't prevent them from getting married, only from having their wedding in the context of my church. The legal civil marriage and the religious ceremony are separate and distinct. This has always been the case. It's still the case now. It's the case even in states that recognize same-sex marriage. Nothing in state or federal law or in the Windsor decision infringes on my ability to carry out my ministry according to my beliefs and my church's policies. In fact, both the U.S. and the Nebraska Constitutions protect this freedom, just as they protect the couple from me imposing my beliefs on them. They're free to go to any other clergy or to a county judge for a strictly civil ceremony. Whether or not state or federal law recognizes a marriage has no effect on how clergy work with couples in the religious context of our faith groups. Thank you for your time. [DOMA]

SENATOR ASHFORD: Thank you, Pastor. Any questions? I don't see any. Thank you. Hopefully, I'm being fair in this; I don't know how else to do it. [DOMA]

ROBERT SULLIVAN: (Exhibit 11) All right. Thank you for having me here today, giving us this opportunity to talk. My name is Bob Sullivan. I'm an attorney out of Hastings, Nebraska, and I've prepared a very long letter--20 pages for you--that gives you a lot of information, so I'm going to hit about seven bullet points here just very quickly, and then I can, I think, answer any questions that might come up. So I'll just basically give you a synopsis of some of those bullet points which is that there are several inaccurate statements with regard to the idea of same-sex marriage that I think are common in our society, one of which is that there is proof that people are born gay. On page 7 of my

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letter there is quote from the American Psychological Association which admits that there is no proof of that, that there is a mixture of many different things that make...lead to the homosexual behavior. The second misperception is that homosexuality is a civil rights movement or same-sex marriage is a civil rights movement. When you have no equality you cannot have equalization imposed on people. Oftentimes, people talk about this as being a fairness issue. You know, we can't manufacture fairness. It's either true or false; it's right or wrong. I know there's people that will disagree with me about that, but there are truths. There are ultimate truths and universal truths in the world, and we have to accept those and deal with them as God gave them to us. There is a common perception that anybody that is against homosexuality or homosexual behavior, you can't be against homosexuality, but anybody that's against homosexual behavior are haters. You know, there are some radicals out there that truly do hate, and some of them hate homosexual individuals, some of them are vehemently against homosexuality. But most, I think, respect the truth that God gives us, which is to show that same-sex marriage is detrimental to society and we can love the sinner and hate the sin. There is also common misperception that 10 percent or 25 percent of our society is homosexual. In Nebraska, it's 2.7 percent; nationwide, it's 3.4 percent. There is a perception that traditional marriage is broken, and Senator Ashford mentioned it earlier, the 50 percent divorce rate or maybe higher. The truth is that in the Catholic faith it's a 30 percent divorce rate and across the nation it's less than 40 percent. There is a perception that we need to accept or tolerate same-sex marriage or homosexual behavior. The question I had was, when have you ever had to tolerate something that is good? People that preach tolerance are just urging us to accept the bad. You know, what is truly good about same-sex marriage? We look at morality, the merit of it, the freeness from unpleasant or corruption, and the reality is it's not good. We need to reject it. [DOMA]

SENATOR ASHFORD: Thanks, Robert. Any questions of Mr. Sullivan? Thank you. Go over here. [DOMA]

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ELIZABETH ABRAMSON: Good afternoon. Thank you for hearing my testimony this afternoon. My name is Beth Abramson. I am speaking to you today free of fear and reservation. I'm speaking to you on behalf of my family. My partner and I are lifelong residents of Nebraska. We are both members of a prominent law enforcement agency in Nebraska and have a combined total of 30 years' experience in our field. As you can imagine, we spend our fair amount of time at the courthouse. I have seen many couples, young and old, carrying out marriage licenses from the marriage office. I can imagine the words exchanged in that office. The words of a common marriage only take about three minutes, three minutes. It's what happens to be the same amount of time I've been given here today, three minutes, the amount of time I'm given to explain how Nebraska's inability to recognize me as a person and my family as a whole and my partner and I as a couple, just three minutes. In those three minutes we would be afforded the same marital rights and benefits as those we have sworn to protect you and your family from. In those three minutes we would be allowed to name each other as lawful beneficiaries of our hard-earned pensions. In those three minutes we would be allowed, our blended family of six, to pay one family insurance rate instead of two. In those three minutes it would negate the additional paperwork and cost incurred there to ensure our three minor children would go to their rightful parent, the only other parent they have ever known, in case I die or I am killed in the line of duty. In those three minutes we would be allowed to file our taxes and finances as they actually occur--jointly--as we own property and investments together and, like anyone else here in this room today, acquire debt together. And those three minutes would bar Nebraska from taking 18 percent of the value of our estates as inheritance tax. Aside from those things you would find our family rather average. Much like our straight neighbors, our lazy Sunday mornings are spent in pajamas, drinking coffee, watching cartoons with our kids, and clipping coupons. Our yearly extended family vacations to Colorado are no different than yours, and our bounce house/pool party birthday bashes are second to none. The truth is, when you look in our kitchen you won't find a gay agenda. Instead, you'll see our family monthly calendar hanging on the refrigerator next to our grocery list. And those three minutes would not make our family whole. We do that every day.

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Those three minutes, just those three minutes, would allow us to be recognized as what we are: one whole family. Thank you. [DOMA]

SENATOR ASHFORD: Thank you. Do we have any questions? Thanks for your service. Bob (phonetic), do you want to...do you have a...you had one thing you wanted to tell us. Do you want to...Bob, do you want... [DOMA]

AL RISKOWSKI: Well, I can go up now. [DOMA]

SENATOR ASHFORD: Sure, come on up. I thought if I caught you by surprise,... [DOMA]

AL RISKOWSKI: You did, but that's (inaudible)... [DOMA]

SENATOR ASHFORD: ...you'd get to the point right away and... [DOMA]

AL RISKOWSKI: I was waiting until the very end. I appreciate it. Thank you very much for the opportunity to be here. Just as a piece of reference, I do have the 1996 piece of legislation in front of me that Senator Chambers introduced on same-sex marriage to...gave me some reading to review myself on your thinking back in 1996. I just wanted to remind the committee that there was a lawsuit filed against the state of Nebraska in 2005 challenging our definition of marriage. Citizens for Equal Protection, Nebraska Advocates for Justice and Equality, and ACLU filed that lawsuit against the state of Nebraska in 2005 declaring our Section 29, DOMA, unlawful as a denial of equal protection, and a bill of attainder. That lawsuit went before a federal judge, Joseph Bataillon, who ruled in favor of the Citizens for Equal Protection initially, and then it went to the Eight Circuit Court before a three-judge panel at that point. The three judges ruled in favor of Nebraska and there was a tremendous amount of amicus briefs presented and thought presented in regard to those issues and the state of Nebraska. So I just thought it would be well to review what took place at that point because a

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three-federal-judge panel did rule in favor of Nebraska in regard to these issues and did not feel that there was anything incorrect and, every right that Nebraska had to have such a definition of marriage, upheld it at that time. [DOMA]

SENATOR ASHFORD: Okay, thank you. [DOMA]

AL RISKOWSKI: Yes. [DOMA]

SENATOR ASHFORD: Yes, Senator Chambers. [DOMA]

SENATOR CHAMBERS: I can't resist. He and I have been not antagonists, but we've been on opposite sides of issues. First thing: "Pastor" Bradford demonstrated a statement in the book that you believe in. When you first enter a room, don't come into the front to show how important you are. Take a seat toward the back and you will be recognized and summoned to the front. Isn't that what it says? [DOMA]

AL RISKOWSKI: It does. [DOMA]

SENATOR CHAMBERS: And, basically, isn't that what happened to you? [DOMA]

AL RISKOWSKI: Yes, it was. [DOMA]

SENATOR CHAMBERS: That was fulfilled today. Now at the time that that earlier decision came down from the Eight Circuit the U.S. Supreme Court had not made the ruling which recently it did. And although it dealt with a federal issue and federal benefits that were denied to people on the basis of their not being heterosexuals in their marriage, there are many things in that opinion which I believe are going to be utilized in future litigation that will result in the U.S. Supreme Court saying no state can, consistent with the United States Constitution, prohibit the recognition of same-sex marriages if it recognizes heterosexual marriages. But here is the point that I want to make with you

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as far as how much respect the Eighth Circuit gets: I brought a lawsuit to get the chaplain out of the Legislature. I won in the federal district court. I won in the federal Eighth Circuit Court of Appeals. Then it went to the Supreme Court under Chief Justice Burger and his "French fries" and it went the other way. But to show how those ideas resurface, that basic issue of prayers in public assemblages is going to be argued before the Supreme Court probably the first of next month. And the lawsuit that resulted in a decision by the Nebraska...by the U.S. Supreme Court will figure prominently in it, and the role that I played all those years ago will resurface. I say that to make this point: The fact that what I consider to have been a backward, wrong decision was made has not disheartened me in my effort to do everything I can to see that all people, all people, are treated justly. And anything born of a man and a woman is a human being to me. When there are rights and privileges bestowed by the government, nobody should be excluded. And there are other principles that we need to support in every way--marriages between people of the same sex--and you may not have been here when I stated earlier that I'm going to offer a bill next session of the Legislature to accomplish that. Is it an uphill struggle? I've been in Nebraska all my life. I certainly know that. Is there any chance that the committee will advance it? There's as much...I have a better chance of being elected the next Pope of the Catholic church than there is that this committee will advance a bill to say that same-sex marriage should be approved. But I will make the attempt. And if I want to force a discussion on the floor of the Legislature, I can make a motion to pull it from the committee. In other words, this is not an issue that I intend to allow to go away, and it's an issue which I think, every time it surfaces, will have you coming forward to express your opinion. And we will just have to argue it out and see who prevails. I think I see this tide turning in the favor of the position that I and other forward-thinking people with a vision hold to. And if you want to respond, you can, but that's all that I have to say. [DOMA]

AL RISKOWSKI: Only to the fact that...and in...I know we have debated this numerous times and will continue to do so, and I appreciate the opportunity to do that. Just that this...the reason that I brought a reminder of this court case: I still believe that, at the

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time that this took place, we still had...we had marriages in other states and you had the same complicated issue that we're dealing with today. You did not have the U.S. Supreme Court ruling, but much of the dialogue and the amicus briefs that were introduced with defending the state of Nebraska I believe already address some of the issues that have been dialogued today. And I think it would just be worthwhile to review some of that dialogue that took place. [DOMA]

SENATOR ASHFORD: And we didn't have a situation where our...at that time we didn't have a situation where our citizens in Nebraska were so dramatically disadvantaged as they are now by the application of DOMA on...or the repeal of DOMA and how it relates back to states that do recognize gay marriage. I mean, that wasn't...that was not on the...that was eight years ago and it wasn't there legally. Now we've gone into a new world. So I think what we're trying to do now, and Senator Lathrop has very artfully brought it to the floor, which is there are...no one, I don't think, can disagree, whether they may or may not agree with gay marriage, can disagree that our fellow Nebraskans are significantly disadvantaged, aside from what Senator Chambers has talked about which is the part of the decision that deals with other than fiscal issues, are disadvantaged fiscally to a fairly significant degree. So it makes it almost obligatory--well, it is obligatory--for us to look at this. I mean,... [DOMA]

AL RISKOWSKI: Yes, and you certainly can. I believe many of those issues were there. You have the same issues of... [DOMA]

SENATOR ASHFORD: Not the federal issues weren't. [DOMA]

AL RISKOWSKI: Well, you didn't have the federal. That makes it more messier, makes it messier, yes. [DOMA]

SENATOR ASHFORD: But that's a big part of it. That's a big deal. [DOMA]

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AL RISKOWSKI: Yes. Yes, it does. [DOMA]

SENATOR ASHFORD: Okay, thanks. [DOMA]

AL RISKOWSKI: Thank you. [DOMA]

SENATOR ASHFORD: Okay, right over here, and then we'll get...we're making good progress. We're only...it's only five of 1:00, so... [DOMA]

DREW HECKMAN: Hello. My name is Drew Hackman. I'm 22 years old. I grew up in Omaha, attended Brownell-Talbot High School. And if my name sounds familiar, you may know my father who leads a major corporation in downtown Omaha. I came out as gay when I was 14. For the record, it was not a choice. And of the thousands of LGBTQ people I've met since then, not one of them has chosen their sexual identity or gender identity. Being gay as a teenager in Nebraska was profoundly isolating. I didn't feel like I could be myself, and I definitely didn't think that I could be happy here. I could not wait to leave and I got that opportunity when I attended college at Brown University where I recently graduated magna cum laude with honors and as initiate of the academic fraternity Phi Beta Kappa. While at Brown I was constantly told by my classmates, wow, you're gay and from Nebraska, that must be really hard. They expected me to be embarrassed. And here is where I may differ from Senator Chambers: I have always defended Nebraskans, despite others from major metropolitan areas encouraging me to feel ashamed, to cut my ties, to throw you all under the bus. I think Nebraskans have huge hearts, work hard, and generally look after one another. I have four younger siblings here and I want to watch them grown up. This is my home. But here's the conflict: I still don't feel welcome in Nebraska. I'm prevented from marrying. I can legally be the target of employment discrimination. I don't even feel comfortable walking down the street holding hands with my partner for fear of physical violence, fear which has only been heightened by last Sunday's anti-gay hate crime in downtown Omaha. I ate a veggie sandwich at that same restaurant with my partner only a few hours before the



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attack. That could have been me. How would I have explained lacerations on my face to my three siblings under seven years old? So when most, if not all, of my similarly educated and ambitious friends decided that Nebraska was not where they wanted to live after graduation, I totally understood. When I surveyed 200 LGBTQ Nebraskan youth for my sociology honors thesis at Brown and found that, if given the opportunity to move away from Nebraska, only 6 percent would choose to stay here, I totally understood. Honestly, the only reason I'm still here is to try to make it better for those who aren't able to move away, as I am, and I still expect my time here to be temporary. It is my impression that everyone here cares deeply about Nebraska, which is really inspiring and makes me proud. I refuse to believe that there are people in this room who hate me, dislike me, or consider me defective solely because I am attracted to men through no choice of my own. Perhaps that's naive. All I want and all the other thousands of LGBTQ youth in this state want is the opportunity not only to call Nebraska home but to truly feel that Nebraska is our home, and while discriminatory and exclusionary laws rules in Nebraska that is impossible and we and our allies will continue to leave in droves. Perhaps that is what our opponents desire, but I believe--I have to believe--that, at least, our elected officials want us around. I suppose time will tell. Thank you. [DOMA]

SENATOR ASHFORD: Thank you, Drew. Nebraska is worth it, so, I'll guarantee you, those of us up here who are here many, many months of the year working on...for Nebraska, I guarantee you, it's worth it. So thank you. Let's go...who else would like to talk over here? Well, we're going to go...come on up and...and then the gentleman in the blue sweater will come next, after...okay. [DOMA]

SHEILA CARTER: Good afternoon, members of the committee. My name is Sheila Carter, and I support Nebraska's constitutional definition of marriage. I do not intentionally hate, demean, disrespect others. I am not backward, narrow-minded, nor do I liken myself to a Salem witch burner. What I am is Catholic. I cannot profess to love God and hate the people he created in his image and likeness. As a Catholic, I also

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profess I am a sinner. I sin every day. I need the forgiveness and salvation of Jesus Christ. But I bring my sinful behavior to the lord and I ask for his forgiveness. I don't bring it to the Legislature and ask for their approval. As for the legal recognition of same-sex marriage here in Nebraska, we are faced with this conundrum. But is it the...is the problem that Nebraska's Constitution retains the definition of traditional marriage or is the problem that other states do not? For example, if someone moves here from, say, Iowa, and in Iowa they are a licensed professional zookeeper and we don't have that licensure here in the state, are we obligated to create a licensure so that that person can make a living as he or she sees fit? Or do we simply recognize the license from Iowa and go on? Does he need a specific license from Nebraska? And finally, I just want to say that there are a lot of people up here who have offered what we've described as opinions. But the truth of Christ is the truth. He said, for this I was born and for this I came into the world, to testify to the truth, everyone who belongs to the truth listens to my voice. It's not my truth; it's not a truth; it's the truth. Thank you. [DOMA]

SENATOR ASHFORD: Any questions of Sheila? Thanks, Sheila. [DOMA]

JACK ANDERSON: Good afternoon. My name is Jack Anderson. I am a lifelong Nebraskan and currently a student at Creighton University studying health administration and policy and public health. In addition, I am a proud constituent of Senator Chambers'. I am here today to express my strong support of marriage equality for all Nebraska's citizens. With a passion for public health, it is in my nature to bring attention to the psychological and public health implications caused by Nebraska's constitutional amendment to marriage. A multitude of academic studies have been conducted on this issue, revealing a clear and indisputable pattern. Social policies are, in turn, health policies. For example, one particular study on the mental health impact of institutional discrimination by means of a marriage amendment found LGB individuals residing in states with a restrictive policy, such as Nebraska, had significantly poorer mental health, including a 248 percent increase in generalized anxiety disorders when compared to LGB individuals living in states without a marriage amendment. More

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specifically, in 2011, the UNMC Midlands Sexual Health Research Collaborative found nearly 50 percent of LGBT Nebraskan respondents had serious ideations of suicide. Another study discovered a sizeable decrease in healthcare use and expenditures among homosexual men in Massachusetts after the state adopted a same-sex policy. The evidence is clear. Nebraska's constitutional amendment to marriage serves as an institutional, status-based, chronic stressor to LGBT individuals in our state. This systematic inequality places citizens of this marginalized population in a persistent state of stress, resulting in detrimental physiological wear, increased risk of illness and disease, and increased negative coping behaviors. The fact of the matter is, this social policy is unjustly robbing LGBT individuals of their health, happiness, and wellness. "Equality before the law," Nebraska's state motto, established March 1867, as a result of the state's willingness to extend rights to a marginalized population, equality before the law. Can we truly say, as a state, we are meeting our obligation to provide equal rights to all citizens free from discrimination, inequality, and intolerance? Can we genuinely claim we are doing enough to give all Nebraskans--gay, straight, male, or female--the opportunity they deserve to live out a happy, healthy, and productive life? If we are honest with ourselves, the answer is no. We continue to maintain a policy relegating individuals to the point of alienation, not just those among the LGBT population but, also, the heterosexual population and, in particular, youth and young adults. Simply put, this issue is no longer just a matter of denied rights but a matter of manufactured health disparities causing significant physiological and psychological harm to our fellow Nebraskans. Our people, regardless of identity, deserve better. I urge you to consider the intimate relationship between social policies and health policies. Please fulfill the Nebraska state motto of "equality before the law" by advancing this matter to the consideration of the full Legislature and to the people of our state. Thank you for your time and consideration, and I'd happily make myself available for any questions you may have. [DOMA]

SENATOR ASHFORD: Any questions of Jack? Thank you, sir. [DOMA]

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JACK ANDERSON: Thank you. [DOMA]

SENATOR ASHFORD: Who else would like to speak? Okay, well, let...man in the...gentleman in the yellow because, as Senator Chambers rightly said, it's better to be in the back of the bus than the front of the bus or...that's not what he was saying, of course. (Laughter) But I would...I'm not sure that...I'm not sure...well, then if you're in the...then you can be...well, never mind. (Laughter) Let's proceed. You had to be here, didn't you? I mean, there's no other way...yes, sir. [DOMA]

MICHAEL ORR: My name is Michael Orr. I've been a resident here for 30 years. I've listened to...I originally had a speech ready and it's been so much repetitiveness I'm going to speak from the heart, as Senator Chambers does. I was in the military. I believed in making sure that I defended my country for liberty and protections and safety and now these people are trying to take this away from me and keep it away from me. My husband and I had to go to Canada to get married when the rush was first going on in California. And during the 25 years that we've been together we've raised two children that both have their families. They're both heterosexual. We have grandchildren. We both have good jobs. We own a home. There is absolutely nothing wrong with our relationship that could harm anyone else's relationship. It's not like same-sex couples want to get married so we can abolish another heterosexual marriage. It will not happen. And the 13 states that have given the rights to same-sex couples have not gone into oblivion, in a black hole anywhere so, obviously, it's not going to be a thing like that. I have an honorable discharge. I respect myself and my country and the decisions that they make; however, that being said, if marriage is so...if you want to protect marriage and the sanctity of marriage, then, by golly, make legislation to make it illegal to get a divorce. Fix that first, but try not to take it away from us. Okay, if marriage is either 50 percent divorce rate now or 30 percent, it doesn't matter. It's still a percentage and it's too dang high. Fix it. If you want to keep it, you want to keep it right, then make it illegal to get a divorce. My husband, Thomas (phonetic), and I do not want to get a divorce. The 25 years we've been together we've

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never discussed it, never had an issue for it. Our marriage license is permanent for us. We don't want to recognize divorces or anything like that. Our children have the greatest marriages. They are perfect in what they do, and their children are perfect as well. And as grandparents and as our children, we were at the PTA meetings as they were having them up. We did everything that we were supposed to or are expected to do as parents. We want DOMA to go away. We want this legislation to go away. As Senator Chambers so eloquently put it, it's stupid. Thank you. [DOMA]

SENATOR ASHFORD: I certainly have nothing to say, so thank you (laugh), which is...all right, the gentleman in the front. There's two of you in the front, so take your pick. [DOMA]

NATHAN LEACH: Mr. Chairman, members of the committee, I'm thankful for the opportunity to testify this afternoon. I'm currently a junior at Kearney High School. I'm also a member of the Kearney High School student government and serve on the Buffalo County youth advisory board. I was born in 1996 as the youngest child of five and was raised in a very loving and conservative home. Growing up, I knew that there was something different about me, that I had a different kind of affection. And in the 4th grade, I realized that this word "gay," it described my sexual orientation. Five years later, in the spring of my freshman year, I came out. Thankfully, in the center of what some would call a very conservative state, my peers have accepted me, not only the parts of me that they agree with or those parts that align with their personal views, but they accepted me entirely. They understand that each aspect of my being holds value and possibility, that character and integrity are far more important than my sexual orientation. It is my contribution to the collection which defines me. I understand that I currently have the right to love, live with, and build a strong, lasting relationship with another man. But then why should I be denied the right to have that relationship develop further to become a legal union? I am proud to live in a state that values limited government. Nebraskans understand the role government plays in protecting liberty. However, Nebraska has an obligation to define and protect the individual liberties of all

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of its citizens, not mandate a moral code held by the majority and impress it upon the minority. Nebraska cannot successfully legislate morality for, regardless, homosexuals will love, they will live together, and they will build relationships. Unfortunately, inequality is easily legislated and this committee is faced with the decision of whether or not Nebraska will continue to advocate that inequality within its constitution or allow liberty to be protected. Last week, several youth from around the state had the opportunity with meeting with several Nebraska state senators as part of the Nebraska Youth Academy for Democracy. There Senator Galen Hadley made the statement that Nebraska stands out as a state that values individual liberty. This committee's recommendation holds the power to urge acceptance, to grant liberty to all Nebraskans, regardless of their views and sexuality, to recognize them as important components to a vibrant state. [DOMA]

SENATOR ASHFORD: Thank you. Any comments, questions? Thank you very much. You did a good presentation. Okay, next testifier, sir. Am I missing anybody? Okay. Okay. Okay, and then we'll go back here. [DOMA]

GRIFFIN MIMS: Hello, and thank you for giving me the opportunity to speak with you today. My name is Griffin Mims. I'm a junior at Kearney High School and I also serve on the Buffalo County youth advisory board, but do not speak on behalf of that board. There's a new generation of youth that are beginning to emerge and embrace same-sex marriage, times are changing and I am hoping that you will realize the inevitability of legal, same-sex marriage in Nebraska. Support for same-sex marriage is increasing and it is only logical that it will be made legal in the future. By not repealing the Defense of Marriage Act and the same-sex marriage ban in Nebraska, we are only handing the issue down to the next generation. We have a chance to change to lives of thousands of people, not only in present time but in the future as well. A same-sex couple should be able to be married in the great state of Nebraska. People should not have to travel out of the state just to be legally wed. A gay couple living in Nebraska will still be a couple, even if they cannot be married, and even if they are not allowed to be married, but the only difference for you and me is a simple ring on their finger. Although I am not gay, I

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have seen the effects of discrimination towards homosexuals amongst my peers. My generation was raised to be independent thinkers and to follow our hearts, but was also raised to look down upon same-sex couples and same-sex marriage. Fortunately, more and more youth are breaking the bonds of discrimination, starting to accept same-sex relationships and accept the fact the Defense of Marriage Act and the same-sex marriage ban is unconstitutional on any level. I have recently just got done...I have recently just got done covering the Thirteenth Amendment in my AP U.S. History class, and President Lincoln abolished slavery because it was restricting the rights of individuals that lived in the United States, just as the same-sex marriage ban is restricting the rights of homosexuals. It took time for slavery to be repealed, as it has taken time for people to realize that we are restricting rights of same-sex marriage. Now is the time to change that. Withholding the rights of any man or woman to marry the one that they love is morally wrong, no matter what the sex of their spouse is. Some same-sex marriage will be legalized, as surely as the sun will rise. The only difference that we will make is when it happens. And hopefully, that will happen now. Thank you. [DOMA]

SENATOR ASHFORD: Do you plan to run for the Legislature? (Laughter) [DOMA]

GRIFFIN MIMS: No, sir. [DOMA]

SENATOR ASHFORD: Well, if you do and if you come to the Legislature, Senator Chambers will be here. (Laughter) [DOMA]

GRIFFIN MIMS: Well, if I do, I will be very much looking forward to working with him. Thank you. [DOMA]

SENATOR ASHFORD: All right, let's see, ma'am in the back, one or the other, the lady here. Okay. [DOMA]

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AMBER DEE PARKER: Me? [DOMA]

SENATOR ASHFORD: Yes, you. I'm sorry, I wish I knew...I'm sorry, I don't know everybody's name. [DOMA]

AMBER DEE PARKER: (Exhibit 12) That's okay. Hi. My name is Amber Dee Parker. Thank you to members of the Judiciary Committee for the public hearing. I stand before you definitely on the opposite side of Senator Chambers and Senator Ashford. I, first of all, come before you as a woman who is passionate for God, passionate for my husband of almost 14 years come December. And one thing that comes about in all of this and hearing certain comments, Senator Chambers, that you've made and calling, I would say, myself would be included of the names that you had called, I had written a children's book based upon the Judeo-Christian family. This is a children's book entitled God Made Dad and Mom. And I hear a lot about discrimination being talked about today, of bullying. We hear about cyberbullying and different things. And there's a comment, and sad to say, I'm...but basically, the words that were said were homophobic, dumb, c-u-n-t, Christians go die in a house fire. If you guys want to Google my name, I would encourage you to. Everything of this children's book and what came of the inspiration was the Bible. Jesus is the Ancient of Days, beginning, middle, and end, New Testament and Old Testament. Anyone can use scripture. Satan used scripture and took it out of context in the Book of Matthew. But today I'm here to also discuss not only my personal testimony but the testimony of those who share similar religious beliefs of marriage between one man and one woman. And I do apologize, I printed out eight; I understand ten copies. One of the stories here is about an Oregon bakery owner who closed their business because it meant more to them to stand on their religious convictions of what the Bible says or their personal beliefs of marriage being between one man and one woman. And because of the discrimination laws in Oregon, basically, they closed their business. And this is my question to Senator Chambers and anybody else who is for redefining marriage: Do you believe that Christians or pastors who stand and speak that marriage is only between one man and



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one woman or who would say you cannot come into the congregation or be a part of the choir because this is an act of worship, as two heterosexual couples living together and practicing sexual relationships and the pastor knowing and saying, no, you got to step away? The other thing I want to say is if you redefine marriage in the state of Nebraska, look at California, AB 1266, what's going on and with the bathroom bill. It will go down into our public school systems. You will be putting people in the line of fire that believe in the natural way of marriage. We know that when a woman's womb is open, it is only in this way that family is created. I do thank you for your time and I would encourage you, because it's not only same sex that would take place but it would be bisexual and transgender and perceived gender identity, and it would lead our state into great confusion. And those are things, as the legislators, that you need to consider as well. Thank you. [DOMA]

SENATOR ASHFORD: Okay. [DOMA]

AMBER DEE PARKER: And I do have handouts. [DOMA]

SENATOR ASHFORD: Great. Okay, thank you. Yes, ma'am. Can you...? How many more testifiers do we have? Well, we've still got a few more. Okay. Good afternoon. [DOMA]

BARBARA GARD: (Exhibit 13) Chairman Ashford, members of the Judiciary Committee, my name is Barbara Gard. I live in north Omaha and am a professional educator with degrees in elementary education from California State University-Los Angeles, and educational administration from the University of Nebraska-Omaha. I have served as both a classroom teacher and a principal in California, Nebraska, and overseas. I'm here this morning to oppose any attempt to change the definition of marriage in the Nebraska Constitution. The U.S. Supreme Court decision on the Defense of Marriage Act affirmed the right of the state to define marriage, which the citizens of Nebraska did by a 70 percent margin in approving this constitutional

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amendment. There are those who try to frame their argument in favor of same-sex marriage as a battle over civil rights. It is not. Civil rights already exist. The discussion needs to be about the definition of marriage. Throughout history marriage has been defined as a covenant relationship between a man and a woman for the purpose of establishing a home and bringing up children who will be taught the moral standards of that particular society. Marriage is not about the committed, loving relationship between two adults. An enduring friendship is a committed, loving relationship between two people, but that does not make it a marriage. Marriage is about establishing a safe, nurturing, enduring home where a husband and wife come together in a sexual expression of a committed, loving relationship for the purpose of bringing forth children to carry on that heritage of love and commitment. Marriage is all about providing a safe environment for children to grow and develop into honorable, productive members of society. The bottom line is that men and women are equal under the law but they are not identical. They are different physically and emotionally. Men tend to focus on issues of justice and righteousness, while women tend to focus on mercy and caring. I would like to call your attention to a recent study published in the October 2013 edition of the journal Review the Economics of the Household analyzing data from a very large population-based sample. You have copies of that article which you can read in detail. The study evaluated a 20 percent sample of the Canadian census and came to the conclusion that a married mom and dad matter for children. Children of same-sex couple households do not fare as well. The sample is particularly relevant because same-sex couples in Canada have had access to taxation and government benefits since 1997 and to marriage since 2005. This study was able to compare side by side the young adult children of same-sex couples and opposite-sex couples, as well as children growing up in single-parent and other types of households. Three key findings stood out to the study author and economist, Douglas Allen. First of all, children of married, opposite-sex families have a high graduation rate compared to the others; children of lesbian families have a very low graduation rate compared to others. The other four types of household--common law, gay, single mother, single father--are similar to each other and lie between the two extremes. Secondly, this substandard

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performance cannot be attributed to lower school attendance or the more modest education of gay and lesbian parents. [DOMA]

SENATOR ASHFORD: Mrs. Gard. [DOMA]

BARBARA GARD: Yes. I'm sorry. [DOMA]

SENATOR ASHFORD: No, you're fine. [DOMA]

BARBARA GARD: I have at least five minutes worth... [DOMA]

SENATOR ASHFORD: I know you do and I appreciate that, but I think just kind of give me a concluding comment, if you would. [DOMA]

BARBARA GARD: Okay. Just very quickly, intact married mother and father households provide by far the best home environment for children to get the best education, which is the key to a successful future. Third and most surprising result is the impact of same-sex households on female children. Girls suffered far more from growing up in gay or lesbian households than boys did. Girls living in same-sex households are only 15 percent as likely to graduate as girls from opposite-sex married homes. Mothers and fathers are not interchangeably... [DOMA]

SENATOR ASHFORD: Okay. Okay, time out. Time out. I think we get your... [DOMA]

BARBARA GARD: Yes. [DOMA]

SENATOR ASHFORD: ...we get your point. Any questions of Mrs. Gard? The only comment I'd make is I'd hate to suggest to my wife, Ann, that justice is not a major concern of hers. But I know you were...you're comparing. But she... [DOMA]

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BARBARA GARD: I'm comparing a focus, okay? [DOMA]

SENATOR ASHFORD: No, I'm not disputing your point, but I'm just suggesting my wife Ann is...justice is a big deal in her life. [DOMA]

BARBARA GARD: Yeah. Yes. Absolutely. Absolutely. [DOMA]

SENATOR ASHFORD: Yeah. [DOMA]

BARBARA GARD: On the other hand, my daughter, mercy is not her strong suit. [DOMA]

SENATOR ASHFORD: Okay. [DOMA]

BARBARA GARD: But that's...we're talking in general terms. [DOMA]

SENATOR ASHFORD: Okay. Well, and everybody is...so everybody... [DOMA]

BARBARA GARD: Fathers and... [DOMA]

SENATOR ASHFORD: ...everybody is different, right? [DOMA]

BARBARA GARD: Yeah. Fathers parent differently than mothers do. [DOMA]

SENATOR ASHFORD: And the great thing about humans is that we are all a little different, each one of us, and we need to... [DOMA]

BARBARA GARD: Each is unique. [DOMA]

SENATOR ASHFORD: ...embrace all of that, right? [DOMA]

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BARBARA GARD: But the statistics show that children do better educationally...  
[DOMA]

SENATOR ASHFORD: No, I get your point. [DOMA]

BARBARA GARD: ...within married opposite-sex families,... [DOMA]

SENATOR ASHFORD: Part of the... [DOMA]

BARBARA GARD: ...and that has implications for the state because... [DOMA]

SENATOR ASHFORD: And I understand that. [DOMA]

BARBARA GARD: Yes. [DOMA]

SENATOR ASHFORD: I understand your point. And we don't really know much about same-sex marriages in Nebraska because we don't recognize them, so it's kind of hard to know how they do. [DOMA]

BARBARA GARD: By the same token, this has implications, even though this study was done on the Canadian census... [DOMA]

SENATOR ASHFORD: Oh, there you go. (Laugh) [DOMA]

BARBARA GARD: ...because the United States, the United States census does not ask the same kind of questions. [DOMA]

SENATOR ASHFORD: Okay. And I'm aware of the Canadian study, so. [DOMA]

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BARBARA GARD: So within the United States' census, to do a survey like this, you have to make assumptions about which are same-sex households,... [DOMA]

SENATOR ASHFORD: Right. [DOMA]

BARBARA GARD: ...which are... [DOMA]

SENATOR ASHFORD: Right. [DOMA]

BARBARA GARD: ...you know, where in Canada, part of their census, they asked people,... [DOMA]

SENATOR ASHFORD: Right. And they recognize gay marriage. [DOMA]

BARBARA GARD: ...did you grow up in a same-sex household and was it... [DOMA]

SENATOR ASHFORD: Okay. [DOMA]

BARBARA GARD: ...two male or two females? [DOMA]

SENATOR ASHFORD: Got it. [DOMA]

BARBARA GARD: So they have the data available for the study. [DOMA]

SENATOR ASHFORD: I appreciate it and thank you for... [DOMA]

BARBARA GARD: And it is a place where marriage has been in place... [DOMA]

SENATOR ASHFORD: Okay. [DOMA]

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BARBARA GARD: ...and so that has an impact, and marriages are accepted, which has an impact. [DOMA]

SENATOR ASHFORD: No, and your point, I understand your point. Thank you. [DOMA]

BARBARA GARD: Yeah. [DOMA]

SENATOR ASHFORD: Thank you. That was... [DOMA]

BARBARA GARD: Okay. Any other questions? [DOMA]

SENATOR ASHFORD: I don't think so. (Laugh) Thank you, Mrs. Gard. [DOMA]

BARBARA GARD: Okay. Okay, thank you very much for your time... [DOMA]

SENATOR ASHFORD: Okay. Thank you for your comments. [DOMA]

BARBARA GARD: ...and your attention. [DOMA]

SENATOR ASHFORD: Yes. Come up, this right here and then...okay, she is first, and then second. Okay. Again, I hate calling everybody "she" and "he" and all that, but I... [DOMA]

ERIN PAYNE: Senators, committee, thank you so much for having me today. Sorry to jump in front of you guys. I need to get back to Omaha to get to work. [DOMA]

SENATOR ASHFORD: Okay. [DOMA]

ERIN PAYNE: I'm kind of here on three different layers. I don't have a speech of an endless onion, it seems. One, I am a product of a... [DOMA]

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SENATOR LATHROP: Can you give us your name? [DOMA]

ERIN PAYNE: Erin Payne. I'm so sorry. [DOMA]

SENATOR LATHROP: Okay, Erin. Thanks. [DOMA]

ERIN PAYNE: Erin Anne Payne. First, I am a product of the foster system. Second of all, I am a lesbian woman in a committed relationship, joyfully for the most part, raising a two-year-old daughter. And then third, that kind of ties into my last layer of the onion, my experience in the foster system from '95 to '97 was not great. I'm sure you're all aware of the problems that it's had and faced, and the home that I was in was shut down and I was sent to the YES house and through really no fault of three out of the four girls that I lived with. These were kids that were just displaced by problems within the household. So that was generally a negative experience. In my 20s, I went to go get a foster care license, and realized that my sexual orientation disqualified me from fostering a child. I'm now in a position where water chemistry and the chemistry of making babies is not quite the same thing, so in a joyful and loving way, my partner and I brought about our two-year-old daughter, and I'll spare you the details. And we've been doing that ever since. We're looking so much forward to adopting from the Nebraska foster system, as I am a Nebraskan. I'm made out of the water and the dirt and the air and the sky of this beautiful sea, and I'm also staying here as opposed to heading to one of the coasts to try to hold that down. I see maybe a yellow diamond in my future, and I'm really looking forward to expanding my family. We've chosen not to have any more biological children. There is a lot of expense incurred when you have a child, go through the paternity stuff, and then adopt through the other parent. It's expensive. There's a lot of litigation. So there's that part. If you adopt from the system, they have healthcare, which includes mental healthcare, until they're 18 years old. But that is exclusive for heterosexuals only. I'm hoping that will change in the next couple years so that we can expand our family. Thirdly, having been in the foster system, being a 33-year-old woman and



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looking to expand my family with my partner that I will hopefully be married to when this muck kind of clears up a little bit and things are a little bit more defined, because I love the contract just like anybody else with a ring, I'm hoping to see that clear up in the next couple of years. And lastly and most importantly, I don't necessarily know that this is about a particular piece of scripture or one person's particular opinion about another person. At the end of the day, it's about our children. It speaks to who we are as a family of Nebraskans in the way that we treat our children in the foster system. When they age out, get addicted to things, and don't know how to balance a checkbook,... [DOMA]

SENATOR ASHFORD: Well, thank goodness for Senator McGill's bill so that you don't age out quite as quickly. [DOMA]

ERIN PAYNE: ...then that doesn't work. But if we can take some productive families and homes and prevent those children from ending up in that situation, I think that would be a fantastic thing and I am all for it. [DOMA]

SENATOR ASHFORD: Well, you have advocates. Senator Coash and Senator McGill, who work tirelessly to...on the foster care system and have... [DOMA]

ERIN PAYNE: Thank you. [DOMA]

SENATOR ASHFORD: ...made significant improvements. And what you're talking about is something we're aware of. [DOMA]

ERIN PAYNE: Thank you. [DOMA]

SENATOR ASHFORD: And Senator Christensen as well has similar experiences.  
[DOMA]

ERIN PAYNE: I'm so glad to live in this time and with you people. Thank you so much.

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[DOMA]

SENATOR ASHFORD: Yeah. Well, they do a good job. So thank you. All right, yes, sir.  
[DOMA]

PERRY GAUTHIER: Thank you, Senator, for having me, and committee. Thank you for holding this and hearing the people and the various views expressed. I am Perry Gauthier and I'm an ordained minister. As many of you know, I work with Capitol Ministries Nebraska and have responsibilities in Washington, D.C., as well, before our Congress. And we have about 50 ministries worldwide, South America, North America, in D.C., trying to bring the teaching of the word of God and the gospel of Jesus Christ into the capitols of our country and even the world. And we are warmly welcomed in those settings, but I do not speak on behalf of Capitol Ministries but rather just as a Christian and as a citizen of Nebraska. And a few thoughts I'd like to share along the lines of the moral component of this debate would be as follows: Our honorable President, Barack Obama, said eight years ago, before he was elected, to exclude morality from the public realm is a practical absurdity because lawmaking is in fact the codification of morality. And I believe the President is absolutely right. That is what lawmaking is, the codification of morality. So the only question really is, whose morality? And that's why we have discussions, debates like this. I and tens of thousands of Nebraskans that I know hold dear Christianity in our hearts. It is our core value. I respectfully disagree with the honorable Senator Chambers in his comment that Christianity is a white man's religion. And God created all race and never condemns any race in any fashion. And so Christianity is a faith for all peoples. The hypocrisy of real and professing Christians and even Jews in the Old Testament does not invalidate the precepts set forth in the New Testament or the Old Testament, nor do the sins of the Founding Fathers or even any honorable officials in our government invalidate the legal and moral code to which they submit. Romans 13:4 says that God gave government to promote good and punish evil, not to promote evil and punish good. So again the question is, whose morality and how is morality defined? Truth is that which conforms to

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reality and those of us who believe in a creator God believe that God made the world and has rights of ownership and has spoken to the morality of the homosexual issue. And there are passages, which I don't think I have time to even touch, in the scripture that speak to this, and so I'll skip that. But pastorally speaking, men and ministers would disagree with me on this point, and some will vocalize that, but they cannot do so without ignoring the passages of scripture that speak directly to homosexual sin as well as heterosexual sin. And most sin, it is my firm belief, committed in all of world history is heterosexual. And so this is an issue of is someone better or not. I had a conversation with a longtime lesbian friend of mine who is an atheist and I told her that this isn't about who's better or not, because I commit sin every day, but let's let God define, according to scripture, what he says is sin and what is not, so. [DOMA]

SENATOR ASHFORD: Okay. Thank you for that. Just for the record, what scripture in the New Testament are you talking about? [DOMA]

PERRY GAUTHIER: Primarily the strongest one...well, there's two actually: Romans 1:24-32... [DOMA]

SENATOR ASHFORD: Okay, and what's the other? [DOMA]

PERRY GAUTHIER: ...and then 1 Corinthians 6:9-11 where homosexuality... [DOMA]

SENATOR ASHFORD: That was Paul. [DOMA]

PERRY GAUTHIER: Pardon? [DOMA]

SENATOR ASHFORD: Written. [DOMA]

PERRY GAUTHIER: Written by Paul, yes. [DOMA]

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SENATOR ASHFORD: And when was that written? [DOMA]

PERRY GAUTHIER: When was Romans... [DOMA]

SENATOR ASHFORD: When was Paul's letters to the Corinthians? When was that?  
[DOMA]

PERRY GAUTHIER: Oh, the date of that letter was probably 60 A.D. [DOMA]

SENATOR ASHFORD: Okay. So it was 60 years after Jesus...or, I'm sorry,... [DOMA]

PERRY GAUTHIER: 30. [DOMA]

SENATOR ASHFORD: ...30 years... [DOMA]

PERRY GAUTHIER: Yes, sir. [DOMA]

SENATOR ASHFORD: ...after Jesus was crucified. [DOMA]

PERRY GAUTHIER: Yes, sir. [DOMA]

SENATOR ASHFORD: Okay. All right. Thank you. [DOMA]

PERRY GAUTHIER: Yes. [DOMA]

SENATOR ASHFORD: That's all I have. Thanks. Anybody else? Thanks, Pastor.  
[DOMA]

LUCAS PETERSON: Lovely and distinguished Judiciary Committee, my name is Lucas Peterson, that's L-u-c-a-s P-e-t-e-r-s-o-n. I like to go by Luke. And I live here in Lincoln,

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but I was born and raised on a farm near Phelps County, Nebraska. And I'm not a lawyer. I don't have my Gucci couture going on and I also don't have any polo, so I feel a little lame in here. But I came to talk about my story because I remember when Initiative 416 was enacted. I was raised in a conservative Republican family actually. My parents are still registered Republican and the only reason why they probably still are is they believe in pro-life issues, which is fine. But I was instilled at a very young age that voting gives you voice to your government, and every election cycle when I was raised I would always ask my parents, how did you vote? And I remember Initiative 416 and my mom said she voted for it; that she couldn't fathom to same-sex couples getting married. And I was deeply in the closet at the time. I believe I was a junior in high school and I was very ashamed at my mother at that point. Well, things have changed, obviously. I came out as openly gay when I was in college and I have recently met someone that my parents always ask questions over. In fact, when I call my mom, she always wants to know how Michael is doing before she asks how I'm doing, and it's quite interesting. But the really funny part about this whole dialogue is when my mother finally realized her fault in voting for Initiative 416, she realized that she wouldn't see her son getting married and she realized that she wouldn't see her son being happy, and it's really hard for her because she told me that in tears. And it was very hard for me to conceptualize how guilt-ridden she was, as a mother. And I'm not going to fault the people behind me who I would say are biased against gays and lesbians, not because they have a visceral distaste for what I do. It's just because they were told to be biased. And it's really hard to listen to these things, but I do want to say that it's possible, because my parents were very committed in the Christian faith. In fact, they named me after the Gospel of Luke, so I'm very well-versed in some biblical terms. But I also like to say that I never felt closer to God after I lost my religion. And it's really hard to listen to people who use religion in terms of letting love of people get in the way. So I came today to tell people that it's possible to let go of your fears and to let go of your bias, and that was the message that I wanted to share. [DOMA]

SENATOR ASHFORD: Thank you, Luke. Any questions of Luke? Seeing none, yes.

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(See also Exhibit 14) [DOMA]

JAMES BOWERS: (Exhibit 15) Chairman Ashford and members of the Judiciary Committee, my name is James Michael Bowers, B-o-w-e-r-s, and I am testifying today on behalf of the National Association of Social Workers, Nebraska Chapter, in support of the Windsor Supreme Court ruling. The NASW is of the position that same-gender sexual orientation should be afforded the same respect and rights as other-gender orientation. Discrimination and prejudice directed against any group is damaging to the social, emotional, economic well-being of society as a whole. Children are an example of a group harmed by upholding the position that same-gendered adults cannot enter into marriage. For two adults who have children, it creates a list of uncertain ties between nonbiological parent and child. Currently, same-sex widows are not entitled to the protection of survivor benefits. And without marriage, there is uncertainty regarding decision-making ability for children in situations, like medical care. And since in Nebraska same-sex parents cannot adopt, a child's placement may become in jeopardy if the biological parent dies, all because they do not fall under the definition of family. Often an argument for discriminating against same-sex marriage is on the basis of protecting children. However, sexual orientation has been found to have no effect on a parent's ability to raise a child in multiple domains, including emotional functioning, behavioral adjustment, and cognitive ability. Same-sex parents are just as capable of raising children as their heterosexual counterparts. And similarly, research shows that children who are raised by people who identify as lesbian, gay, bisexual, or transgendered are not more likely to identify as LGBT themselves. Children and families have much to gain by allowing marriage between same-sex couples and much to lose by continuing to discriminate on the basis of sexual orientation. By ensuring all children have the opportunity to succeed, we are creating a stronger community, and we are not strengthening our community by enacting laws that create a second tier of families and marriages. Have any questions that I'd be willing to answer? [DOMA]

SENATOR ASHFORD: I don't see any. [DOMA]

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JAMES BOWERS: Awesome. Thank you so much. [DOMA]

SENATOR ASHFORD: Thank you. Anyone else? Okay. Do any members of the committee wish to... [DOMA]

SENATOR MCGILL: Don't do that. (Laugh) I'm just (inaudible) I meant to him. [DOMA]

SENATOR ASHFORD: Oh. Anyway, well, thank you all for coming and I understand that those in this room have strongly held beliefs on all sides of this issue and I am very pleased that you took the time to come and express those views in this hearing. Thank you very much. (See also Exhibits 16, 17, 18, and 19) [DOMA]