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Judiciary Committee  
March 18, 2015

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[LB114 LB187 LB358 LB422 LB463]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 18, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB422, LB114, LB187, LB358, and LB463. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: The bewitching hour has arrived. And we're one short on senators, so I'll go through the preliminaries and, that way, I hope the...we get one more for a quorum here. Welcome to the Judiciary Committee. My name is Les Seiler. I'm Chairman of the committee. And sitting on my far right is Matt Williams of Gothenburg. Next to him will be Adam Morfeld of Lincoln. Next to him will be Bob Krist of Omaha. Next to him is Ernie Chambers from Omaha. Our legal counsel is Josh Henningsen. On the far left is Senator Dr. Laura Ebke from Crete. Senator Patty Pansing Brooks from Lincoln will be next to her. Senator Colby Coash from Lincoln will be next to...there he is. Now we've got a quorum. And the committee clerk is Oliver VanDervoort. Our two pages, who play a very important part, are Drew and Jonathan. When you...first of all, we want you to make sure you sign up your...if you're planning on speaking, make sure you sign up your speaker's sheet. And then when you come up, hand...one of the pages will come over and get your speaker's sheet. And if you have any written materials to hand out, they'll take those and hand them out to the committee. Oh, one of the things that people leave off of the sign-up sheet is their community, where they're from. They get their addresses down, but they leave off the town and the state. When you come up to the microphone, slide up close to it because it's being transcribed and if you sit back too far the transcribers cannot pick up your testimony. And we want every testifier testimony and exhibits to be made part of the record. Now, if you do not want to speak but you want to sign up regarding a position on any of the bills, you can do that out in the hallway and you...and that will be made part of the record. I was kidding the other day that if your boss is looking at where you were, you can prove it by that sign-in sheet. But the last thing is silence your phones. And I normally do the same, but I left mine in Hastings, so. But silence your cell phones. I think we're ready to go. Sara Brown (sic), Senator Sara Brown (sic). We are taking the... [LB422]

SENATOR COASH: Sara Brown? [LB422]

SENATOR SEILER: Oh. (Laugh) Sara Brown (sic)...(laughter) Howard. I'm sorry. I was looking at something else. LB422 will be the first bill and we'll follow the agenda as printed. Sorry, Senator. Go ahead. [LB422]

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SENATOR HOWARD: Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Sara Howard, S-a-r-a H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I bring before you LB422. LB422 provides courts the statutory authority to order the payment of costs incurred in a very narrow window of cases, cases where guardians ad litem, or GALs, are appointed for proceedings to establish a guardianship appointment for a minor child. There are really two situations where a GAL would be necessary when appointing a guardian for a minor. The first situation is where there's a question about the guardian and placement. The GAL is appointed to investigate and report back to the court if the placement and the guardian are appropriate. The second situation, which is more frequent, is a guardian has been appointed and they stop filing reports with the court and do not respond to show-cause orders. In some situations, even the mail gets returned. The courts have to be able to appoint a guardian ad litem in order to find the minor. Some counties have been paying for the GAL but, under the case law as it is now, it is clear they do not have to, especially because there's no statutory authority to make the counties pay. That's why legislation is so important. The courts need to make sure minors are being placed in appropriate homes and, if the guardians disappear with the minor, we have a way to find the minor. This bill is a recommendation of the Supreme Court's Commission on Guardianships and Conservatorships. And two testifiers following me today who are members of that commission will be available to answer any questions you may have. LB422 was drafted in response to the 2013 Supreme Court case In re Guardianship of Brydon P., where the Nebraska Supreme Court determined that there is no statutory authority or uniform course of procedure that authorizes a county court to assess fees or costs against anyone in a guardianship proceeding for a minor. This could result in an interpretation that a court does not have the ability to appoint a guardian ad litem for a minor in a guardianship case because there is no authority to pay the GAL for the work that they do. LB422 was drafted to give courts the same authority to order payment of cost for a minor as it already exists for cases determining the guardianship of a vulnerable adult under Nebraska Revised Statute Chapter 30-2620.01. Such costs may include the fees for an attorney, a guardian ad litem, a physician, and a visitor appointed by the court for the minor. The bill also allows for the payment of such costs from the estate of the minor in the few cases where such estate may exist. An estate is unusual unless they are the recipient of funds from a settlement or an inheritance. Thank you for your time and attention to this matter. I would urge the committee to advance LB422 to General File and I would be happy to try to answer any questions you may have. [LB422]

SENATOR SEILER: Any questions of Senator Howard? Seeing none, thank you very much. Would you call your first two witnesses, please,... [LB422]

SENATOR HOWARD: Certainly. [LB422]

SENATOR SEILER: ...one at a time. [LB422]

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WILLIAM LINDSAY: Senator Seiler, members of the Judiciary Committee, my name is William Lindsay, Jr., W-i-l-l-i-a-m L-i-n-d-s-a-y. I'm here on behalf of the Nebraska State Bar Association. I'm also a member of the Nebraska Supreme Court Guardianship and Conservatorship Commission. I'm chair of the protection of vulnerable adults subcommittee and I'm a member of our forms and rules subcommittee as well. This was brought to our attention by the judge who was involved in the Brydon P. case, the trial court judge, that there is no statutory authority to pay from the county for the appointment of a guardian ad litem, a lawyer, a physician, or a visitor. These are all people that are involved in investigations to aid the court in the process of taking care of getting a guardian appointed and taking care of minor children. We believe that it's appropriate to mirror what's already in the statutes for adults. A vulnerable adult, we already have this authority. We basically took the same language that we have for vulnerable adults to apply to children. I would urge your support of LB422 and I would be happy to answer any questions you may have. [LB422]

SENATOR SEILER: Questions of...Senator Williams. [LB422]

SENATOR WILLIAMS: Thank you, Senator Seiler. Mr. Lindsay, just one question. Right now, since there is not statutory authority, what happens? [LB422]

WILLIAM LINDSAY: Well, some counties have been paying this. The Supreme Court's decision in Brydon P. was actually the second decision. There was a first one in 2001 on a similar statute. And the Brydon P. decision, they said that we will go along...you know, we said this in 2001, we're saying it again today and, since the Legislature has not acted to fix this, we're going to assume that that's what the Legislature intended. So basically, it's voluntary on the part of the counties and we're trying to make it so that a judge doesn't feel hesitant to appoint somebody in a case where he or she needs to appoint somebody. [LB422]

SENATOR WILLIAMS: Thank you. [LB422]

SENATOR SEILER: Senator Chambers. [LB422]

SENATOR CHAMBERS: Mr. Lindsay, of what does a child's estate consist? [LB422]

WILLIAM LINDSAY: In most cases, nothing, Senator. If the child, say, his parents had died, there may be an estate, the inheritance that could be received, and that could be used to pay the fees of the particular people appointed by the court. [LB422]

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SENATOR CHAMBERS: So this primarily would be something the counties would pay, being practical? [LB422]

WILLIAM LINDSAY: Being practical, I was speaking to one of our judges and was told that probably 99 percent of the time it's going to be the county. [LB422]

SENATOR CHAMBERS: Okay. I just wanted the information. Thank you. [LB422]

WILLIAM LINDSAY: Thank you, Senator. [LB422]

SENATOR SEILER: Any further questions? Thank you, Senator (sic). [LB422]

WILLIAM LINDSAY: Thank you. [LB422]

SENATOR SEILER: The next expert witness. [LB422]

SUSAN BAZIS: Chairman, members of the Judiciary Committee, my name is Susan Bazis, B-a-z-i-s, and I'm a Douglas County Court judge. I'm here in a neutral capacity on behalf of the Guardianship and Conservatorship Commission, which I cochair, and the County Judges' Association. I'm here to talk about how the bill would affect the courts. And I want to first thank Senator Howard for introducing this bill because it is vital to the court's ability to do their job. LB422 gives the court the ability to pay a guardian ad litem it appoints for a minor in a probate guardianship. Right now the court can appoint a guardian ad litem but, unless there is money for the ward's estate, there is no way to pay the guardian ad litem. In the majority of the cases, the minor does not have an estate. Senator Howard already talked about the two situations, which are, first, if there is a question about the proposed guardian or the placement of the minor, the court appoints a guardian ad litem to investigate and then report back to the court if the placement and/or the guardian is appropriate. The second situation is more frequent, unfortunately, which is where a guardian has been appointed and stops filing the annual reports and does not respond to the court's show-cause orders. In some situations we do get mail returned with no forwarding address, so we have no idea where that minor is. The courts have to be able to appoint a guardian ad litem in order to find the minor child. Both of these situations are occurring statewide. Some counties, as we've mentioned, have been paying the GAL fees, but this Brydon P. case has made it clear that the only way a guardian can...guardian ad litem can get paid is by the minor's estate because there is no statutory authority to make the counties pay. This is why this legislation is so important. The courts need to make sure minors are being placed in appropriate homes. And if guardians disappear with the minor, we have to have a way to find them. The proposed legislation is exactly what is already in place for adults'

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guardianships and conservatorships that are provided for in the statutes. Thank you for your time. If you have any questions, I'd be happy to answer them. [LB422]

SENATOR SEILER: Any questions? Thank you, Your Honor, for appearing. [LB422]

SUSAN BAZIS: All right. Thank you. [LB422]

SENATOR SEILER: One thing I'll remind...now that we're through the experts, we are on the light system. Green, you've got plenty of time to go. Yellow is getting one minute left. Red: stop. We want you to stop there and we'll...one of the other senators may ask you to continue. But, please, stop when the red comes on. Next proponent of the will...or of the...proponent of the testimony. Sorry. Anybody further in favor of this bill? Anybody opposed to this bill? Anybody in the neutral? You may waive...or closing? (Laughter) I thought you would. The transcript is now closed. The documents that have been submitted for support and the sign-in will be made part of the record. (Exhibit 1) Thank you, Senator Howard. [LB422]

SENATOR HOWARD: Thank you, Senator Seiler. [LB422]

SENATOR SEILER: Next bill is LB114. Good afternoon, Senator. [LB114]

SENATOR McCOY: Good afternoon, Chairman Seiler and members of the Judiciary Committee. For the record, my name is Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District here in the Legislature. And I am here this afternoon, as Chairman Seiler mentioned a moment ago, to introduce LB114 to you, which would require abortion clinics who perform five or more abortions a month or one or more second- or third-trimester abortions be defined as an ambulatory surgical center. Now some might ask, well, if we're going to talk about rules and regulations about health clinics or ambulatory surgical centers, that would...one would assume that that would mean typically we would be talking about a bill that would be in front of the Health and Human Services Committee. However, we are here this afternoon, so I'm not going to go through every line-item difference between health clinics and ambulatory surgical centers. There are a number of people who will testify behind me this afternoon. But I will go into a little bit of why I think that this is a bill that's worthy of discussion this afternoon and why I brought this bill. It came to my attention and our attention in our office that, some number of months ago, we have a situation currently in Nebraska statute where abortion clinics aren't even considered health clinics unless a certain number of abortions are performed and, of course, in the hierarchy of the Health and Human Services Department, how they rank hospitals and ambulatory surgical centers and then health clinics. And in light of the fact that I think all of us, no matter where you stand on the divisive issue of abortion, and I happen to be prolife, I think would we would agree that we would want anyone who would enter the doors of an abortion clinic to hopefully

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be...have the same standard of care that they would receive at any other clinical environment that you would encounter across Nebraska. That's why I bring this bill before the committee today. I believe it's important that we correct this situation and make certain, sure that abortion clinics have all the procedures in place an ambulatory surgical center does so that, if there are complications that arise from any procedure that might take place, that we're making sure that all attention is paid to make sure that those women in those kind of situations are cared for in the best way possible. And there are some key differences, a couple of which I'll outline, that are very different when it comes to health clinics versus ambulatory surgical centers, one being just the length between what happens in the case of an emergency and emergency equipment. Many people I would guess don't realize--I certainly didn't until I looked into this a little further--that ambulatory surgical centers have to have a minimum level of equipment in case there's a complication with a patient that would include a ventilator, assistance equipment, a cardiac defibrillator. No requirements like that take place with a health clinic. I think that that's very important and one that we really...bears looking at and making sure that we are holding all clinics in this type of situation to a similar standard. So that's why I bring LB114 to you today. And I mentioned there will be those that will testify behind me that I'm sure there will be questions directed to. I'll be happy to take any questions. But again, as a husband and a father of three daughters, this is something that means a lot to me that I think that really some attention should be paid to this issue going forward. And with that, I'd take any questions if there are any. [LB114]

SENATOR SEILER: Questions? Senator Chambers. [LB114]

SENATOR CHAMBERS: Senator McCoy, this type of bill has been offered in other parts of the country, hasn't it? [LB114]

SENATOR McCOY: I think...believe, Senator Chambers, there are other states where this issue has been touched on. I don't...I can't testify as to whether or not the bill has been constructed in the same way. [LB114]

SENATOR CHAMBERS: No, I'm not going to ask you any questions like that. This bill, this type of bill, is designed to make it as difficult as possible for a woman to get an abortion, and these issues have been argued in courts. So in your view, will this bill, if it's taken, if it becomes law, make it more difficult for a woman to obtain an abortion in Nebraska? [LB114]

SENATOR McCOY: Well, clearly, Senator Chambers, as I said at the outset, I am very much prolife and I believe that we should be doing everything, in my opinion, to reduce the number of abortions, not just here in Nebraska but across the country. At the same time I believe that we shouldn't have a different standard when it comes to health standards for abortion clinics than

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what we have for any other clinic across the state. So I believe that we should merely bring up the level of evaluation of abortion clinics to what we would have for any other clinic across the state in the same way that ambulatory surgical centers are evaluated and have strict guidelines by Health and Human Services that they must perform work by. I think that's very important. It's...as I said, I believe it's important, no matter where you stand on the issue of abortion. [LB114]

SENATOR CHAMBERS: How important do you consider this bill itself to be? [LB114]

SENATOR McCOY: Well, I wouldn't bring it here today, Senator Chambers...if you look at the gadget, as you call it, you'll see that I typically don't introduce very many pieces of legislation. We tend to spend time on legislation. That may mean that legislation stretches over a period of several sessions, depending on when in the biennium legislation is introduced. But I am not a senator, although I don't believe there's anything wrong with this, that brings dozens of bills per session, nor are you, for that matter, I don't believe. Typically, you tend to give thoughtful consideration to pieces of legislation and spend a great deal of time working on them. So this is a piece of legislation that I do care about. [LB114]

SENATOR CHAMBERS: But you didn't prioritize it, did you? [LB114]

SENATOR McCOY: I didn't prioritize it this session, no, I did not, Senator Chambers, for the reason that I believe that the committee process must be respected and I do respect the committee process. The hearing today, as you know, is after the priority bill deadline and I think that we respect the committee process enough. And I believe this is a very important issue, but it's one that I didn't feel comfortable prioritizing a bill until it had, had a public hearing. [LB114]

SENATOR CHAMBERS: But you did prioritize a bill. [LB114]

SENATOR McCOY: Did I prioritize a bill this session? [LB114]

SENATOR CHAMBERS: Uh-huh. [LB114]

SENATOR McCOY: Well, of course, as did you. [LB114]

SENATOR CHAMBERS: And it doesn't relate to women's health, does it? [LB114]

SENATOR McCOY: It does not. [LB114]

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SENATOR CHAMBERS: It relates to making public certain votes by political subdivisions or school boards or their officers. [LB114]

SENATOR McCOY: It does. [LB114]

SENATOR CHAMBERS: Senator McCoy, it is so tempting, but today I'm going to resist it. That's all that I have to ask of you. Thank you. [LB114]

SENATOR SEILER: Senator Morfeld. [LB114]

SENATOR MORFELD: Senator McCoy, are there any specific medical instances that occurred here in Nebraska that led you to bring this legislation? [LB114]

SENATOR McCOY: Well, there have been instances, Senator Morfeld, and there will be those behind me that I imagine will outline some of those instances. [LB114]

SENATOR MORFELD: Okay. And one of the things that concerns me a little bit about this is how it's singling out particular clinics when we have other clinics that perform invasive procedures, not abortions but invasive procedures as well, but we're not making them ambulatory...this is only focused on clinics that perform abortions, isn't it? [LB114]

SENATOR McCOY: Well, Senator Morfeld, no, I don't believe that to be true, in my opinion. If you look at the actual Health and Human Services regulations, clinics that perform procedures like what are performed at abortion clinics, they're considered to be ambulatory surgical centers. But we have carved out a different subset, if you will, in the regulations for abortion clinics for, I suppose, a variety of reasons. And I think that if you had any other clinic, loosely defined, that was performing the type of procedures anywhere in the state of Nebraska that wasn't an abortion clinic, by definition they would be an ambulatory surgical center. [LB114]

SENATOR MORFELD: Thank you. [LB114]

SENATOR SEILER: Any further questions? Do you have expert witnesses that you want to call first? [LB114]

SENATOR McCOY: There are four people that will testify behind me, Senator Seiler. [LB114]

SENATOR SEILER: Okay. Do you have any particular order? [LB114]

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SENATOR CHAMBERS: But I have a colleague who wants to ask a question. [LB114]

SENATOR SEILER: Oh, I'm sorry. I'm sorry. Go ahead. [LB114]

SENATOR WILLIAMS: I'm sorry. Thank you, Chairman Seiler. Senator McCoy, just one quick question: Can you, or will your experts be able to, talk about the needed equipment that would be necessary to move from one type of clinic to the ambulatory clinic? [LB114]

SENATOR McCOY: I'd be happy to address that a little bit if you'd like, Senator Williams. [LB114]

SENATOR WILLIAMS: Okay, that would be fine. Thank you. [LB114]

SENATOR McCOY: And there, as you can imagine, there is a huge volume of guidelines that go along with this. But just in short, and I'll...and there are a number of them. But if you're talking about emergency equipment, as I mentioned earlier, ambulatory surgical centers...and this is just one particular category of a difference. Ambulatory surgical centers have to have a minimum supply of emergency equipment available in their operation or procedure rooms--and I'm reading right from the guidelines--including an emergency call system, mechanical ventilator assistance equipment, cardiac defibrillator and monitoring equipment, tracheostomy set, and necessary emergency equipment and supplies. So there are a number of pieces of equipment, if you will, medical equipment. That's a difference. That's just in the emergency equipment environment. [LB114]

SENATOR WILLIAMS: And is there other equipment besides emergency equipment? [LB114]

SENATOR McCOY: There may be, Senator Williams. The guidelines doesn't...they don't really call that out specific. Instead, they set forth...for instance, anesthetic risk and evaluation would be one particular guideline that a medical professional would evaluate someone's reaction to anesthesia. And I don't...the guidelines don't particularly call out whether that requires any special equipment for that. I'm not a medical professional, so in the ordinary course of doing business in that arena, I'm not sure whether that requires any additional equipment or not. [LB114]

SENATOR WILLIAMS: Okay, thank you. [LB114]

SENATOR McCOY: You're welcome. [LB114]

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SENATOR SEILER: Senator Chambers. [LB114]

SENATOR CHAMBERS: Senator McCoy forced my hand. Senator McCoy, you have been in the Legislature and you have supported and offered various bills that can be called antiabortion or whatever term is applied to bills that are brought by those who don't think a woman should be allowed to have an abortion. Whenever something would happen, if it did, that was serious, those organizations would make sure that the media knew about it. Have there been outbreaks of serious medical problems, because these conditions had not been imposed on abortion clinics, that you know of? [LB114]

SENATOR McCOY: Well, Senator Chambers, one thing I think it's important to note is that, when it comes to reporting, it's self-reporting by abortion clinics. And as you characterize an outbreak of situations, I don't know what you would define as an outbreak, so... [LB114]

SENATOR CHAMBERS: Well, let me change that word. How many instances are you aware of which occurred that could not be addressed in one of these abortion clinics because these standards were not in place? [LB114]

SENATOR McCOY: Well, that would depend, Senator Chambers, on whether someone filed a report, whether a clinic filed a report. [LB114]

SENATOR CHAMBERS: That's why I ask, how many are you aware of? [LB114]

SENATOR McCOY: I'm not aware of a specific...I don't know the specific number. Depending on how many years you want to go back, it would depend on... [LB114]

SENATOR CHAMBERS: No, no, I don't want you to do that. I'm just asking for your personal knowledge that you have now. [LB114]

SENATOR McCOY: There are instances. [LB114]

SENATOR CHAMBERS: When... [LB114]

SENATOR McCOY: It depends on what kind of time frame you're going to look at. [LB114]

SENATOR CHAMBERS: When people brought this bill to you, did they give you examples that you could present to the committee to show the need for a bill like this? [LB114]

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SENATOR McCOY: Yes, Senator Chambers. [LB114]

SENATOR CHAMBERS: Well, could you share with me those that they told you about?  
[LB114]

SENATOR McCOY: There will be those behind me that have more of an intimate knowledge of those instances that would be better suited to answer those questions, Senator. [LB114]

SENATOR CHAMBERS: Are you a football fan? [LB114]

SENATOR McCOY: Oh, of course, Senator Chambers. We live in Nebraska. [LB114]

SENATOR CHAMBERS: Do you know who the young man from Nebraska, who went to Kansas, was known as "The Kansas Comet" or something like that? [LB114]

SENATOR McCOY: I... [LB114]

SENATOR CHAMBERS: Gale Sayers, have you heard of him? [LB114]

SENATOR McCOY: Yes. [LB114]

SENATOR CHAMBERS: He is one of the most elusive runners ever (laughter) to wear football togs. (Laughter) [LB114]

SENATOR McCOY: Incidentally, Senator Chambers, my wife Shauna's grandfather coached Gale Sayers at Omaha Central football, so I am very acquainted with him. [LB114]

SENATOR CHAMBERS: So you know at least I'm not making that up. [LB114]

SENATOR McCOY: That's true. [LB114]

SENATOR CHAMBERS: And here's what I'm getting at: I've been in the Legislature a lot of years and I've been exposed to a lot of this type of legislation. And every time a new gimmick or scheme is hatched somewhere else in the country, it winds up coming to Nebraska, not because conditions in Nebraska require it, but it's a national move that's underway. This is a part of such a move, isn't it, if we're going to be very frank, because it did not originate in Nebraska? [LB114]

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SENATOR McCOY: Well, that's actually not the case, Senator Chambers. We didn't pattern this legislation after any other legislation across the country. This is something we've been working on for a great deal of time. And as you know, we are unique in Nebraska, Senator Chambers, and this legislation is legislation that I believe is important for our state and... [LB114]

SENATOR CHAMBERS: Unique in what regard? [LB114]

SENATOR McCOY: I think it's uniquely crafted to fit our state. Health and Human Services regulations are very different in all different 50 states and, as such, we deal with situations here that some states don't deal with, and other states have situations in which they regulate medical clinics and hospitals in many different ways. And legislatures have various forms of oversight over those types of medical environments. [LB114]

SENATOR CHAMBERS: But...okay, then... [LB114]

SENATOR McCOY: So this legislation, Senator... [LB114]

SENATOR CHAMBERS: I don't want to stretch mine and yours too long because you have a lot of people who want to speak, but I'm trying to get an answer. This kind of legislation would not have been brought by you had it not been delivered to you by those who are opposed to abortion. Is that correct or is that incorrect? [LB114]

SENATOR McCOY: We came up with this legislation, Senator Chambers. [LB114]

SENATOR CHAMBERS: Say it again? [LB114]

SENATOR McCOY: We authored this legislation in my office. [LB114]

SENATOR CHAMBERS: I thought you said it was brought to your attention and the attention of your staff, but I won't pursue it because the... [LB114]

SENATOR McCOY: No, through our own research. [LB114]

SENATOR CHAMBERS: Okay, the record will be clear on that. But you would like to make it as difficult as possible for abortions to be performed in Nebraska. Is that true or false? [LB114]

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SENATOR McCOY: Well, I'll answer that in this way, Senator Chambers, because I don't think a true or false answer in that regard is... [LB114]

SENATOR CHAMBERS: Well, is it yes or no? [LB114]

SENATOR McCOY: ...or a yes or no answer. If you'll allow me to answer that question, I'd be happy to, but I don't think you can answer it in a yes or a no or a true or false way. [LB114]

SENATOR CHAMBERS: So you don't want to make it as difficult as possible. [LB114]

SENATOR McCOY: I am a prolife person, Senator Chambers. I was before I arrived in the Legislature and when I am gone from the Legislature, I'll still remain a prolife senator. And I'll do everything I can to make sure that we reduce the number of abortions and value life from conception. [LB114]

SENATOR CHAMBERS: I want to see if this statement that's been attributed to you is correct. You are prolife from conception to natural death. Did you make that statement? And if you did, you don't really mean that, because you're in favor of the death penalty. So you would put a proviso into that: You're prolife from conception until natural death with the exception of judicial executions. That would be an accurate statement of your position, wouldn't it? [LB114]

SENATOR McCOY: Well, those are your words, Senator Chambers, not mine. [LB114]

SENATOR CHAMBERS: That's why I'm asking you. Is that an accurate statement of your position? And if it's inaccurate, would you correct me. [LB114]

SENATOR McCOY: Well, I believe in life from conception to natural death. In the case of crimes in which people commit atrocities against their fellow man and are tried in a court of law and found guilty and guilty punishable by death, I believe the death penalty should be carried out. [LB114]

SENATOR CHAMBERS: So then my statement of your position is correct when I said you profess to be prolife from conception until natural death with the exception of judicial executions. You took more words, but that's what your position is. [LB114]

SENATOR McCOY: Well,... [LB114]

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SENATOR CHAMBERS: It's not from conception to natural death without exception, is it?  
[LB114]

SENATOR McCOY: I'll use my words, Senator Chambers, and I gave you what those are, so...  
[LB114]

SENATOR CHAMBERS: And I think the record makes clear what your position is, as I did.  
And that's all that I have of you unless you want to pursue something with one of my colleagues.  
[LB114]

SENATOR SEILER: Further questions? I have one. Are you familiar with a similar statute from  
Texas that is currently on appeal from the Fifth Circuit Court of Appeals in Whole Woman's  
Health v. Lakey? [LB114]

SENATOR McCOY: I've heard the stories, obviously, Senator Seiler,... [LB114]

SENATOR SEILER: Okay. [LB114]

SENATOR McCOY: ...as we all have, I think, around the country. [LB114]

SENATOR SEILER: I didn't know if you'd... [LB114]

SENATOR McCOY: Yeah. [LB114]

SENATOR SEILER: ...use that as the basis for your draft. [LB114]

SENATOR McCOY: No, it's not. [LB114]

SENATOR SEILER: Okay, that's what I wanted to clarify. [LB114]

SENATOR McCOY: It's very different from what they proposed for...it's my understanding, in  
looking at what's been proposed in Texas. [LB114]

SENATOR SEILER: Okay, just wondered if that's...was the beginning. [LB114]

SENATOR McCOY: Yes. [LB114]

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SENATOR SEILER: Okay, any further questions? Seeing none, thank you for your testimony. [LB114]

SENATOR McCOY: Thank you. [LB114]

SENATOR SEILER: First proponent of this LB114. [LB114]

KAREN BOWLING: (Exhibit 1) Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Karen Bowling and I am the outreach director at Nebraska Family Alliance. We are a nonprofit research and... [LB114]

SENATOR SEILER: Ma'am, would you spell your last...or your name. [LB114]

KAREN BOWLING: Yes, K-a-r-e-n B-o-w-l-i-n-g, just like a bowling ball. [LB114]

SENATOR SEILER: Thank you. [LB114]

KAREN BOWLING: I appear before the committee today to voice our support for LB114. All women in Nebraska need and deserve the highest standard of healthcare that LB114 provides. The state has a vested interest in making women's health a top priority for any facility performing a surgical procedure and should be licensed as an ambulatory surgical center. LB114 is straightforward, fair, and reasonable. Nebraska state statute currently requires a dermatology and ophthalmology clinic to meet the highest standard of care and requires such clinics to be licensed as ambulatory surgical centers. Should we not require the same standard of care by clinics performing abortion surgical services on women? Some key differences that I'd like to highlight that bring a difference to attention demonstrating the differences of ambulatory surgical centers, which I'm going to refer to as ASCs, and health clinics, HCs, is defined by statute in 71-405 and 71-416, three that I want to highlight. The discharge planning requirements: ASCs have specific discharge planning standards which require necessary medical information to be transferred to a healthcare facility receiving an ASC patient. When emergency care...when emergency occurs, every second matters. Providing immediate medical information to emergency and healthcare professionals assures the highest standard of care for women. Secondly, emergency personnel: ASCs must have available personnel trained in the use of emergency equipment and CPR, whereas there are no similar express requirements for HCs. Once again, when an emergency occurs, every second matters. Providing immediate medical treatment assures the highest standard of care for women. And finally, I want to highlight discharge procedures. ASCs must establish medical criteria for discharge consistent with professional standards. HCs have no similar express discharge requirements. Nebraska women

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deserve the highest standard of care when undergoing any surgical procedure. We respectfully urge you to advance LB114. And I wanted to highlight, too, there was a mention on ambulatory services. There's a great resource available at HHS. And actually, the Omaha Heartland Center for Reproductive Medicine is an ambulatory surgical center and requires such. [LB114]

SENATOR SEILER: Okay, further questions? [LB114]

KAREN BOWLING: Yes. [LB114]

SENATOR CHAMBERS: Is this a bill that is designed to deal with a woman's health and well-being? Is that what the purpose of this bill is? [LB114]

KAREN BOWLING: I believe this bill will provide the highest standard of care for women that are being treated in a clinic that does a surgical center. [LB114]

SENATOR CHAMBERS: So the health and well-being of the woman is what this bill is primarily aiming at? [LB114]

KAREN BOWLING: I think it is part of that. We're interested in the health of the woman and giving them the same higher standard of care. [LB114]

SENATOR CHAMBERS: Okay. If a woman's health would be seriously threatened by carrying a pregnancy to term, would you be in favor of that woman being allowed to have an abortion? [LB114]

KAREN BOWLING: That is best decided between the woman and her healthcare professional. [LB114]

SENATOR CHAMBERS: And if the healthcare professional makes that decision, then you think that decision should be respected? [LB114]

KAREN BOWLING: That is best decided by them. I can't...you're presenting to me something that I don't know any of the medical records of, nor am I a physician. That is best decided by them. [LB114]

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SENATOR CHAMBERS: I think what you're saying, as I understand it, is if a woman's health would be endangered by carrying a pregnancy to term, there should be no interference with her having an abortion if she and her healthcare provider decide that's in her best interest. [LB114]

KAREN BOWLING: Senator, what I would like to say in response to that... [LB114]

SENATOR CHAMBERS: Well, that's all right. I won't go on because I don't know whether you want to answer that question, so I don't want to badger you. That's all that I have. Thank you. [LB114]

KAREN BOWLING: Okay, thank you, sir. [LB114]

SENATOR SEILER: Any further? Senator Morfeld. [LB114]

KAREN BOWLING: Yes. [LB114]

SENATOR MORFELD: Thank you. So do you believe that the same ambulatory surgical center standards should be placed on dental clinics? [LB114]

KAREN BOWLING: Actually, these here are good guidelines, as far as I'm suggesting, that if an ophthalmology or a dermatology center have to have surgical centers, ambulatory surgical centers, in the best care of protecting a woman's health I believe that a center that provides abortion surgical services should have that same standard of care and shouldn't be crafted out to be different. [LB114]

SENATOR MORFELD: Thank you. [LB114]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB114]

KAREN BOWLING: Thank you. Thank you. [LB114]

SENATOR SEILER: Next proponent of the bill, LB114. [LB114]

GREG SCHLEPPENBACH: (Exhibit 2) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Greg Schleppe**n**bach, S-c-h-l-e-p-p-e-n-b-a-c-h. I'm executive director of the Nebraska Catholic Conference and I'm here to put the conference on record in

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support of LB114. Nebraska Catholic Conference represents the mutual interests and concerns of the Catholic bishops serving in Nebraska. The Catholic church is consistent in strong opposition to the practice of abortion, as rooted in its fundamental belief that every human being from its beginning at conception has inherent dignity and is endowed by our creator with an inalienable right to life. We believe that abortion represents a terrible injustice to the dignity and rights of preborn human beings. But the church also believes that recourse to abortion demonstrates a terrible failure of society to address injustices that drive women to this act of violence. One of the early pioneers of the feminist movement, Mattie Brinkerhoff, expressed this failure cogently when she said the following, "When a man steals to satisfy hunger, we may safely conclude that there is something wrong in society; so when a woman destroys the life of her unborn child, it is an evidence that either by education or circumstances she has been greatly wronged." The commitment of the Catholic church in the broader prolife movement to addressing the unmet needs that can drive women to have abortions is demonstrated by the more than 30 privately funded prolife pregnancy care centers in Nebraska. One of these centers is St. Gianna Women's Homes, operated by Catholic Social Services in Lincoln, which provides shelter to pregnant and abused women who have no other place to live safely. The same concern for women in crisis pregnancies that drives the church to establish homes like St. Gianna's drives the church to support LB114. The real potential for life-threatening complications from abortion is reason enough for abortion facilities to be subject to the same regulatory oversight as other similar surgical centers. The fact that there are several actual and recent cases in Nebraska and many more such cases nationally in which women were victims of botched abortions and shoddy medical practices only makes the need for LB114 more compelling. We urge you to advance LB114 to General File. [LB114]

SENATOR SEILER: Any questions? Thank you for coming. [LB114]

GREG SCHLEPPENBACH: Thank you. [LB114]

SENATOR SEILER: Next proponent. Are those copies to be distributed? [LB114]

SANDY DANEK: Um-hum. [LB114]

SENATOR SEILER: Okay. [LB114]

SANDY DANEK: (Exhibits 3 and 4) Mr. Chairman and members of the committee, my name is Sandy Danek, and that's S-a-n-d-y D-a-n-e-k. And I'm president of Nebraska Right to Life and I appear in support of LB114. It is the opinion of Nebraska Right to Life that the administrative decision to categorize Nebraska's abortion facilities as health clinics was incorrectly decided. Abortion facilities are performing an invasive procedure in the case of surgical abortions; and

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chemically induced abortions, which involve administering a two-drug regimen to take the life of an unborn child, must certainly be considered an invasive procedure. Due to the risk of these procedures, we agree that the abortion facilities would be better categorized under ambulatory surgical center. We can cite a number of cases of botched procedures, including clinics right here in our own state. One has only to look at the photo of LeRoy Carhart's abortion facility on Mission Avenue in Bellevue and wonder what health and safety standards are at issue here. I know that should someone I love unfortunately decide to have an abortion, I would at least prefer that there be a crash cart available and that the staff be trained to use it so that they would be given every opportunity for survival. Our local chapter has been committed to maintaining a presence at the Planned Parenthood Lincoln facility where we have seen on at least two occasions emergency vehicles arriving for women whose abortion procedure went wrong. On the one occasion, we were never to know the outcome; but on the second, we came to know publicly that this woman had to be rushed to a nearby hospital where an emergency hysterectomy had to be performed to save her life. We know these ladies have complications and sometimes emergencies. I was in the waiting area of an emergency room here in Lincoln with a grandchild when I encountered a young woman who had had an abortion earlier that day and was experiencing problems. She was there because she was told her only option for medical care after hours was to go to the emergency room. On another occasion, two "prolifers" who were praying at the Planned Parenthood South Street location witnessed a young woman leaving the facility after having had an abortion and collapsed on the sidewalk. They immediately came to her aid and asked if they could call for medical assistance. Unfortunately, she declined, so our supporters sat with her on the ground until someone came for her. I have to admit, when I began a prayerful presence at the Lincoln facility many years ago, I was motivated by the protection I believe is necessary for a child in the womb. I still passionately believe this, however, my presence there year after year has caused me to have greater compassion and care for these women that many times are in a desperate situation and abortion is touted as the cure-all. I am asking that these women be given the same medical protection at abortion facilities as at other surgical centers. It is the least that we can do as their mind-set may not be clear during this time to think to investigate the readiness of the facility that they're entrusting their lives to. We feel that by categorizing them as an ambulatory surgical center, we give the women who choose this option the same respect we give every other woman who has had such an invasive procedure. Thank you. [LB114]

SENATOR SEILER: Any further questions? [LB114]

SENATOR CHAMBERS: Just one. [LB114]

SENATOR SEILER: Yes, Senator Chambers. [LB114]

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SENATOR CHAMBERS: Ms. Danek, how many abortion clinics are there in Nebraska, to your knowledge? [LB114]

SANDY DANEK: There are three. [LB114]

SENATOR CHAMBERS: And where are they located? [LB114]

SANDY DANEK: Omaha and Lincoln. [LB114]

SENATOR CHAMBERS: And does any one of them or do more than one of them meet these standards that are contained in this bill, to your knowledge? [LB114]

SANDY DANEK: To my specific knowledge, no, I can't say that; however, I have passed around a handout that outlines some of the complications that have been experienced at Carhart's clinic. [LB114]

SENATOR CHAMBERS: Well, here's what I meant by that, not necessarily that you had personal, direct knowledge, but it is your belief, based on information you have, that they do not meet these standards. Would that be a correct statement? [LB114]

SANDY DANEK: I can't tell you that for certain. [LB114]

SENATOR CHAMBERS: Okay. [LB114]

SANDY DANEK: I can say that this bill would allow for us to have a certainty that, if I had a loved one in that facility and there were complications, that they would be cared for properly. [LB114]

SENATOR CHAMBERS: That's all that I have. Thank you. [LB114]

SANDY DANEK: Thank you. [LB114]

SENATOR SEILER: I have one question. The definition seems to...of ambulatory surgical center is defined as having so many abortions a month. Do they do any other type of surgery, like breast surgery or anything like that? [LB114]

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SANDY DANEK: Not that I'm familiar with, no, and maybe others could speak to that. But I don't have knowledge of that. [LB114]

SENATOR SEILER: Well, when I read the definition, it's pretty broad. That's why I was wondering if it includes... [LB114]

SANDY DANEK: Not such an invasive procedure, to my knowledge. [LB114]

SENATOR SEILER: Okay, thank you. Any further questions? Senator Chambers. [LB114]

SENATOR CHAMBERS: My colleagues won't leave me alone when I decide not to ask questions. That number, what is that number that they give of abortions that have to be performed in order for this bill to apply, if you recall? [LB114]

SANDY DANEK: I don't have it in front of me. I'm sorry. I should have brought it up. I want to say five per month. [LB114]

SENATOR CHAMBERS: But several...I think so, I think so. Well, if we are concerned, and this is not a trick question, if we are concerned genuinely about the health of every woman, why would there be a number? In other words, if there are fewer than five, then those four are not entitled to that kind of coverage based on what the bill is saying, is that correct? [LB114]

SANDY DANEK: That's a very good point. [LB114]

SENATOR CHAMBERS: I'm asking, is that correct based on your understanding of the bill? [LB114]

SANDY DANEK: I don't have the bill in front of me, but... [LB114]

SENATOR CHAMBERS: If the number is five, or whatever the number is, any number fewer than that, the feeling would be on the part of those who brought this bill that those few are not worthy of this kind of coverage. [LB114]

SANDY DANEK: I think that's a very good point. [LB114]

SENATOR CHAMBERS: That could be a conclusion that could be drawn. [LB114]

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SANDY DANEK: Yeah, I think that's a very good point. [LB114]

SENATOR CHAMBERS: Okay. I don't want you to think I was trying to trick you. [LB114]

SANDY DANEK: No. (Laugh) [LB114]

SENATOR CHAMBERS: That's all that I have. Thank you. [LB114]

SANDY DANEK: Thank you, Senator. [LB114]

SENATOR SEILER: Any further questions? Senator Morfeld. [LB114]

SENATOR MORFELD: Thank you, sir. Have any of these complications that you've noted, have they been reported to the Department of Health and Human Services or whatever reporting agency? [LB114]

SANDY DANEK: Yes. [LB114]

SENATOR MORFELD: They have been? [LB114]

SANDY DANEK: Yes, many of them have. [LB114]

SENATOR MORFELD: Oh. [LB114]

SANDY DANEK: But I think Karen made mention, or perhaps it was Senator McCoy made mention that I think is a valid point, that this is a self-reporting mechanism. And so if someone were to need emergency services, such as the woman I cited that needed to be taken to the emergency room and have an emergency hysterectomy done, that probably is a little bit more knowledgeable. But many times we don't know about these cases unless these women come to us thereafter,... [LB114]

SENATOR MORFELD: Okay. [LB114]

SANDY DANEK: ...or in the case where we have, you know, people there that day where the woman collapsed and, you know, needed medical care but for whatever reason declined it. [LB114]

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SENATOR MORFELD: Thank you. [LB114]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB114]

SANDY DANEK: Thank you. [LB114]

SENATOR SEILER: Next proponent. [LB114]

JEFFERSON DOWNING: (Exhibit 5) Mr. Chairman, members of the committee, my name is Jeff Downing. I apologize, I did not provide sufficient copies for each member of the committee of my testimony, but I would ask the Chairman if he would see that my testimony is included in the record. The written materials I've provided are more substantial and lengthier than what I'll be able to cover here in just the few minutes I have with the committee. But the reason I'm here is because I'm a Nebraska lawyer who represents people... [LB114]

SENATOR KRIST: Can you just say and spell your name for us, for the record. [LB114]

JEFFERSON DOWNING: Yeah, sorry, Jeff Downing, D-o-w-n-i-n-g. [LB114]

SENATOR KRIST: Thank you. [LB114]

JEFFERSON DOWNING: I'm a Lincoln lawyer, but I have a statewide practice, and I represent people who are hurt through medical malpractice. I do a wide variety of things, but that's one of the areas that I've developed a specialty in over the last 25 years. In the last seven years, I've had multiple clients who have ended up in my office, calling me and contacting me because they were hurt through abortion. I recount in my written materials a case that I can go into some specificity in, or with, because we filed the lawsuit--it's a matter of public record--here in district court in Lancaster County. And that was a case where a woman was injured and the abortion clinic chose not to provide her with prompt postabortion care. Instead, they just hoped that she would sort of get to feeling better as she was convalescing on the recliners in the abortion facility. And in fact, what was happening is she was hemorrhaging terribly internally. Finally, when she collapsed and had at least three seizures in the clinic, the emergency department...or, excuse me, not the emergency department, but Lincoln Fire and Rescue was called and they got to the clinic and got her then to a proper hospital facility where she could be treated. And indeed, she had lifesaving treatment at the hands of a very skilled team of OB/GYNs and nurses. One of the things about that case is the OB/GYN at the emergency department of the hospital really didn't know what had happened previously to cause the injury to this patient because the attending physician at the abortion clinic did not communicate to the hospital any information

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whatsoever. Instead, Lincoln Fire and Rescue appears on the scene, does a fantastic job to stabilize her and get her to the hospital. But as Karen Bowling pointed out in her previous testimony, adding a discharge planning requirement, because every second truly does matter, I think would be tremendously important for the health of Nebraska women who choose to have the abortion procedures. I've got several other cases that I've been involved in. Two of those were in Omaha, where Nebraska women were injured by an out-of-state abortionist who was flown into those Omaha facilities. And again, a non-Nebraska physician... [LB114]

SENATOR SEILER: Hold it just a second, Jeff. [LB114]

JEFFERSON DOWNING: Sure. [LB114]

SENATOR SEILER: Senator Krist. [LB114]

SENATOR KRIST: Go ahead and finish that part of it, because I have a question regarding that. [LB114]

JEFFERSON DOWNING: Yeah, a non-Nebraska physician caused injury at those facilities, again, one of which could have led to lethal circumstances. Fortunately, she herself got herself to an emergency department at an Omaha hospital and received lifesaving treatment there. [LB114]

SENATOR SEILER: Senator Krist. [LB114]

SENATOR KRIST: So I won't say anything else on...probably on either one of these two bills because I carried them both in the past few years and unsuccessfully argued. And as a matter of fact, with this bill, my previous bill said, if there's one performed, they should be an ambulatory surgical facility, to protect the rights and the health of the woman who was involved. So you're going to sit there and hear me talk and then I'm going to ask you a question. And I'm doing it at your expense because I'm only going to do this once this afternoon. I am a prolife person from conception to natural death. I do not advocate for the death penalty. Senator Chambers knows that. I signed onto that bill, and so...and I did not receive a prolife endorsement this last time because I guess I didn't do enough to get the bills out of committee or whatever that might have been, although I think that if you look at my voting record when it comes to the prenatal events and all the other things, I've been clearly prolife during my entire time in the Legislature. Hypocritically, I think people talk about antiabortion as a prolife measure. I'm not antiabortion. I think there are reasons when you have to take care of a woman's life. I believe that I voted for the 20-week law that I was very proud to do because within that time period a woman should have

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the right for whatever reason, and then after that point she should also have a right to a procedure if it's medically...a medical necessity. On the previous though I will tell you this: Even when Roe v. Wade was being discussed, Justice Sandra Day O'Connor said that any pro legislation, pro-abortion legislation, or pro-life legislation is on a collision course with science, meaning that as soon as we can define that life has started, whether it's at conception or, now, at 20 weeks, reasonably, because of the system that is developing, the central nervous system, the brain, that's where we have defined in law. And that has stood the course; that has stood a Supreme Court test. So I'm very proud of that. What I find most offensive though, because that abortion clinic that's in Omaha, one of them, is in my district, they can't find an Omaha doctor who can perform those services and find it necessary to ship somebody in from New York, New Jersey, or wherever. That's not a medical home. That's not the relationship between a doctor and a woman, based upon a situation, or a doctor and a couple. What it is, is abortion for hire, and for that I take particular offense and would like to do something about it in my district. And I've talked about it many times, but that's the right that I defend on the other side. So being conflicted with what I am as a legislator and realizing that I have to have justification to pass law and then also my moral conviction and my religious conviction, some of my colleagues have asked the question. And in testimony and associated with this over the last few years, I realize that there has been some really bad situations here in Lincoln in one of the clinics and in Omaha in one of the clinics, and any one of those would have caused me to say that we need to have the same parameters in an ambulatory surgical facility. But in your law practice, my question is this: Why are we not insisting on having a patient transfer agreement in place, or do these words of having that plan in place also comply with that? And I'll let you answer the question, please. [LB114]

JEFFERSON DOWNING: Yeah. The way I read the statute is that's one of the really important parts of it, is it would require discharge planning and direct communication between the abortion facility and any subsequent treating facility, which in many of these cases is the hospital emergency room where when people are hemorrhaging every second truly does matter. And so I think that would get right to the issue you're discussing. And in that regard, this is not anti-abortion legislation. This is pro-women's healthcare legislation. The costs would be de minimus based upon what I understand about the licensing differences between a health clinic and an ambulatory surgical center. Given the tens of thousands of dollars that are made on abortion at these facilities in Nebraska, that additional cost of licensing would be nothing. As it relates to some of the previous questions about the necessary equipment, wouldn't we want that equipment to be in a place that is doing invasive procedure that indeed can cause the type of hemorrhaging that has almost cost some Nebraska women their lives? [LB114]

SENATOR KRIST: So the last part of that question is simply, you're familiar with a procedure called the DNC? [LB114]

JEFFERSON DOWNING: Yes. [LB114]

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SENATOR KRIST: And that's performed where? [LB114]

JEFFERSON DOWNING: It's performed at many different places. DNC happened to be the procedure that was being performed at the abortion clinics involved in the cases that I represented these injured women in. [LB114]

SENATOR KRIST: Is it true that a doctor can perform a DNC in his office? [LB114]

JEFFERSON DOWNING: Yes. [LB114]

SENATOR KRIST: His or her office? [LB114]

JEFFERSON DOWNING: Yes. [LB114]

SENATOR KRIST: So why aren't they surgical facilities with the same kind of response capabilities? [LB114]

JEFFERSON DOWNING: Yeah. I think that gets to the issue of what Senator Chambers' issue or question was earlier about the numbers. Maybe that's why the numbers are important. If a doctor occasionally performs a DNC on a failed pregnancy in his office, is he subject to the same regulation that someone who is in the business of providing abortion on a weekly basis in numbers greater than the occasional one? That may be the issue with regard to the numbers. [LB114]

SENATOR KRIST: And surprisingly enough, it was the doctors in Omaha who came back to me and said, don't make it one... [LB114]

JEFFERSON DOWNING: Yeah, right. [LB114]

SENATOR KRIST: ...because then I have to have that, and that's an incredible expense. So that's a decision that someone who took the oath is saying, it's not necessary because I know what I'm doing. So you've made my point. Thank you very much. [LB114]

SENATOR SEILER: Any...Senator Chambers. [LB114]

SENATOR CHAMBERS: Mr. Downing, I want to make sure that I got your...your name is Downing, right? [LB114]

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JEFFERSON DOWNING: Yes, sir. [LB114]

SENATOR CHAMBERS: Okay, because the other name ended in "ing" and I want to keep them correct. [LB114]

JEFFERSON DOWNING: Yes. [LB114]

SENATOR CHAMBERS: I'm trying to save my questioning for people who might be able to answer them. None of them is designed to be a trick. You handed us this petition? What was the outcome of this case? Did you win it? [LB114]

JEFFERSON DOWNING: Well, some... [LB114]

SENATOR CHAMBERS: I think that's a yes or no answer. [LB114]

JEFFERSON DOWNING: We had a successful resolution of the case. Due to confidentiality concerns, I can't tell you any of the details. The pleading is public. Settlements often are confidential and private. [LB114]

SENATOR CHAMBERS: But it did not go to a decision, so this case would not be a precedent for anything. [LB114]

JEFFERSON DOWNING: That's correct. [LB114]

SENATOR CHAMBERS: Okay. [LB114]

JEFFERSON DOWNING: Yeah, not a precedential matter at all, sir. [LB114]

SENATOR CHAMBERS: Right. Now you're antiabortion or you're not antiabortion? I'm asking you. [LB114]

JEFFERSON DOWNING: Yeah, I'm prolife and I'm pro-women's health. [LB114]

SENATOR CHAMBERS: On what? [LB114]

JEFFERSON DOWNING: Prolife and pro-women's health. [LB114]

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SENATOR CHAMBERS: Oh. Are you prolife from conception to natural death, or do you exempt judicial executions? [LB114]

JEFFERSON DOWNING: Well, neither as a lawyer, nor as a state senator--and I feel for those of you who have to grapple with this issue--I've never had to grapple with that. I'm not a member of the Judiciary and so I would...I don't know how I would feel about that if I were in your shoes. [LB114]

SENATOR CHAMBERS: But, Mr. Downing, since you're a lawyer, I'm not going to be as gentle with you as I have been with (inaudible). [LB114]

JEFFERSON DOWNING: And that's fine. [LB114]

SENATOR CHAMBERS: I don't mean I'm going to be rude. [LB114]

JEFFERSON DOWNING: Sure. [LB114]

SENATOR CHAMBERS: But with the furor that has surrounded capital punishment for decades, I find it incredible that a lawyer would say, I don't know how I feel about that issue. You really don't know how you feel about capital punishment? [LB114]

JEFFERSON DOWNING: I said I don't know what I would do if I were in your shoes or in the shoes of a judge. [LB114]

SENATOR CHAMBERS: No, I'm putting... [LB114]

JEFFERSON DOWNING: Now I'm going to answer your question if you'll allow me. [LB114]

SENATOR CHAMBERS: In your shoes, that's... [LB114]

JEFFERSON DOWNING: Yeah, in my shoes,... [LB114]

SENATOR CHAMBERS: I'm asking you...right. [LB114]

JEFFERSON DOWNING: ...I see a difference between innocent human life and that which has been...gone through the proper processes, due process,... [LB114]

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SENATOR CHAMBERS: But here's what I'm asking... [LB114]

JEFFERSON DOWNING: ...all due process, and been rendered guilty under the laws of the state of Nebraska. [LB114]

SENATOR CHAMBERS: Here's my question: If I were...if you were in court, I'd say, Your Honor, would you ask the witness to answer the question as asked. I asked, are you prolife from conception to natural death or do you exempt judicial executions? And I think what you have said is that you are in favor of capital punishment, you exempt that. So you're... [LB114]

JEFFERSON DOWNING: In certain circumstances I can see where it would be justified, sir. [LB114]

SENATOR CHAMBERS: Okay, so there are some people who see certain circumstances where an abortion is justified. [LB114]

JEFFERSON DOWNING: Absolutely. [LB114]

SENATOR CHAMBERS: Okay, so you do recognize that there are instances when they would be justified. [LB114]

JEFFERSON DOWNING: Absolutely. [LB114]

SENATOR CHAMBERS: Okay. Now here's the question that I have to put to you: The number that has been established in this bill, five or more abortions during any calendar month, how many months are there in the year? This is for the record. [LB114]

JEFFERSON DOWNING: 12. [LB114]

SENATOR CHAMBERS: And any number less than five would be four or fewer, correct, based on the bill? [LB114]

JEFFERSON DOWNING: Yes. [LB114]

SENATOR CHAMBERS: So under this bill, as many as four abortions can be performed a calendar month without being in violation of this bill. [LB114]

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JEFFERSON DOWNING: I believe that's an accurate reading. [LB114]

SENATOR CHAMBERS: And what would 4 times 12 gives us? [LB114]

JEFFERSON DOWNING: 48. [LB114]

SENATOR CHAMBERS: So there could be 48 instances of women whose health is not of sufficient concern to require this kind of protection. That's what we have to conclude from the language of this bill, isn't that true? [LB114]

JEFFERSON DOWNING: Yeah, no, I think, Senator, that Senator McCoy would be happy to receive a friendly amendment... [LB114]

SENATOR CHAMBERS: I don't want to be argumentative. [LB114]

JEFFERSON DOWNING: ...a friendly amendment from you... [LB114]

SENATOR CHAMBERS: I don't... [LB114]

JEFFERSON DOWNING: ...that would ensure that the first four are protected as well. [LB114]

SENATOR CHAMBERS: All I'm asking...now, as a lawyer, you understanding what I'm asking you. [LB114]

JEFFERSON DOWNING: I do and I agree with your point. [LB114]

SENATOR CHAMBERS: And all I want is for the record...I want you and me... [LB114]

JEFFERSON DOWNING: Yes. [LB114]

SENATOR CHAMBERS: ...to deal with the language of the bill. It seems to me that with the talk that I've heard, especially from Senator McCoy who in the past has not emphasized women's health in any of his presentations on this issue, to suddenly say he has that interest, then he brings a bill which says that 48 women per year could be subjected to what he considers to be inadequate medical processes being in place and tell us to vote for that bill and say he's interested in women's health...now I'm not asking you to make a judgment. Are you aware...I

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don't want it to be a leading question. Is this bill a part of a trend that has developed recently in this country where this approach is being taking in state after state? [LB114]

JEFFERSON DOWNING: I heard your question earlier to Senator McCoy on that and to my knowledge...well, I have no knowledge one way or another about that. I also was aware from Senator Seiler's question about the Texas case and the issue in the Fifth Circuit. But I am unaware of this being a generalized trend. [LB114]

SENATOR CHAMBERS: In all of your experience in handling these types of cases, this is the first time a bill of this kind has been offered to this Legislature, isn't that true? [LB114]

JEFFERSON DOWNING: That I do not know as well, sir. I don't know. [LB114]

SENATOR CHAMBERS: Is this the first bill you've testified on related to this subject? [LB114]

JEFFERSON DOWNING: Yes, sir. [LB114]

SENATOR CHAMBERS: Okay. Are you aware of similar bills to this having been introduced in other states and a source of litigation? [LB114]

JEFFERSON DOWNING: I am not, other than the Texas case which was referenced earlier. [LB114]

SENATOR CHAMBERS: Were you requested to come testify today? [LB114]

JEFFERSON DOWNING: I actually found out that the bill had been offered because I'm an observer of your good work in the Legislature, and I offered to come and testify as a practicing lawyer for 25 years who has had many cases. [LB114]

SENATOR CHAMBERS: To whom did you make the offer? [LB114]

JEFFERSON DOWNING: Pardon? [LB114]

SENATOR CHAMBERS: To whom did you make the offer to come and testify? [LB114]

JEFFERSON DOWNING: Senator McCoy's office. [LB114]

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SENATOR CHAMBERS: I don't have anything else. Thank you. [LB114]

JEFFERSON DOWNING: Sure. [LB114]

SENATOR CHAMBERS: Okay. [LB114]

SENATOR SEILER: Further questions? Senator Williams. [LB114]

SENATOR WILLIAMS: Thank you, Senator Seiler. I have a question that I'm not sure you can address, but if you can...based on your experiences representing women in different situations, as I'm understanding what we're seeing here, we could have a dermatology clinic and an ophthalmology clinic that would both need to meet the standards of an ambulatory clinic. That's what I'm understanding from the testimony we've heard. Do you have any experience in being able to describe what would happen, what procedures would go on, at a dermatology clinic, possibly what would go on at an ophthalmology clinic, as compared to what would go on at an abortion clinic? [LB114]

JEFFERSON DOWNING: Yeah, I really don't, Senator. That's a great question. It...the... [LB114]

SENATOR WILLIAMS: If someone that is going to testify could address that, I would really appreciate it. Thank you. [LB114]

JEFFERSON DOWNING: Understood. [LB114]

SENATOR SEILER: Any further questions? Thank you, Mr. Downing. [LB114]

JEFFERSON DOWNING: Thank you. [LB114]

SENATOR SEILER: Next proponent. [LB114]

ANNA PAPROCKI: (Exhibit 6) Mr. Chairman and members of the Judiciary Committee, thank you for the opportunity to testify today. I'm Anna Paprocki, and that's A-n-n-a P-a-p-r-o-c-k-i. I'm staff counsel with Americans United for Life Action, the legislative arm of Americans United for Life, a national public-interest law firm with a practice in abortion and bioethics law. I have reviewed LB114, which would require abortion facilities to comply with Nebraska's existing ambulatory surgical center standards. I am testifying in this proceeding as an expert in

constitutional law and laws regarding abortion. Overwhelming legal precedent supports the constitutionality of LB114. A consistent holding throughout the U.S. Supreme Court's decisions touching on abortion is that the state has a legitimate interest in regulating abortion providers and the practice of abortion to protect maternal health. Since Roe v. Wade, the U.S. Supreme Court has repeatedly acknowledged that the state has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that ensure maximum safety for the patient. Specifically, in Roe, the court found that the state's legitimate interest in regulating abortion to protect maternal health obviously extends at least to regulating the performing physician and his staff, to the facilities involved, to the availability of aftercare, and to adequate provision for any complication or emergency that may arise. Squarely falling under the obvious minimum protections articulated by the court in Roe, LB114 protects women and does not impose an undue burden. Federal courts have repeatedly and summarily rejected the argument that abortion clinic regulations create an undue burden on women seeking abortions by increasing the cost of abortions or by decreasing the number of providers. In 2007, the U.S. Supreme Court specifically concluded in Gonzales v. Carhart that, quote, the law need not give abortion doctors unfettered choice in the course of their medical practice, nor should it elevate their status above other physicians in the medical community. Where legislation concerning abortion, like LB114, is based on a maternal health rationale, U.S. Supreme Court precedence suggests that in order to sustain an undue burden challenge, the plaintiffs challenging the law must demonstrate that the government has no medical evidence that the regulation is rationally related to maternal health. Notably, LB114 does not create new ambulatory surgical center standards in Nebraska. The bill merely requires that abortion clinics comply with the existing standards that ensure greater patient safety. There are five states--Alabama, Missouri, Pennsylvania, Texas, and Virginia--that likewise require that abortion facilities meet their state's ambulatory or outpatient surgical center standards. The abortion right announced in the U.S. Supreme Court cases, including Roe, is not a right for abortion providers to operate as cheaply as they want and without oversight. In fact, Roe expressed concern with what it called abortion mills. [LB114]

SENATOR SEILER: Ma'am, ma'am, just hold it a second. Entertain a motion? [LB114]

SENATOR CHAMBERS: I'm going to ask her a question or two, and that might give her a chance to... [LB114]

SENATOR SEILER: If you... [LB114]

ANNA PAPROCKI: Sure. [LB114]

SENATOR CHAMBERS: But if somebody wants her to complete, continue,... [LB114]

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SENATOR SEILER: You want her to finish up? [LB114]

SENATOR WILLIAMS: No, go ahead, Senator Chambers. [LB114]

SENATOR SEILER: Okay. [LB114]

SENATOR CHAMBERS: Have you litigated these...not necessarily these cases. Have you litigated cases in this area? [LB114]

ANNA PAPROCKI: I've gotten involved at the appellate level through amicus briefs on legislation dealing with aspects of aftercare, so, for example,... [LB114]

SENATOR CHAMBERS: No, that's what I'm trying to find out. [LB114]

ANNA PAPROCKI: Right. [LB114]

SENATOR CHAMBERS: Was your work on those cases restricted to writing briefs... [LB114]

ANNA PAPROCKI: Not at the trial level, right. [LB114]

SENATOR CHAMBERS: ...but not actually in the courtroom? [LB114]

ANNA PAPROCKI: Right. [LB114]

SENATOR CHAMBERS: So when you say you testify as an expert, what is that based on? [LB114]

ANNA PAPROCKI: My practice in constitutional law and laws regarding abortion, so in my capacity as an attorney at Americans United for Life. [LB114]

SENATOR CHAMBERS: And are you recognized by the courts as an expert? [LB114]

ANNA PAPROCKI: No. Are you saying... [LB114]

SENATOR CHAMBERS: Did you... [LB114]

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ANNA PAPROCKI: This is my expertise in the practice of law that...in the field that I've been engaged in since 2009. [LB114]

SENATOR CHAMBERS: I thought I saw in here where it said you speak as an expert. [LB114]

ANNA PAPROCKI: As an expert in constitutional law, yes. [LB114]

SENATOR CHAMBERS: But that hasn't been based... [LB114]

ANNA PAPROCKI: Not as, like, an expert witness, no. [LB114]

SENATOR CHAMBERS: Okay, so it's a self-applied term. [LB114]

ANNA PAPROCKI: Sure. [LB114]

SENATOR CHAMBERS: Okay. Now you made a statement in your presentation here, and it looks like you've been quite thorough in the research that you've done, on page...well, anyway, "B. It is undisputed that the later in pregnancy an abortion occurs, the riskier it is and the greater the chance for significant complications." [LB114]

ANNA PAPROCKI: Yes. [LB114]

SENATOR CHAMBERS: Could that be said about a pregnancy itself? [LB114]

ANNA PAPROCKI: Well, as pregnancy progresses, sure, there could be other complications. But the reason that I included it in my testimony here is because the bill... [LB114]

SENATOR CHAMBERS: I'm not attacking you. [LB114]

ANNA PAPROCKI: No, no, no. I'm actually explaining why I included it here, because I think this is a great point. When we were talking about the number of abortions per month, the bill actually says that any second- and third-trimester abortions will qualify a clinic as an ambulatory surgical center, so it's not...that's not the five number anymore. And as gestational age increases, the risks of an abortion increase too. So when we're talking about...you asked, you know, if 48 could be the maximum--not necessarily. If they're doing second- or third-trimester abortions, one per month qualifies as an ambulatory surgical center. [LB114]

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SENATOR CHAMBERS: Okay, but if I ask the question, the answer should be to the question I ask, not to something else. I can read about the late-term abortions, as they are called. [LB114]

ANNA PAPROCKI: Right. [LB114]

SENATOR CHAMBERS: But there can be 48 abortions performed per year and the facilities where those 48 are performed would not come under this bill if they're not late term, isn't that correct? [LB114]

ANNA PAPROCKI: If they're not performing second-trimester or third-trimester abortions, right. [LB114]

SENATOR CHAMBERS: Right. And when I ask the question, I don't want it to be understood beyond the way that I frame it. [LB114]

ANNA PAPROCKI: Right. [LB114]

SENATOR CHAMBERS: And as an expert and a lawyer, I think you know that. [LB114]

ANNA PAPROCKI: Um-hum. [LB114]

SENATOR CHAMBERS: Okay. Now where are you from? [LB114]

ANNA PAPROCKI: I live in Chicago. [LB114]

SENATOR CHAMBERS: And did you come here from Chicago for this? [LB114]

ANNA PAPROCKI: I did, yes. [LB114]

SENATOR CHAMBERS: Were you invited here? [LB114]

ANNA PAPROCKI: Yes. [LB114]

SENATOR CHAMBERS: Who invited you? [LB114]

ANNA PAPROCKI: Senator McCoy's office. [LB114]

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SENATOR CHAMBERS: Senator who? [LB114]

ANNA PAPROCKI: Senator McCoy's office. [LB114]

SENATOR CHAMBERS: Did you pay your own way? [LB114]

ANNA PAPROCKI: Yes. [LB114]

SENATOR CHAMBERS: And do you do this? You...is that a function of the office you work with where you travel around the country testifying? [LB114]

ANNA PAPROCKI: Yes. I was actually here two years ago in this committee, but I wasn't married, so I was Anna Franzonello back then. [LB114]

SENATOR CHAMBERS: Are you going to continue to say you're an expert in constitutional law? [LB114]

ANNA PAPROCKI: Yeah, I practice in the area of constitutional law, yes. [LB114]

SENATOR CHAMBERS: Is there any place in here, because I haven't had a chance to read it all because when somebody is testifying I listen to what the person is saying, is there any place in here where it points out that you do not actually have courtroom experience? [LB114]

ANNA PAPROCKI: No. [LB114]

SENATOR CHAMBERS: Do you think it might be good to make that clear? [LB114]

ANNA PAPROCKI: I practice and I write appellate-level briefs, so I do have a practice...I do work in litigation as well. But, no, I do not have...you can have that on the record that I am not litigating these cases at the trial level. [LB114]

SENATOR CHAMBERS: Okay, and that's all I had. [LB114]

ANNA PAPROCKI: Okay. [LB114]

SENATOR CHAMBERS: I just wanted the record to be clear. Thank you. [LB114]

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SENATOR SEILER: Senator Morfeld. [LB114]

SENATOR MORFELD: Thank you, Senator. So are you familiar with the Texas law that's currently being litigated in the Fifth Circuit then? [LB114]

ANNA PAPROCKI: It's a much bigger law that has...yes. Yes, I'm familiar with the Texas law. [LB114]

SENATOR MORFELD: Okay. Can you then tell us the practical differences between that law and this law? [LB114]

ANNA PAPROCKI: Well, the...what's being litigated in Texas, there's...admitting privileges are one aspect of it that has been litigated. There's chemical abortion regulations requiring that they comply with the FDA requirements on chemical abortions. It is a substantially different law. It was a bigger piece of legislation that addressed many areas of abortion regulations. So this is...all that this bill does is require that abortion facilities in Nebraska comply with existing ambulatory surgical center standards. That's not what...the big piece of legislation that's been challenged in part, so not every piece of it was challenged. There was a 20-week ban that was part of that legislation, too, that hasn't been challenged. So it was a much bigger piece of law. Smaller pieces have been challenged, the admitting privileges probably one of the pieces of the case that was...you know, that's been upheld as rationally related to women's health that is probably similar to this bill in that it requires appropriate aftercare for women. [LB114]

SENATOR MORFELD: So is the designation of the different health facilities, is that an issue that's current? I'm reading through the case now. I haven't gotten all the way through it. Is that a fighting issue in... [LB114]

ANNA PAPROCKI: My understanding is, no, that it's not the ambulatory surgical centers, sir. It's the admitting privileges requirement itself that was being challenged. [LB114]

SENATOR MORFELD: Okay, and so in reviewing this legislation and...you reviewed this legislation and provided feedback to Senator McCoy's office? [LB114]

ANNA PAPROCKI: Right. [LB114]

SENATOR MORFELD: Okay. In reviewing this legislation and Senator McCoy's legislation...or, excuse me, and the Texas legislation--or law, I should say--what are the similarities then? [LB114]

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ANNA PAPROCKI: Well, I actually did...to... [LB114]

SENATOR MORFELD: I didn't necessarily get that. [LB114]

ANNA PAPROCKI: ...disclosure, I'm aware of the Texas legislation. [LB114]

SENATOR MORFELD: Okay. [LB114]

ANNA PAPROCKI: I did not consult on the Texas legislation. I wasn't asked for my review from the bill sponsor on that. I did...I'm aware of it, and that was your initial question, but I did not consult on the Texas legislation. [LB114]

SENATOR MORFELD: Okay, but have you read the Texas legislation? [LB114]

ANNA PAPROCKI: I've read the pieces that have been challenged, yes. [LB114]

SENATOR MORFELD: Okay, and are any of those pieces that have been challenged, are they in this legislation as well? [LB114]

ANNA PAPROCKI: As far as I'm aware, no. [LB114]

SENATOR MORFELD: No, okay. [LB114]

ANNA PAPROCKI: This is...this bill that we have before is simply asking...requiring that Nebraska's abortion facilities comply with existing ambulatory surgical center standards in Nebraska. [LB114]

SENATOR MORFELD: Thank you. [LB114]

SENATOR SEILER: Senator Chambers. [LB114]

SENATOR CHAMBERS: Oh, Senator Pansing Brooks can go because I have asked... [LB114]

SENATOR SEILER: Oh, okay. Sorry. [LB114]

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SENATOR PANSING BROOKS: Thanks. I'm already...that's okay. Ms. Prapro (phonetically)...is it Praprokey (phonetically)? [LB114]

ANNA PAPROCKI: I still say it wrong. Paprockey (phonetically) is how I say it. My husband might disagree with that, but... [LB114]

SENATOR PANSING BROOKS: Thank you. I guess I was just interested, is this...are there other efforts around the country to bring bills such as this? [LB114]

ANNA PAPROCKI: I think, you know, in the wake of the Dr. Kermit Gosnell trial--I think most people are here, probably aware of that--we do see an increased interest in regulating abortion clinics as more stories of harm to women have come out, as there's more evidence of...you know, you see more studies showing increased risks, medical risks to women. Yes, there has been an increased interest, particularly in the wake of the Kermit Gosnell trial that did receive national attention. There is an increased interest in ensuring that they're...that abortion facilities are complying with state law and not self-policing. [LB114]

SENATOR PANSING BROOKS: Okay, I guess I'm just interested...I keep hearing all this increased interest in the women and maximum safety for the patient, and all I can think of is prior to 1973 when women were having abortions in the back alleys. So can you speak to those numbers and the... [LB114]

ANNA PAPROCKI: Well, I can speak to Dr. Bernard Nathanson saying that those numbers, and he was part of founding of NARAL, saying that they inflated those numbers because they wanted to, you know, kind of manufacture a reason for Roe v. Wade. But the...what is...what I was getting to at the very end of my testimony... [LB114]

SENATOR PANSING BROOKS: Excuse me one second. I'm... [LB114]

ANNA PAPROCKI: Yes. [LB114]

SENATOR PANSING BROOKS: So you're saying that they manufactured numbers, that women were not having abortions in the back alleys all those years? Yeah. [LB114]

ANNA PAPROCKI: No, women were having illegal abortions, but the numbers are self-admitted by people...Dr. Bernard Nathanson being a notorious...you know, previously an abortionist and founder of NARAL, has said that they inflated those numbers. So I can't actually speak to their accuracy. I do know that people will challenge the numbers as being inflated. But, yes...but what

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I...I think this brings up a really important point, that the court in Roe did have a concern with what it was calling abortion mills, these illegal practices that were going on. And they said that...they have reported negative impact on women's health strengthens rather than weakens the state's interest in regulating the conditions under which abortions are performed. So this has been, even from the time of Roe, talking about illegal abortion mills, that the court recognized then that making abortion legal wasn't going to solve the problem but that there was an important state interest in regulating these clinics to protect maternal health. [LB114]

SENATOR PANSING BROOKS: And my query would be, doesn't the continued efforts to limit the access to abortion cause a greater risk to women's health? [LB114]

ANNA PAPROCKI: No, I think... [LB114]

SENATOR PANSING BROOKS: Thank you very much. That's all I have to say. [LB114]

ANNA PAPROCKI: No, okay. [LB114]

SENATOR SEILER: Any further questions? Senator Chambers. [LB114]

SENATOR CHAMBERS: Have you read this bill itself, the green bill, copy of the bill? [LB114]

ANNA PAPROCKI: I haven't seen it on green paper, so just... [LB114]

SENATOR CHAMBERS: Anyway...and none of these are trick questions. [LB114]

ANNA PAPROCKI: Okay. [LB114]

SENATOR CHAMBERS: But what is exempted from the provisions of this bill would be a clinic or the office used solely by a practitioner or a group of practitioners in the practice of medicine. Is performing an abortion the practice of medicine? [LB114]

ANNA PAPROCKI: So you're reading an existing part of the law, the definition of health clinics that was...so you're right, this isn't...the...what this bill does is it amends... [LB114]

SENATOR CHAMBERS: No, here's what I'm saying. [LB114]

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ANNA PAPROCKI: Right. [LB114]

SENATOR CHAMBERS: Here's what I'm asking you. I wanted you to see that the term "practice of medicine" is in the existing law. Does performing an abortion fall within the definition of the practice of medicine, or is it not a part of the practice of medicine? [LB114]

ANNA PAPROCKI: There are medical aspects to an abortion procedure, so... [LB114]

SENATOR CHAMBERS: The...would somebody be allowed legally to perform an abortion if he or she were not licensed to practice medicine? [LB114]

ANNA PAPROCKI: I believe, in this state, no. [LB114]

SENATOR CHAMBERS: So this is exempting out a particular medical procedure from the practice of medicine and all of these other practitioners of medicine can perform the practice of medicine in... [LB114]

ANNA PAPROCKI: Well, ambulatory surgical centers do practice medicine, too, so there...what it's doing is it's actually taking it out of the exception that was carved out with the health clinics definition from ambulatory surgical centers, which are medical practices. I don't think you would disagree with that, that these ambulatory surgical centers are engaging in the practice of medicine. [LB114]

SENATOR CHAMBERS: That's too many words. There is a specific exception made in this new language. It describes ambulatory surgical center and bases that definition on the number of abortions that are preformed, but it specifies that it does not apply to these offices where there is the practice of medicine, dentistry, or podiatry. [LB114]

ANNA PAPROCKI: That's in the existing law in the... [LB114]

SENATOR CHAMBERS: They are exempted out. [LB114]

ANNA PAPROCKI: That's in the existing law in the definition of health clinics, where abortion was also included as a carve-out in the health clinics definition. What this bill does is it... [LB114]

SENATOR CHAMBERS: I'm not arguing. I'm just... [LB114]

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ANNA PAPROCKI: ...doesn't take it out...right. [LB114]

SENATOR CHAMBERS: I'm asking you, is what I'm saying factual? First of all,... [LB114]

ANNA PAPROCKI: That there is...that there's a carve-out to the ambulatory surgical center standards? [LB114]

SENATOR CHAMBERS: No, first of all, is the performing of an abortion a part of the practice of medicine? [LB114]

ANNA PAPROCKI: Yes, just as other ambulatory surgical centers are performing medical procedures. [LB114]

SENATOR CHAMBERS: I don't even hear the rest of what you're saying. The performing of an abortion falls within the practice of medicine. [LB114]

ANNA PAPROCKI: As do other ambulatory surgical centers. [LB114]

SENATOR CHAMBERS: Now when you set up a classification...first of all, you said you're an expert in constitutional law. Are you aware of what the term "special legislation" means in a constitutional context? [LB114]

ANNA PAPROCKI: Is this a Nebraska-specific question that you're asking me? [LB114]

SENATOR CHAMBERS: Just in general. Special legislation is when it refers to a certain class and it's a closed class and it does not apply to others similarly situated. And when it does that, then it is not equally applying the law. [LB114]

ANNA PAPROCKI: Right, and this would change that so that abortion centers are no longer having special treatment, not being treated as ambulatory surgical centers. [LB114]

SENATOR CHAMBERS: But you're not answering the questions I ask, so I'll ask you another question. [LB114]

ANNA PAPROCKI: Okay. [LB114]

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SENATOR CHAMBERS: Did you hear people up here testifying for this bill who said that, where matters related to dermatology and ophthalmology are required to meet certain standards? [LB114]

ANNA PAPROCKI: Yes. [LB114]

SENATOR CHAMBERS: Is it anticipated that an ophthalmological entity or clinic would perform more than five procedures in a month? [LB114]

ANNA PAPROCKI: I don't know the answer to that, but I would assume so. [LB114]

SENATOR CHAMBERS: Well, what would you think? Do you think if there's an ophthalmological clinic or ophthalmology clinic, do you think they would have more than five ophthalmology procedures in a month? [LB114]

ANNA PAPROCKI: I'm not familiar with the practice of ophthalmology. [LB114]

SENATOR CHAMBERS: Do you know what ophthalmology deals with? [LB114]

ANNA PAPROCKI: Sight. [LB114]

SENATOR CHAMBERS: Right. I don't want to ask you trick questions. If it's beyond your knowledge... [LB114]

ANNA PAPROCKI: I know, but that's what I'm saying. I'm not...I don't know that area of medicine, so I don't know... [LB114]

SENATOR CHAMBERS: Okay, well, I've gone to an ophthalmologist and I've had laser surgery performed in that office. If it's performed incorrectly, I could be blinded. I have never gone to that office on any one day when there were fewer than five people. There were always more than five. So there is a large number of people who are being subjected to those procedures. The same with dermatology facilities. Then why do they limit the number of abortions to five? [LB114]

ANNA PAPROCKI: They don't limit...what do you mean they limit it to five? [LB114]

SENATOR CHAMBERS: Five or more. [LB114]

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ANNA PAPROCKI: Right. [LB114]

SENATOR CHAMBERS: Then they have to meet these standards. [LB114]

ANNA PAPROCKI: Yeah, I...I mean, if you want to change that so that all...that they perform any abortions... [LB114]

SENATOR CHAMBERS: Would you make it ten? Let's change it to ten. You said change it. How about ten? [LB114]

ANNA PAPROCKI: Well, I'm not sure where you're going with your line of...I'm... [LB114]

SENATOR CHAMBERS: I don't have any more questions. [LB114]

ANNA PAPROCKI: Okay. [LB114]

SENATOR CHAMBERS: Thank you. [LB114]

SENATOR SEILER: Senator Morfeld. [LB114]

SENATOR MORFELD: Just following up a little bit... [LB114]

ANNA PAPROCKI: Yeah. [LB114]

SENATOR MORFELD: I read the case a little bit more... [LB114]

ANNA PAPROCKI: Okay. [LB114]

SENATOR MORFELD: ...during your exchange with Senator Chambers. You've read the district court Opinion in... [LB114]

ANNA PAPROCKI: In Lakey? [LB114]

SENATOR MORFELD: Yep. [LB114]

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ANNA PAPROCKI: A while ago, yes. [LB114]

SENATOR MORFELD: Yep, you did. [LB114]

ANNA PAPROCKI: Yes. [LB114]

SENATOR MORFELD: So going back to my original question that I had about whether or not this issue is a fighting issue in this case, you know, the court in here...and I'll just read directly from it: The court concludes that the act's ambulatory surgical center requirement, combined with the already-in-effect admitting privileges requirement, creates a brutally effective system of abortion regulation that reduces access to abortion clinics, thereby creating a statewide burden for substantial numbers of Texas women. And the court goes on to find...you know what the court goes on to find. [LB114]

ANNA PAPROCKI: Right, and the Fifth Circuit has said that it's not an undue burden, that it's rationally related to women's health, but... [LB114]

SENATOR MORFELD: The First Circuit has? [LB114]

ANNA PAPROCKI: Fifth. [LB114]

SENATOR MORFELD: Fifth Circuit, okay. And so if this law were to close all the abortion clinics in the state of Nebraska and essentially make it so that nobody in the state of Nebraska could have an abortion, do you think that that would be based on your expert opinion that... [LB114]

ANNA PAPROCKI: Well, if abortion providers chose not to... [LB114]

SENATOR MORFELD: Can I just finish my question? [LB114]

ANNA PAPROCKI: Yeah, okay. [LB114]

SENATOR MORFELD: Do you think that that would be unconstitutional based on the current case law, Roe v. Wade, and all the case...the precedent after that? [LB114]

ANNA PAPROCKI: No. If abortion providers in Nebraska chose not to comply with ambulatory surgical centers and instead chose to close their clinics and leave Nebraska, there isn't a right to

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the existence of abortion clinics within a state. That's not what's articulated in Roe. And in fact, when we look at the funding cases, the abortion funding cases, we see the exact opposite, that states don't have to fund abortion, they don't have to incentivize abortion. It's not something that Roe or other cases have ever said has to exist within a state because, otherwise, if you have those practices leaving, then the state, if there's a constitutional right, the state would have to build clinics or fund them. And that's clearly not in the line of cases that the court has addressed on abortion, any right of the state to build and maintain abortion facilities within the state. So if the...just to be clear, the ambulatory surgical center standards don't bar abortion clinics from existing in Nebraska. Abortion facilities in Nebraska could choose not to stay open. They could choose that they don't want to offer this appropriate level of care to women and instead want to go to other states. But this bill does not outlaw abortion; it does not close clinics. It's the abortion providers themselves who would choose if they did not want to invest in the women that they see, if they don't want to provide that appropriate amount of care. They would be the ones choosing to close their doors and to leave. [LB114]

SENATOR MORFELD: Do you have any facts...do you have any figures on how much it would cost to comply with these standards from being a regular clinic to going up to this... [LB114]

ANNA PAPROCKI: I don't actually have a cost analysis of the equipment. I think the licensing fees are, as been said already, a fair...it's a difference, but it's not a substantial difference between... [LB114]

SENATOR MORFELD: Well, I don't think the licensing...I don't think anybody would argue the licensing fee would... [LB114]

ANNA PAPROCKI: Right, so I don't know the cost of the...because I don't know with these facilities what...the existing facilities, what they would have to bring into their clinics, no, I don't know. [LB114]

SENATOR MORFELD: But I don't know either, and hopefully somebody can answer that question after that because I think a few of us have asked that. [LB114]

ANNA PAPROCKI: Right. [LB114]

SENATOR MORFELD: But say it's \$250,000 or \$500,000. You know, for some of these organizations, they obviously have to operate within the confines of a budget. [LB114]

ANNA PAPROCKI: Right. [LB114]

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SENATOR MORFELD: And if they're unable to provide those services or that level of care,... [LB114]

ANNA PAPROCKI: Yeah. [LB114]

SENATOR MORFELD: ...I should say, wouldn't you agree that it could... [LB114]

ANNA PAPROCKI: Yeah, I mean, Planned Parenthood, the national federation, has posted, you know, a double-digit, triple-digit, million-dollar profit after paying all expenses, including its wish-list funds, for the last several years. So I find it hard to believe that...you know, Planned Parenthood of the Heartland is one that we're discussing. You know, they're part of a national federation that routinely posts double-digit, million-dollar profits every year, so I think that they'd be able to, through the federation, invest in the women in the state of Nebraska to ensure their health and safety. [LB114]

SENATOR MORFELD: You know, to a certain extent, I think that they'd probably agree with you. But the federal district court in Texas found that this was actually of substantial burden, that it simply wasn't just about providing that level of care but, rather, it created a, quote, brutally effective system of abortion regulation that substantially burdened their rights. So I think that, you know, the reality is, is that by putting some of these burdens on, you're effectively reducing the amount and the access to abortions. And I don't think there's really any way that you can get around that, but thank you very much for your testimony. [LB114]

ANNA PAPROCKI: Thank you. [LB114]

SENATOR SEILER: Senator Ebke. [LB114]

SENATOR EBKE: Thank you. Hey, I'm wondering if you or anybody that may come after you on either side of the larger issue has any kind of data in terms of what the risks as a result of abortion to complications or complications per abortion are. You know, is...are we talking about, you know, 1 out of 100 abortions, are we...that might end up needing this kind of emergent care? Or is it 1 out of 1,000 or 1...I'm just... [LB114]

ANNA PAPROCKI: Right. [LB114]

SENATOR EBKE: I'm just curious because we've...you aren't from Nebraska. [LB114]

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ANNA PAPROCKI: Right. [LB114]

SENATOR EBKE: But we've talked a lot about risks this year and, you know, when the appropriate...what the appropriate time is for imposing mandates in the interest of safety. [LB114]

ANNA PAPROCKI: Well, immediate...it's undisputed that immediate risk...I know you're asking for a quantification here, which is...there is a dispute probably about the quantification of how many women face these immediate risks. But every woman, you know, is...could face the immediate complications from abortion, including blood clots, hemorrhage, incomplete abortions, infection, injury to the cervix and other organs, and that comes from Planned Parenthood's own Web site. It can also cause cardiac arrest, respiratory arrest, renal failure, metabolic disorder, or shock. There have been estimates made that approximately 10 percent of women undergoing abortions could face those immediate complications, but that number is probably...I'm going to guess will be disputed, but that those are all undisputed immediate risks of abortion. You can get those from Planned Parenthood's Web site, from the National Abortion Federation, that, you know, hemorrhage and these emergency situations are known, undisputed risks of abortion. [LB114]

SENATOR EBKE: Thank you. [LB114]

SENATOR SEILER: Senator Krist. [LB114]

SENATOR KRIST: I said I was only going to talk once on these two bills, so I lied already. But I want to add to Senator Ebke's question. When a woman or a man or a couple go into a medical home situation, they're going to be counseled as to risks. And those are CYAs for people to put on their Web sites to say, these are the things that could happen to you. I note, on that Web site there's no psychological warning on the long-term effects of a woman or a couple deciding to do what they need to do. And that's really not a question, it's a comment, but I needed to put it on the record. Thank you. [LB114]

ANNA PAPROCKI: Thank you. [LB114]

SENATOR MORFELD: Senator Seiler. [LB114]

SENATOR SEILER: Any further? Yes, Senator Morfeld. [LB114]

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SENATOR MORFELD: Do you think that government mandates can close down certain clinics or agencies or they can essentially have that effect, a government mandate? [LB114]

ANNA PAPROCKI: Clinics could choose not to comply with...substandard clinics will close and, yes, the...a government mandate that a clinic chooses not to comply with or, because they are incapable of offering appropriate care for women, yes, it could have the effect of closing. But it's actually...you know, or if they're, you know, violating the law, yes, the government can shut down a clinic. But in this case we're talking about, you know, that they could choose...if they don't want to meet the standards, you know, it really is that the clinics are the ones that are closing themselves. [LB114]

SENATOR MORFELD: Thank you. [LB114]

SENATOR SEILER: Seeing no further questions, thank you for your testimony. [LB114]

ANNA PAPROCKI: Thank you. [LB114]

SENATOR SEILER: Next proponent. Proponent? [LB114]

MARIS BENTLEY: (Exhibit 7) Thank you, Senators. My name is Maris Bentley, M-a-r-i-s B-e-n-t-l-e-y. I reside in Omaha, Nebraska. I'm on the board of directors of Nebraskans United for Life and I'm here representing that organization to speak in support of LB114, with thanks to Senator McCoy for sponsoring this legislation. Nebraskans United for Life has been involved in valuing and protecting human life for the past 40 years, and we have over 3,000 members throughout the state of Nebraska. This bill, requiring that all facilities that perform abortions in Nebraska be licensed as ambulatory surgical centers, would be an advancement in protection for the mothers who seek abortions. Because these centers are better regulated by the state of Nebraska, this designation for all abortion facilities would provide better medical care for patients not only during the procedure but also during the event that the women would require emergency care to treat complications as well. Dr. Robert Glatter, an emergency medicine physician at Lenox Hill Hospital in New York, in an article in Time Magazine in 2013, has said of ambulatory surgical centers: Although there is added cost for the setup and accreditation of such facilities, it protects both physicians as well as patients and, thus, creates standards for care and safety. Without strict regulation, oversight, and minimum standards, patients can be at risk for adverse outcomes. Nebraskans United for Life has had contact over the years with people who have worked in the abortion industry in Nebraska and who have recounted for us instances of substandard care, including actual violations such as unlicensed staff starting IVs and an abortion doctor talking on his cell phone while he was performing an abortion. One of our goals, and it should be yours, too, is to make these facilities safer. Right now, as I speak, there is a

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facility in Nebraska that is not accessible by an ambulance, another hazardous situation for women which again makes the case for improved standards and regulation by the state. From the article I already cited are the words of another physician, Dr. Geoffrey Keyes, the president of the American Association for Accreditation of Ambulatory Surgery Facilities, and I think this is a very cogent point: "The argument on one side is that people who are demanding licensing and accreditation are antiabortion. Those who don't want it, are proabortion. I don't think that's the issue. There is nothing wrong with having standards to adhere to when you are performing procedures on patients." Senators, we should all be supporting this bill, whether we are in favor of abortion or not, because it is the right thing to do to protect the health and the life of the mothers who choose abortion. Why would anyone oppose this bill when the objective is to provide improved medical care for these women? If you truly care about the quality of healthcare for women, then you will want to vote to support LB114. Thank you. [LB114]

SENATOR SEILER: Any questions? Seeing none, thank you very much. [LB114]

MARIS BENTLEY: Thank you. [LB114]

SENATOR SEILER: Next proponent. Seeing nobody scrambling from their chair, first opponent. [LB114]

MIKE FALKSTROM: Mr. Chairman, committee members, my name is Mike Falkstrom. That is F-a-l-k-s-t-r-o-m. I am general counsel for Planned Parenthood of the Heartland, a multistate reproductive healthcare provider that has health centers in Iowa, Nebraska, Arkansas, and Oklahoma. We have a center each in Omaha and in Lincoln. Planned Parenthood of the Heartland's top priority is patient health and safety. That's why we utilize rigorous, evidence-based standards and protocols, including recommendations from the American College of Obstetricians and Gynecologists and peer-reviewed research, to inform our policies and procedures. We also, it should be noted, adhere to Nebraska's health clinic standards because we are a health clinic under Nebraska law. This bill is unnecessary, it is potentially unconstitutional, and it could, in fact, pose a threat to women's health. Now ambulatory...I'm going to talk...I'm a lawyer. I went to law school, not med school, so I'm mostly going to talk about the law here. And I'm going to talk about two potential ways that this bill could result in a flat ban on the existence of abortion providers in Nebraska. So first off, it should be noted that ambulatory surgical centers in Nebraska must have qualified for a written agreement with the Health Care Finance Administration of the U.S. Department of Health and Human Services to participate in Medicare or otherwise qualify as an ASC for...to receive payment from other third-party ASC reimbursers. Now these payers don't typically see abortion providers as ASCs. In fact, I think probably most people are on the committee...on the committee are aware that CMS doesn't reimburse for abortion except in very limited circumstances. So in essence, what the committee is asking CMS

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to do is to...or what this bill, excuse me, would be asking CMS to do is agree with its...with the bill's assessment of what an ASC is. And it's pretty elementary to constitutional law that an arm of the federal government doesn't have to do that. You know, they may not like to be drafted as sort of a de facto regulatory body for something they don't typically see as an ASC. So if we end up in a situation where CMS or these other third-party ASC payers refuse to sign one of these required agreements in Nebraska, that would be a de facto ban. If it's not, as was asserted earlier, a choice, that would be a situation where it would be functionally impossible for an abortion provider to comply with the law. So in that way, we're talking about issues of undue burden, obviously. With a flat ban we could also have some federal preemption. Oh, I'm sorry. My time appears to be up. [LB114]

SENATOR SEILER: Okay, Senator Morfeld. [LB114]

SENATOR MORFELD: Can you just finish up your last thought here? [LB114]

MIKE FALKSTROM: Oh, sure. Well, I was going to say also, if I may speak to...we had some aftercare issues, if I may speak very briefly to the transfer agreement issue. Mr. Chairman, may I? [LB114]

SENATOR SEILER: Yes. [LB114]

MIKE FALKSTROM: All right. Then there is also sort of a required transfer agreement that could be sort of incorporated by a reference to these federal regulations. Now, you know, obviously, with EMTALA, the Emergency Medical Treatment and Labor Act, emergency rooms are required to treat patients anyway. But, you know, you may have, with a local hospital, you may have a board member who doesn't want to...the hospital to sign an agreement with any abortion provider. You may have hospitals that are religiously affiliated and may have sort of a religious...legitimate religious objection to signing any agreement with an abortion provider. So if you would be unable to find any hospital that's willing to sign that agreement, that also results in a flat ban due to impossibility of compliance. Thank you. [LB114]

SENATOR SEILER: Senator Morfeld. [LB114]

SENATOR MORFELD: Thank you, Senator. Maybe somebody behind you will talk about this, but one of the questions that has been brought up is, what is the cost, the practical cost? And obviously, you know, you can...there's all different ranges... [LB114]

MIKE FALKSTROM: Sure. [LB114]

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SENATOR MORFELD: ...of cost of equipment, things like that. I understand that. But what's the practical cost from upgrading from a healthcare... [LB114]

MIKE FALKSTROM: Well, Senator Morfeld, I'm unsurprised, frankly, that anyone has been unable to speak to that. We have been digging into this and, in fact, our evaluation continues both locally and with some national experts and it's at the moment complicated to come up with an exact dollar figure for you. What we can tell you...what I can tell you at this point is it does not appear to be unsubstantial. [LB114]

SENATOR MORFELD: Thank you. [LB114]

SENATOR SEILER: Senator Krist. [LB114]

MIKE FALKSTROM: Third time's a charm, Senator? [LB114]

SENATOR KRIST: Yeah. Yeah, you bet. Define "unsubstantial" or "insubstantial." [LB114]

MIKE FALKSTROM: You know, I can't give you an exact dollar figure. Like I said, our investigations are continuing. [LB114]

SENATOR KRIST: Okay. How long have you been with Planned Parenthood? [LB114]

MIKE FALKSTROM: I have been with Planned Parenthood for seven years. I have worked for Planned Parenthood as an attorney since 2009. I have been in the position of general counsel since February 2014. [LB114]

SENATOR KRIST: And what have...just generally, what's your profit margin per year in the time you've been there? [LB114]

MIKE FALKSTROM: I couldn't tell you off the top of my head, Senator. You know, we are a nonprofit. I do hear all these huge profit margin numbers get thrown around. I am not aware of any sort of, at least for our affiliate, any sort of massive profits like the kind that are being asserted. [LB114]

SENATOR KRIST: What's the percentage of federal money that you get to... [LB114]

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MIKE FALKSTROM: I'd have to check our annual reports, Senator. I don't know off the top of my head. [LB114]

SENATOR KRIST: Could you do that and get back to us? [LB114]

MIKE FALKSTROM: Sure. [LB114]

SENATOR KRIST: I'd appreciate that, maybe the last four or five years' fiscal...what was your profit margin across the country,... [LB114]

MIKE FALKSTROM: Sure. [LB114]

SENATOR KRIST: ...and then how many federal dollars the clinics are actually getting. We'd appreciate that. [LB114]

MIKE FALKSTROM: Okay. [LB114]

SENATOR KRIST: Thank you. [LB114]

MIKE FALKSTROM: Senator Chambers. [LB114]

SENATOR SEILER: Senator Chambers. [LB114]

SENATOR CHAMBERS: I have a... [LB114]

SENATOR KRIST: I didn't say anything to you. I was talking to him. (Laugh) [LB114]

SENATOR CHAMBERS: I hadn't said a word to anybody. (Laugh) But this is a rhetorical question: If I say that something is very important to me and I'm a member of the Legislature and I'm entitled to one priority bill, under our system, we do have a deadline for offering or designating a priority bill, but it's not uncommon at all to designate a priority bill which remains in committee. So it seems to me it would be disingenuous if I were to tell people...let's take my death penalty bill, which I believe I prioritized before it came out of committee. And I would tell a lot of people, this means a lot to me, but I didn't prioritize it and instead I prioritized a bill that would say we're going to make it required that when school boards vote for their officers, they have to do it publicly. That wouldn't seem that I placed a high priority on abolishing the death penalty, would it? [LB114]

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MIKE FALKSTROM: If I were sitting in your shoes, Senator, no. [LB114]

SENATOR CHAMBERS: And that was just a rhetorical question. That's why your answer is sufficient for my purposes. Thank you. [LB114]

SENATOR SEILER: Further testimony? Seeing none, thank you for coming. [LB114]

MIKE FALKSTROM: Thank you, sir. [LB114]

SENATOR SEILER: Further testimony in opposition. Opponents? [LB114]

DIANE LOOS: Good afternoon, Senators. Can you hear me? My name is Diane L. Loos, L-o-o-s, and I am a physician. I have practiced medicine in Colorado and Arizona for almost three decades. I now live here and do not practice in this state. I have studied this bill and I wrote a letter to Senator Crawford and here I am. That will teach me. This bill puts a tremendous burden on those very few clinics who do perform so many abortions a month or more to become ambulatory surgical centers. Now the trend of ambulatory surgical centers developed in the '70s and '80s to get patients who needed anesthesia out of the main OR, out of the main hospital, because they were coming in, having their procedure, and leaving. An ambulatory surgery center originally was designed with the idea that patients are not conscious at least part of the time. Now I looked at this bill and I took it on myself to go to Planned Parenthood, to go to some of the local hospitals, and to find out how things are done here. Planned Parenthood patients and the population they serve are served very well as a clinic in the classification they are listed as now because they do not receive general anesthesia. Patients in Planned Parenthood walk into the treatment room, are properly cared for, and walk out of the treatment room. They go to the little reclining rest area until they're ready to go home. Patients in a recovery room unit or in an ambulatory care unit have to wake up from their anesthetic before they can go home. The reason eye clinics are considered ambulatory care centers is because many eye patients receive extensive sedation. So they also are being shuttled around in a physical plant designed for it, on gurneys, because they're asleep. The physical plant that an ambulatory surgical center has to provide is bigger, wider, and more expensive than what a clinic has to provide. A clinic, as Planned Parenthood is, is perfectly adequate for the population it serves in the provision of safe and legal abortion to those women who want it, which constitutes only 2 percent of the women who come there for care. Other forms of care are done there as well: yearly exams, birth control prescriptions, contraception advice, breast exams, arrangements for mammograms. These are things some poor women need and they don't get anywhere else. [LB114]

SENATOR SEILER: Ma'am, just a second. [LB114]

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DIANE LOOS: Am I out of time? I'm sorry. [LB114]

SENATOR SEILER: Just a second. Senator Williams. [LB114]

SENATOR WILLIAMS: Doctor, I would like you to continue with your thoughts for a moment, and then I've got some questions. [LB114]

DIANE LOOS: You bet. [LB114]

SENATOR WILLIAMS: Go ahead. [LB114]

DIANE LOOS: I have to get back to where I was. (Laughter) The population that Planned Parenthood serves is only revolved...is only involving 2 percent of their patients in abortion. The rest of them are getting a wide variety of women's healthcare services that they don't get elsewhere. A lot of those patients might or might not fall under that Medicaid bill if it were expanded. I don't know. But these are people who are treated on a sliding scale, depending on their income. No one is forcing them to have an abortion. No one is pressuring them. But they come into the clinic asking for this. Now I have not worked with Planned Parenthood here. I have not worked with Planned Parenthood ever. I have worked in every kind of imaginable operating-room scenario that exists in both Colorado and Phoenix: inpatient, outpatient, ambulatory, in doctor's office, group clinic, and clinics like Planned Parenthood. And the important thing to remember is that outpatient surgeries are designed because the people in them are asleep. The patients are asleep. The physical plant needs to reflect that. [LB114]

SENATOR SEILER: Senator, you may ask your questions. [LB114]

SENATOR WILLIAMS: Thank you. [LB114]

DIANE LOOS: Thank you. [LB114]

SENATOR WILLIAMS: Doctor, you mentioned the ophthalmology clinic and the types of procedures there. What about the dermatology clinic? [LB114]

DIANE LOOS: Dermatologists do a wide variety of things. I am not familiar with everything they do in their surgery centers. They usually bring their patients into an ambulatory surgery center if it's an extensive procedure, like a face lift. [LB114]

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SENATOR WILLIAMS: Okay, thank you. [LB114]

DIANE LOOS: If it's minor, they do it in the office. [LB114]

SENATOR WILLIAMS: Yeah, thank you. [LB114]

DIANE LOOS: The key here, the key difference, is the anesthesia. [LB114]

SENATOR SEILER: Okay. Any further questions? Senator Morfeld. [LB114]

SENATOR MORFELD: Doctor, you may not know this, the answer to this question. Maybe I should have asked the individual with Planned Parenthood, even though he's on the legal side of things. A lot of people have been talking about how much money Planned Parenthood makes. I mean, how much money do...how much is an abortion, I guess? I mean how much money can Planned Parenthood actually make off these...I don't... [LB114]

DIANE LOOS: All I know is they charge on a sliding scale according to income. [LB114]

SENATOR MORFELD: So somebody could not have to pay anything and Planned Parenthood could actually take a...I don't want to call it a hit, but it may cost Planned Parenthood money, actually, correct? [LB114]

DIANE LOOS: Well, theoretically, I guess. I don't know. [LB114]

SENATOR MORFELD: If they're not receiving funds for their services... [LB114]

DIANE LOOS: They're...no, they're a nonprofit organization. [LB114]

SENATOR MORFELD: Okay, thank you. [LB114]

SENATOR SEILER: Any further questions? Seeing none, thank you, Doctor. Next testimony in opposition. [LB114]

DELORIS TONACK: (Exhibit 8) Good afternoon, Chairman and Judiciary Committee. My name is DeLoris, D-e-L-o-r-i-s, Tonack, T-o-n-a-c-k. I am here in opposition to LB114. I am here as an individual and also a representative of AAUW, the American Association of

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University Women. It is an organization which has worked to empower women since its beginning in 1881. It is known for many funding efforts and research efforts, the most recent a 2011 study on sexual harassment. AAUW supports the right of every woman to safe, legal, accessible, and affordable, which has been addressed already several times this afternoon, and comprehensive family planning and reproductive health services. AAUW trusts that every woman has the ability to make her own informed choices regarding her reproductive life within the dictates of her own religious and moral beliefs. Further, AAUW holds that these deeply personal decisions should be made without governmental interference. LB114 redefines and extends ambulatory surgical centers' criteria to procedures that are already based on recommendations from the Centers for Disease Control and Prevention, U.S. Preventative Services Task Force, and the American Congress of Obstetricians and Gynecologists. Data shows that legal abortion has over a 99-percent safety record. This is not a bill to improve health risks but, quite the contrary, a bill that could nudge patients to seek unsafe procedures. It is a bill that seems so contrary to our Nebraska reputation for individual rights and limited government control. There are other issues that do need your time, and this is not one of them. Thank you. [LB114]

SENATOR SEILER: Questions of this witness? Senator Chambers. [LB114]

DELORIS TONACK: Yes, sir. [LB114]

SENATOR CHAMBERS: I give much more credence to a person who is a member of a class, has been a member of that class all her life, has educational credentials, experiential credentials, speaking for that class over a politician who has never shown an interest in that class, has only brought things that are detrimental or inimical to that class. So that's to indicate where I am on a bill such as this. I have watched, years that I have been here, people pretend that they're interested in the welfare of women. But when we come to issues that pertain directly to a woman's welfare, they are, "No, no, it costs too much, President Obama wants that, we don't want that." So when I hear those hypocrites, there are people who themselves may not be hypocritical, but they're following one because he's saying what they want to hear. And if this thing gets to the floor, which I don't think it will, I will point out that the one who brought the bill and said how important it is did not make it a priority but, rather, chose a different senator's bill to prioritize that dealt with making public the votes of school board members when they elect the officers for the school board. I just thought I'd throw that out there so you'd know that not everything you're saying is falling on deaf ears. [LB114]

DELORIS TONACK: Thank you, Senator Chambers. [LB114]

SENATOR SEILER: Senator Ebke. [LB114]

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SENATOR EBKE: Okay, at the bottom of your testimony you say that data shows legal abortion has over a 99-percent safety record. Do you have anything tighter than that? [LB114]

DELORIS TONACK: That is information that I did gain from the Planned Parenthood information, so I would have to go back to give you more on that. I do not know our own state's record. [LB114]

SENATOR EBKE: Okay, so something less than 1 out of 100, something less. We don't know whether it's yet... [LB114]

DELORIS TONACK: Well, and safety probably has a broad meaning. [LB114]

SENATOR EBKE: Sure, sure. I only ask this because, some of you may have been aware, a couple weeks ago we were discussing meningitis vaccines and the numbers that I heard were...the chance that any given person has of getting meningitis over the course of a year is something like 4 out of 10,000, if I check my...you know, so, you know, there seems to be a little bit of a disconnect in terms of the numbers here. And, you know, at what point do we mandate something? So I...that's just sort of my own puzzling about this issue right now. Thank you. [LB114]

SENATOR SEILER: Further questions? Seeing none, thank you for your testimony. [LB114]

DELORIS TONACK: Thank you. [LB114]

SENATOR SEILER: Next proponent...or opponent, excuse me, opposition. [LB114]

GWENDOLEN HINES: Good afternoon. My name is Gwendolen Hines. It's G-w-e-n-d-o-l-e-n, and my last name is Hines, H-i-n-e-s. Usually, I would be here representing the social justice committee of the Unitarian Church of Lincoln, but our minister is here today to represent our church, so I'll let him do that and I'll just represent myself. I just want to say that abortions are safe, especially first-trimester abortions. A first-trimester abortion, you don't need an anesthetic or a sedative. It's just a DNC. My mother had a DNC at her doctor's office for something other than an abortion. You don't need a defibrillator or a ventilator or any other emergency equipment around. The risk is very low. This bill would make it harder for abortion providers like Planned Parenthood to provide abortions and would restrict women's access to abortion. Abortion is legal and there is no reason to restrict women's access to safe abortions. Planned Parenthood already provides safe abortions. This bill is really a conversation about whether abortion should be legal or not. The idea that a fertilized egg is human is a religious idea and we have separation between

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church and state. A fertilized egg is not human, in my opinion, neither is a first-trimester fetus. It is not a self-aware human being. You seem to think that women need to be protected from themselves and from their own decisions. I had an abortion when I was 24 and I was in graduate school. I was on the pill but I got pregnant anyway. I went to Planned Parenthood in Rhode Island--I was going to Brown University at the time--and I felt like I was in good hands. To this day, I feel like the abortion was a good decision. I couldn't bear the idea of having a baby and giving it up. I couldn't let my fetus develop into a human baby. If I'd have had the child and kept it, my life would have been very different. I wouldn't have finished graduate school. I wouldn't have touched the hundreds of lives that I've touched as a professor in the math department at the University of Nebraska-Lincoln. I've touched many lives there. I've gotten close to many of my students. My students invite me to their weddings. I've helped out when they had their first baby. So I've had very close relationships with many of my students. After I had my abortion, I got married four years later and I had a child and that child would not exist if I had not had that abortion. And his life is very precious. And who's to say that his life is less precious than the life of the child that I would have had if I hadn't had the abortion? And I also wonder, why five abortions per month? If people really think that abortions are dangerous, they would make any place doing abortions be ambulatory surgical centers. [LB114]

SENATOR SEILER: Thank you. Any questions? Seeing none, thank you for your testimony. Next opposition. [LB114]

JUSTIN OSTERMAN: Good afternoon, Mr. Chairman, Senators. My name is the Reverend-Doctor Justin Osterman, O-s-t-e-r-m-a-n, and I'm the interim minister of the Unitarian Church of Lincoln and I'm here to share my personal opinion. I'm confident that I speak on behalf of the members of my church as well. And I want to express to you my opposition to LB114 and to ask that you not support this bill. Senators, this bill is a wolf in sheep's clothing. In the name of protecting women's health, this would punish women for being poor. Our great heritage of western religion has as one of its cornerstones the notion of social justice, the idea that our society has an obligation to protect and care for those who are oppressed, dispossessed, and marginalized in the society, and for too long in our history, society, and nation, women have been on that margin. And we have made tremendous strides over the past century in lifting up and honoring the dignity, the equality, the integrity of women and empowering them as the equal members of our society that they are and always should have been. We are now facing a crusade to roll back women's rights in this country, and it should alarm all of us. LB114 is designed to price reproductive health centers in Nebraska out of existence. It's designed to require a capital investment that is going to prevent those clinics from providing care to women, women who are on the margin of our society, who are most vulnerable and most in need of our care. And passage of this bill would require women of Nebraska to travel out of the state at great expense in order to safely terminate a pregnancy. And the real consequence of this bill would be to deny the poorest, most vulnerable women in our state access to safe and legal abortions. This is about

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controlling women by limiting their choices in life and I oppose that in principle. There are many different reasons why women seek abortions. There are as many as there are different women. And I'm in no position to pass judgment on their decisions. I urge you not to erect any barrier between the women of this state and their constitutional right to self-determination. The women of this state, especially the weakest and most vulnerable, are looking to you for protection. Please, I urge you not to let them down. Thank you. [LB114]

SENATOR SEILER: Any questions? Any questions? Seeing none, thank you, Reverend. [LB114]

JUSTIN OSTERMAN: Thank you, sir. [LB114]

SENATOR SEILER: Next opposition. [LB114]

DANIELLE CONRAD: (Exhibits 9 and 10) Good afternoon, Chairman Seiler, members of the Judiciary Committee. My name is Danielle Conrad. That's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today as a registered lobbyist for the ACLU of Nebraska. It's a pleasure to see you all this afternoon. The ACLU of Nebraska strongly supports the constitutional rights of women to safe and legal abortion and their liberty interest to control their reproductive health. The ACLU strongly believes that the government should not decide personal decisions about family size and quality of life. LB114 is nothing more than a classic TRAP bill, a targeted regulation of abortion providers. This legislation is suspect from a policy perspective and from a legal perspective. We ask, as such, that our testimony be included in the record in opposition to LB114. Let's talk about the policy considerations right out of the gate. The health and safety of Nebraska women is something that we all care about. There is an extensive legal and regulatory framework already in place to ensure these policy objectives are met. This proposition is clearly evidenced by the facts. Abortion in Nebraska has a strong safety record with no complications reported on statistical reports to this date from 2005-2013, which I've passed out a chart for each of your ability and reference. Additionally, respected medical organizations, like the American Medical Association and the American Congress of Obstetricians and Gynecologists, consistently oppose TRAP laws just like this because they do not serve a medical purpose. In fact, they have noted, where abortion is legal it is extremely safe. The risk of death associated with childbirth is 14 times higher than that with abortion. In the United States, 88 percent of abortions occur within the first trimester, when they are the safest. Additionally, serious complications from abortion at all gestational ages are rare. There is no public health need to adopt LB114. LB114 would impose undue costs and undue burdens on Nebraska women and Nebraska healthcare providers. And please note, there is no grandfather clause or waiver provision. There is already a lack of access to abortion care in Nebraska with only three clinics and five providers. Ninety-seven percent of Nebraska counties do not have an abortion clinic. Forty-one percent of Nebraska

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women live in the counties without an abortion clinic. Thus, if any one of these existing counties would close, it would impose an undue burden on safe access to abortion care. Additionally, there is no recognition in this legislation for the increasing prevalence of medical abortion versus surgical abortion. And if you look at the chart that I passed out, almost half of all abortions in Nebraska are now conducted on a...through a medical procedure, not a surgical procedure. So it begs the question, why would we require...I see that my time is up, Senator Seiler, and the rest of my comments are included in the testimony. [LB114]

SENATOR SEILER: Senator Krist. [LB114]

SENATOR KRIST: Only because I miss you and I miss debating you... [LB114]

DANIELLE CONRAD: Some days, maybe. [LB114]

SENATOR KRIST: All days, Senator. Go ahead, finish your conclusion. [LB114]

DANIELLE CONRAD: Well, thank you very much, Senator. I appreciate the professional courtesy and I will try and be brief and to the point. But I know that this is an important issue and hopefully my responses may speak to some of the questions that the committee has asked other testifiers. Again, it begs the question, why would we require standards that are appropriate for surgery for medical procedures that aren't even surgical in nature? Additionally, there are specific legal considerations at play with this legislation. And to be very clear, there is a complex and lengthy framework when evaluating these constitutional liberty interests through a body of Supreme Court case law. But the bottom line is this: Women do have a constitutional right to personal privacy and to abortion that is protected in the Fourteenth Amendment to our constitution. And the courts have gone on to find, even when they do an undue burden standard or apply that in concert with a rational basis standard, in the most recent Gonzales v. Carhart decision...in fact, Senator Morfeld, as you noted, a Texas court which specifically looked at the ambulatory surgical center requirements in the Texas legislation found, on page 17, using that lengthy framework in analysis, quote: The law's ambulatory surgical center requirement burdens Texas women in a way incompatible with the principles of personal freedom and privacy protected by the United States Constitution for 40 years since Roe v. Wade. The state reached a tipping point in limiting access to abortion when the ambulatory surgical center requirement is viewed in context with other state-imposed regulations. And this is important because the state noted that, because of a 24-hour waiting period, because of sonogram requirements, the ambulatory surgical requirement, in concert with those existing regulations, created an undue burden and on its face. Nebraska has that similar...those similar requirements and regulations in place already, and many more, so that's important to note as well. I think that when you look at the case law from the Fifth Circuit and the Seventh Circuit, it's clear that courts have found that

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legislation like this is suspect from a constitutional perspective. And goodness knows, the good senators have so many important issues before them and this great state this session that it would be ill advised to move forward with legislation that is poorly conceived from a policy standpoint and a legal standpoint and that puts the Nebraska state taxpayers at risk for funding a defense to unconstitutional policies and potentially paying the attorney's fees for abortion providers, which has happened in our very recent past. So with that, I know that your time is precious and there are many more bills before us today, but I did want to provide that information in the record. I also want to clarify, there has been some confusion that there is no existing regulation for abortion clinics in Nebraska, and that's just not true. Our state statute has a clear framework and there are a host of regulatory provisions with...complement the statutory framework that are dozens of pages in nature. You can go look for yourself. So I think that it is important to note that the current classification for health centers versus ambulatory surgical centers has been made on a medical basis, it hasn't been made on a political basis, and that's what the problem with LB114 is. [LB114]

SENATOR KRIST: I missed your one-minute call, but time. (Laughter) [LB114]

DANIELLE CONRAD: (Laugh) Right. I will be more... [LB114]

SENATOR SEILER: Senator Morfeld. [LB114]

SENATOR CONRAD: ...more respectful of the time at the next go-around, yes. [LB114]

SENATOR SEILER: Senator Morfeld. [LB114]

SENATOR MORFELD: Amy Miller may be my favorite attorney in Nebraska, but you're my favorite constituent, Senator Conrad, so. [LB114]

DANIELLE CONRAD: Oh, well, that's very kind. [LB114]

SENATOR MORFELD: In any case, I'm not even up for reelection in three years either, so (laugh)...one of the things that I'm concerned about is some of these government mandates that I think we could argue both ways, but in my opinion is a guise to limit access. Is there, other than this case right here, are there any other case law or precedents finding that, you know, a certain government mandate that's not rationally related to what it's actually trying to achieve does place an undue burden on a woman's right to have an abortion? Is there any other case law out there or is this an emerging... [LB114]

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DANIELLE CONRAD: You know, I...it's my understanding that the Texas experience would probably speak to that most directly. Application of a very similar provision requiring all clinics to become ambulatory surgical centers, in addition with other matters, like admitting privileges and a 20-week ban and a host of additional regulations, caused a significant decrease in the amount of clinics that were able to adhere to those heightened standards. And the court, that's exactly why the court first rejected a facial challenge but then later supported an as-applied challenge, because the impacts, the actual impacts to access for Texas women were so dramatically reduced. [LB114]

SENATOR MORFELD: Thank you. [LB114]

SENATOR SEILER: Further questions? [LB114]

DANIELLE CONRAD: Okay. [LB114]

SENATOR SEILER: I have one. [LB114]

DANIELLE CONRAD: Yes, Senator. [LB114]

SENATOR SEILER: If you'd look at your chart... [LB114]

DANIELLE CONRAD: Yes. [LB114]

SENATOR SEILER: ...under the year 2013,... [LB114]

DANIELLE CONRAD: Yes. [LB114]

SENATOR SEILER: ...you've got 42 percent by medication, 58 percent surgical. [LB114]

DANIELLE CONRAD: Yes. [LB114]

SENATOR SEILER: Is that broken down by counties? [LB114]

DANIELLE CONRAD: You know, I believe it is broken down by counties, Senator Seiler. There is a... [LB114]

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SENATOR SEILER: If you could find a copy of that... [LB114]

DANIELLE CONRAD: Yep. [LB114]

SENATOR SEILER: ...chart and send it to me. [LB114]

DANIELLE CONRAD: There is an excellent statistical report put out by the Department of Health and Human Services every year and it has a variety of different data points that...so that's just a selection of complications and of abortion type, but I'd be happy to send that to you. It's readily available. [LB114]

SENATOR SEILER: Thank you. [LB114]

DANIELLE CONRAD: Yeah. [LB114]

SENATOR SEILER: Any further questions? [LB114]

DANIELLE CONRAD: Okay, thank you so much for your time. [LB114]

SENATOR SEILER: (Exhibits 11, 12, and 24) Next testimony in opposition. Anybody in the neutral? Senator McCoy, he waives closing. Okay, the record will include the written materials centered...that have been sent to us and presented to us today and the documents signed outside as to whether you're pro or against. Senator Kintner, did I see...yeah, there he is. [LB114]

SENATOR KINTNER: I know, I've got a bad reputation. I know. [LB187]

SENATOR SEILER: No, you were hiding behind a chair. LB187. [LB187]

SENATOR KINTNER: The seat is already warmed up. Well, thank you, Mr. Chairman, members of Judiciary Committee. I'm Senator Bill Kintner, B-i-l-l K-i-n-t-n-e-r. I represent Legislative District 2 and I'm here to introduce LB187. LB187 amends the Health Care Facility Licensure Act in regards to healthcare facilities that perform abortions. I just want to point out for those of you returning, this is my signage bill from last year and Senator Krist's sonogram bill, I'll call it, that updates the informed consent law. So I've just taken the two, as you may remember them from last year, and put them together. First, Sections 2 and 3 of the bill would update and improve on-line coordination and awareness, Nebraska's currently required abortion informed consent information. And second, Sections 4 and 5 would add signage requirements for

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healthcare facilities that provide abortions to inform women that it is against the law for anyone to force them to have an abortion. Sections 2 and 3 of this bill are an attempt to bring our informed consent law on abortion information into the 21st century, Nebraska's law dating back to 1993 on informed consent, but for all intents and purposes is outdated because we don't hand pamphlets out anymore. We do things on-line and this is an attempt to square that with how we currently do things. Section 2 specifically requires Nebraska Department of Health and Human Services to develop a dedicated Web site on their Web site for all the abortion information and consent...informed consent information required by the 1993 law, including video of ultrasound images using the best available ultrasound technology of unborn children in two-week increments. In addition, Section 3 requires healthcare facilities that provide abortions and have a Web site to provide a link to HHS's dedicated Web site page from the healthcare facility's home page, coordinating awareness and access to informed consent information. If they don't have any...if they don't have a Web site, they don't have to do one, only if they currently have one. I believe this is a very important provision that would provide quick, efficient, and user-friendly access to the informed consent information required by law through the latest technology. Finally, Sections 4 and 5 would require a posting of signs in certain areas of the healthcare facilities which provide abortions to inform patients that it is against the law for any person, regardless of their relationship, to force a woman to have an abortion. Currently, Nebraska's informed consent laws that we talked about earlier provide crucial information concerning the abortion procedures, its risk, alternatives, and long-term consequences, as well as the physical development of the unborn child. The intent of Sections 4 and 5 are to provide another important piece of information to women seeking an abortion, specifically that a woman seeking an abortion cannot be coerced or forced into having an abortion against her will and this decision is exclusive to the woman and the abortion cannot be performed without her voluntary consent and she is entitled to legal protections if she feels threatened. You know, research confirms that a substantial number of women feel forced by a boyfriend, spouses, parents, and others to have an abortion. And women are coerced through threats, sometimes of physical violence, withdrawal of financial support, loss of housing, violation of employment contracts, or other legal agreements. Furthermore, numerous studies have confirmed that women considering an abortion are substantially more likely to be suffering domestic violence. Required language outlined in the bill would provide women notification of their rights and must be posted conspicuously in the facilities that perform abortions. A \$500 fine for each day the sign is not posted would be imposed. Again, I believe LB187 is necessary to update, to bring Nebraska's current informed consent laws into the 21st century to inform women making one of the most important decisions in their life. No woman in Nebraska should ever regret not having enough information regarding abortion in our on-line, connected, information-rich society. And most importantly, no woman in Nebraska should ever feel forced or coerced into having an abortion against her will. There will be some testifiers behind me that probably know more about it. Obviously, I've never been in an abortion clinic. It was news to me that this kind of stuff was going on. I would have no idea. But

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I will try to answer any and all questions that you may have at this time and I will thank you for your consideration. [LB187]

SENATOR SEILER: Questions? Senator Morfeld. [LB187]

SENATOR MORFELD: Senator Kintner, one of the things that I always appreciate about you is that you're always consistent about being opposed to unnecessary government mandates and things like that. I mean, don't you think this kind of conflicts with that philosophy that you're fairly consistent on in imposing this type of mandate on a clinic? [LB187]

SENATOR KINTNER: Which part of the law are you referring to? [LB187]

SENATOR MORFELD: The requiring of the signs in certain areas of healthcare facilities which provide abortions to inform patients that it is against the law for any person, regardless of their relationship to you, to be forced to have an abortion. [LB187]

SENATOR KINTNER: You know, we do this all the time. If you go into a bar, there's a sign on the wall about fetal alcohol syndrome. We passed a bill last year that many of the senators in this room voted for that required tanning facilities to have a sign, a warning sign, and I voted for that. And I think all the senators here, except Senator Seiler, voted for it. We have warnings on cigarette packages. You have warnings posted on airplanes and they go over warnings with you, I mean, when you ride on an airplane. You know, this is regulating commercial speech and we're doing it in a way to give a woman the greatest amount of information possible. You and I both believe in as much information as possible, as much transparency/information as possible. I think we agree on that part. But where it starts, where it stops, we may dink around on that a little bit. But I just think that...you know where I stand from? I want to give that woman one more chance to say yes to life. She doesn't have to. She's got a right to go either way she wants. I wanted to make sure that's your decision and no one can force you to do anything. So I think posting a sign, jeez, there's a lot of signs up already. They've got parking signs on it--where you can park, where you can't park, how long you can park there maybe, maybe no overnight parking. They probably have 30 or 40 signs up. So I weighed that. I thought about that. I did consider it and I thought that the benefits outweigh the very slight burden. But I have one of those signs. I can show you what we're talking about. Matter of fact, I'll put it here. If you guys want to, you can...I can pass it around or I can just set it right here for you. This is the size. This is the size of the lettering, right there. So I'll set it right here. If anybody wants to actually hold it or something, just let me know and we'll send it over to you. [LB187]

SENATOR MORFELD: Thank you, Senator. [LB187]

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SENATOR KINTNER: Okay. [LB187]

SENATOR SEILER: Senator Chambers. [LB187]

SENATOR CHAMBERS: Senator Kintner, this issue is not important at all, is it? It's inconsequential, isn't it? In reality, this is not a big deal. This is...this could be called a peewee bill, couldn't it? [LB187]

SENATOR KINTNER: No, not at all, and if...obviously, there's a lot of people sitting back here and there's people in the overflow room, so it's important to somebody and it's important to me. [LB187]

SENATOR CHAMBERS: But it's not too important to you. [LB187]

SENATOR KINTNER: Yes, it is. [LB187]

SENATOR CHAMBERS: Is it your priority bill? [LB187]

SENATOR KINTNER: No. [LB187]

SENATOR CHAMBERS: So it's not a priority with you, is it? [LB187]

SENATOR KINTNER: Senator Chambers, I may be here another seven years and we'll...we're...and so... [LB187]

SENATOR CHAMBERS: No, that's not what...I don't want you to be evasive. This... [LB187]

SENATOR KINTNER: This will be held over for next year. [LB187]

SENATOR CHAMBERS: This bill is not important to you enough for you to prioritize it, is it? Obviously, it's not, because you didn't prioritize it. [LB187]

SENATOR KINTNER: We have...this is two years here. We've got two years, so this can be prioritized next year. [LB187]

SENATOR CHAMBERS: Can you answer a question if I ask it slowly? [LB187]

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SENATOR KINTNER: Very slowly. [LB187]

SENATOR CHAMBERS: This bill is not important enough for you to prioritize it, is it? Let me ask it a different way. Did you prioritize this bill? [LB187]

SENATOR KINTNER: No. [LB187]

SENATOR CHAMBERS: You prioritized a different bill, correct? [LB187]

SENATOR KINTNER: That's correct. [LB187]

SENATOR CHAMBERS: So that different bill had a higher priority to you than this one, correct? [LB187]

SENATOR KINTNER: Yes, and there's a reason: because that bill had a very, very early hearing and this has a very, very late hearing, so I went with the early hearing. If it was swapped around, this might have gotten my priority and the other bill would have waited until next year. [LB187]

SENATOR CHAMBERS: Now do you think all those people in that overflow room--I'm taking your word for it--are going to accept that? They can tell when a politician is flip-flopping or trying to get out of a tight spot that he put himself in. Now, when you held up that sign, the words that would be required are not actually on that sign, correct? [LB187]

SENATOR KINTNER: No, they're there. [LB187]

SENATOR CHAMBERS: Okay, because there are so many words I didn't think that that many words would be on the sign. What do you think will be prevented if that sign is up somewhere? What evil are you trying to prevent by making this government mandate wherever these services are performed, private or public? [LB187]

SENATOR KINTNER: First of all, you know, we're in the mandate business. That's all we do here is mandates. That's what we do. [LB187]

SENATOR CHAMBERS: Now I'm asking you, what... [LB187]

SENATOR KINTNER: Laws are mandates. [LB187]

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SENATOR CHAMBERS: ...what evil are you... [LB187]

SENATOR KINTNER: So let's get that straight. [LB187]

SENATOR CHAMBERS: What evil are you trying to prevent? [LB187]

SENATOR KINTNER: I'm trying to prevent coercion. I think the best thing we can do is just remind the person, these are your rights, these are your options, and by law you can do with that as you will. [LB187]

SENATOR CHAMBERS: Well, if somebody is being coerced, that sign is not going to stop them from going through with what they're coerced to do, is it, because they already know that nobody has the legal right to coerce them to do something? Don't you think this indicates that somebody in this society is not intelligent when a sign like that is put up? They don't know that they cannot be coerced? They already know that, don't they? [LB187]

SENATOR KINTNER: The answer to your first question is no. [LB187]

SENATOR CHAMBERS: They don't know. [LB187]

SENATOR KINTNER: The answer to your second question is, probably. [LB187]

SENATOR CHAMBERS: I just want to establish that this bill is not that important to you. Let me ask you another question. How long have you been in the Legislature? At least four years and this is your second term? [LB187]

SENATOR KINTNER: It's my third year, third year. [LB187]

SENATOR CHAMBERS: Third year. You've seen bills prioritized while they were still in committee, haven't you? [LB187]

SENATOR KINTNER: Um-hum. [LB187]

SENATOR CHAMBERS: And you could have done that, couldn't you? [LB187]

SENATOR KINTNER: Um-hum. [LB187]

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SENATOR CHAMBERS: And you chose not to, right? [LB187]

SENATOR KINTNER: Right. [LB187]

SENATOR CHAMBERS: Good. [LB187]

SENATOR KINTNER: Okay. [LB187]

SENATOR CHAMBERS: I'm through questioning. [LB187]

SENATOR KINTNER: Okay. [LB187]

SENATOR SEILER: Any questions, further questions? Thank you. You'll wait for closing, Bill? Senator, you'll be here for closing? [LB187]

SENATOR KINTNER: I'll stick around, yeah. Yeah. [LB187]

SENATOR SEILER: First proponent. [LB187]

JULIE SCHMIT-ALBIN: (Exhibits 13 and 14) Mr. Chairman and members of the committee, my name is Julie Schmit-Albin, S-c-h-m-i-t, hyphen, A-l-b-i-n. And I'm executive director of Nebraska Right to Life appearing today in support of LB187 which seeks to strengthen our existing informed consent on abortion statute. The basic tenets of informed consent for medical treatment are that the medical provider involve the patient in a discussion about the procedure or treatment that they are to receive, the risks involved, the alternatives to such treatment, and that they have all the information to make a fully informed decision on whether or not to proceed with the treatment or procedure. LB187 would provide that the Department of Health and Human Services create a dedicated Web page within their DHHS Web site which brings together all of the informed consent on abortion information required by the '93 statute and proposed in LB187 into one easily accessible site that accounts for the advancement of technology since 1993. If the state has a public policy providing this information, why shouldn't it be the latest state-of-the-art technology accessible by today's methods of smart phones, tablets, and laptops, and not by 1993's methods of snail mail and a toll-free 800 number. The booklet that I passed out to you was the '93 provision in the statute of the way information was provided. And in that booklet...I think Senator Ebke asked a lot about risks and complications of abortion, and some of that is listed in the back of the booklet, Senator Ebke. Two things that LB187 would add that are new would be the DHHS Web page linking to a 4D ultrasound site showing videos of unborn children developing in the womb, and such sites are available. It would be up to DHHS to choose

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that. The other new component would be the Nebraska abortion facilities' Web sites providing a link on their Web site to the DHHS page. This is currently done by Planned Parenthood of Kansas/Mid-Missouri, as well as Planned Parenthood of Michigan, to name just two abortion providers as an example. Two years ago, LB300 by Senator Krist sought to do this and an argument was raised by Planned Parenthood of the Heartland that they couldn't link to a state site because they cover Nebraska, Iowa, and parts of Oklahoma and Kansas and it would violate interstate commerce clause. Apparently, that hasn't stopped Planned Parenthood of Kansas/Mid-Missouri from currently linking to the Kansas DHHS site. And I have that and some other materials here for you, the link. Additionally, our National Right to Life legal counsel says, when discussing the violation of the interstate commerce clause, the question is whether the federal government has preempted the state in regulating businesses' Web sites, and they have not. I have examples in your handout of Planned Parenthood of the Heartland's Web site currently handling business in four states, quite adeptly, across their Web site. As for any concern about the state infringing on free speech, the Kansas DHHS Web site link was initially challenged by Planned Parenthood of Kansas/Mid-Missouri, but they dropped it after the state of Kansas cited case law upholding the right of government to regulate commerce. And as Senator Kintner remarked about the different warnings that we have, the state of Kansas' legal brief argued that the required link was sensible commercial disclosure requirements aimed at ensuring a decision is mature and informed. So again, the Planned Parenthood of Kansas City... [LB187]

SENATOR SEILER: Ma'am, your red light is on. Just a second. [LB187]

SENATOR KRIST: Go ahead. [LB187]

SENATOR SEILER: Senator... [LB187]

JULIE SCHMIT-ALBIN: Thank you, Senator Krist, Mr. Chairman. Planned Parenthood of Kansas and Mid-Missouri currently links to the Kansas DHHS site. So that argument from a year or so ago seems to be moot at this point. And I just have some other provisions that I wanted to talk about regarding the poster signage but Senator Kintner covered that, so I'll conclude. [LB187]

SENATOR SEILER: Any questions? Senator Krist. [LB187]

SENATOR KRIST: So several years ago when we engaged in the bill that you spoke of, it was the department's reasonable response when I asked the question, and I think you were in the meeting when I asked it, why haven't you increased the requirement to post these on your Web site or stop using stick figures and start using technology...do you remember what their response was at the time? [LB187]

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JULIE SCHMIT-ALBIN: Correct, Senator. The response to us was three different times in that meeting the person in charge with DHHS said, if the Legislature mandates us to do this in statute we will do it; otherwise, we're not doing it. [LB187]

SENATOR KRIST: So for the record, I'm just going to say it again. If DHHS was doing their job, we wouldn't have a job to do because, in essence, they should be updating the information that's available on the Web site. I'm not going to talk about my endorsement for prolife with you because you and I have had that conversation. And I had to defend myself and my district for not getting it, but I didn't fill out the documentation after our conversation. So I guess I made that choice for myself. But for the record, there isn't anybody in this Legislature that can compare with my record for prolife, and I just want that said out loud today in this hearing. Thank you. [LB187]

SENATOR SEILER: Any further questions? Senator Morfeld. [LB187]

SENATOR MORFELD: The Kansas litigation that you brought up, was that a decision on the merits or was that a voluntary settlement? [LB187]

JULIE SCHMIT-ALBIN: It is in your...oh, I'm sorry. It's in the packet coming to you, so it's highlighted in there. It was...basically, they challenged it and then they agreed to just drop it, so it wasn't... [LB187]

SENATOR MORFELD: Okay, because my understanding is that it was a voluntary settlement, not a decision on the merits. I just want to make sure that the record is clear on that. [LB187]

JULIE SCHMIT-ALBIN: Well, the case remains that Kansas...Planned Parenthood of Kansas/Mid-Missouri, so we're talking two states, has no problem currently linking to the Kansas DHHS Web site that has the informed consent information. [LB187]

SENATOR MORFELD: Thank you. [LB187]

SENATOR SEILER: Senator Chambers. [LB187]

SENATOR CHAMBERS: I just want Senator...my colleague Senator Krist to know--just like I wanted my colleague who is running for Governor to know I said I could lose the Governorship for far less money than he was spending--I failed to get the endorsement by doing far less for the cause than you did. [LB187]

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SENATOR KRIST: (Laughter) Noted. [LB187]

SENATOR SEILER: Any other questions? Thank you for your testimony. [LB187]

JULIE SCHMIT-ALBIN: Thank you. [LB187]

SENATOR SEILER: Testimony in support. [LB187]

SUSAN THAYER: (Exhibit 15) Good afternoon, Mr. Chairman, members of the committee. My name is Sue, S-u-e, Thayer, T-h-a-y-e-r. I'm from Storm Lake, Iowa. I'm here in support of LB187. From April 1991 to December 2008 I was center manager of the Planned Parent of Greater Iowa clinic in Storm Lake. As manager, I was responsible for hiring, firing, training, scheduling, maintaining patient records, billing, and facility maintenance. We did pregnancy testing with options counseling, comprehensive exams, birth control, and testing and treatment for infections. In late 2007, I was told that all centers, including mine, would soon be offering chemical abortions via Web cam. I voiced concerns about both the safety and legality of this new way to do abortions and was soon terminated by management saying they were downsizing. All new clinic staff attended a one-day training regarding abortion. The goal was to desensitize staff to the reality of the abortion industry. For example, we learned, instead of using the word "baby" or even "fetus," we were to say "products of conception" or "contents of uterus." And abortion was described simply as a heavy period. We were taught not only how to sell abortions but also to feel good about doing it. By the end of the training, staff believed that providing abortion services was, indeed, a noble calling. Completion of the training meant that, according to protocol and coupled with manager discretion, you were officially a counselor and ready to meet with pregnant women to discuss their options. My center was a referral clinic, meaning that we were to send all abortion-seeking women to the nearest Planned Parenthood abortion center, either Des Moines or Sioux City. The beginning of Web cam abortion meant that every center would become an abortion facility. As with every other service and supply at Planned Parenthood, there was a goal or quota for the number of abortions that were to be done each month. Failure to meet this goal required implementation of a corrective action plan. Starting in 1997, Iowa law mandated 48-hour parental notification for minors. This means that a letter must be sent to a parent or a grandparent. It was always the hope to get the abortion done without getting a call from an angry parent. The law also included a component of informed consent. Minors seeking abortion were to view a video, as well as be offered a booklet explaining the pros and cons of adoption, abortion, and prenatal care. This was infuriating to Planned Parenthood and they immediately purchased flat, brown bags, slightly larger than the booklets. The bag with the booklet inside was laid on the table by the client and she was told that she could take it or leave it. Watching the video was offered, but most had just learned they were pregnant and were not willing or able to sit and watch a movie. Either way, staff were to initial that the booklet was

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given and the video watched. Never do I remember any center, including my own, having to reorder booklets or the video, as they were so seldom taken by clients. During my years there I was taught many tricks to steer a woman toward abortion. We would say things like, if you can't even afford to pay \$10 for your pregnancy test, how will you buy diapers? I'm red. [LB187]

SENATOR SEILER: Any questions? [LB187]

SENATOR KRIST: It's just a few lines left. Do you want to continue to read it? [LB187]

SUSAN THAYER: You want me to finish? Things like fetal development and risks of abortion were rarely, if ever, brought up, partly because of the discomfort it caused the staff but also because of the pressure to meet goals. Planned Parenthood may call themselves a nonprofit but, I can assure you, their business model is based on making money. They are more about their bottom line than making sure women have accurate and complete information. Thank you. And I hope you will pass LB187. [LB187]

SENATOR SEILER: Questions? You want to be last or you want to... [LB187]

SENATOR CHAMBERS: Last. [LB187]

SENATOR SEILER: Okay. Senator Williams. [LB187]

SENATOR WILLIAMS: Thank you, Senator Seiler. And the first become last again. (Laugh) I have a quick question. Can you take me through, because of my lack of understanding on this, what a chemical abortion via a Web cam is and what that means? [LB187]

SUSAN THAYER: You bet. Briefly, a chemical abortion is done with medication and that's been around for a long time. RU486 is what it was originally called. Mifeprex and misoprostol are the medications that are given. She takes the first set of pills at the clinic, takes the second set home with her, takes it 24-48 hours later, has, actually, the abortion at home. And that's been around for awhile. But they started doing them via Web cam or, like, a Skype connection where the woman is in one clinic and the physician is in another and the vaginal ultrasound is done by nonmedical staff in the clinic. That image is scanned to the doctor. If she determines it's 70 days or less, she can push a button on her computer to open a drawer at the remote center where the woman takes out the pills. [LB187]

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SENATOR WILLIAMS: So the use of the Web cam is allowing the Planned Parenthood clinic to not have a qualified physician there to look at the patient, talk to the patient, administer the drugs to the patient, and send them home with those kind of conversations? [LB187]

SUSAN THAYER: Correct. It was basic... [LB187]

SENATOR WILLIAMS: So who does do that part then? [LB187]

SUSAN THAYER: Who does the initial part? [LB187]

SENATOR WILLIAMS: The visiting with the prospective mother. [LB187]

SUSAN THAYER: A clinic assistant or a center manager, like myself. It was...Web cam was a way for Planned Parenthood to be able to do abortions in many locations in Iowa, and potentially in Nebraska when they merged, without having to send a doctor physically to all those places. [LB187]

SENATOR WILLIAMS: Okay. Thank you. [LB187]

SENATOR SEILER: Senator Chambers. [LB187]

SENATOR CHAMBERS: Who invited you to come testify? [LB187]

SUSAN THAYER: I'm here representing myself. I knew that this was going to be happening. I have a lot of prolife friends in Nebraska and I knew that this was coming, so. [LB187]

SENATOR CHAMBERS: So nobody asked you to come. [LB187]

SUSAN THAYER: No, sir. [LB187]

SENATOR CHAMBERS: Did you think this bill was important to the one who introduced it? [LB187]

SUSAN THAYER: I couldn't speak for him. It's important for me. [LB187]

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SENATOR CHAMBERS: I understand that, or you wouldn't have come the distance that you did. [LB187]

SUSAN THAYER: Correct. [LB187]

SENATOR CHAMBERS: Did it surprise you that it was not a high priority for the introducer of the bill? [LB187]

SUSAN THAYER: I can't speak to that, sir. [LB187]

SENATOR CHAMBERS: I bet it did surprise you. I'm just an observer of human nature. But you don't have to answer that question. That's all I have. Thank you. [LB187]

SENATOR SEILER: Any further questions? Senator Pansing Brooks. [LB187]

SENATOR PANSING BROOKS: Are you aware of the tendency in the practice of medicine, especially in states with low populations, to use the technology via Web cam? Certainly, university...I'm sure you don't know about this, but University of Nebraska Medical Center is using it significantly to contact with healthcare providers at the University of Nebraska at Kearney and to be able to not necessarily have specialists in every field at every site. Are you aware of that? [LB187]

SUSAN THAYER: Senator, yes, I am, actually. I'm a foster parent and I typically do teenage girls and sometimes they have a need for medications that are given only by pediatric psychiatrists. And of course, I don't know if you know where Storm Lake is, but it's very rural and the nearest one is probably Des Moines or Iowa City. So many of the kids that I've had have had telemedicine services, you know, that way to see a child psychiatrist. But that's more of an interview, just, how are you feeling, you know, do you have any suicidal tendencies, do you hear or see voices, that kind of stuff. But, you know, when Planned Parenthood made the announcement about Web cam abortion, the thing that really concerned me the most was the nonmedical people doing the vaginal ultrasounds because, speaking for myself, I wouldn't want to have somebody, an entry-level person, doing that procedure for me. So that was one of the reasons why I voiced concerns. [LB187]

SENATOR PANSING BROOKS: Well, that's just presuming a lot, to say that a nonmedical person would be doing that, so I think that's...I mean you're saying that could happen and a lot of things could happen. [LB187]

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SUSAN THAYER: Well, it... [LB187]

SENATOR PANSING BROOKS: So I don't believe that that is the intent of anyone, to have nonmedical people to...and so... [LB187]

SUSAN THAYER: Well, it's happening. [LB187]

SENATOR PANSING BROOKS: And furthermore... [LB187]

SUSAN THAYER: And I was going to be trained in Sioux City one day and then I was going to be doing them in my center. [LB187]

SENATOR PANSING BROOKS: I've been up to the University of Nebraska Medical Center and seen their telehealth process and what they're doing, and they are doing more than just having a psychiatric consult. They're dealing with their nurses, having...directing nurses through medical providers to do different things. So it isn't just speaking to somebody and asking them how they're feeling today. There are processes, there are medical procedures that are completed through that and it's a wonderful way that we can make sure to provide healthcare access across states with very low populations. Thank you. [LB187]

SUSAN THAYER: I totally agree, yeah. [LB187]

SENATOR PANSING BROOKS: Thank you. [LB187]

SENATOR SEILER: Any further questions? Thank you for your...oh, sorry, Dr. Ebke. [LB187]

SENATOR EBKE: Thank you. I've asked several other people about the numbers. And the ACLU sent out a chart a little while ago. And doing a rough count, it looked to me like there was something around 10,000 surgical abortions in Nebraska in the last six or seven years that were on there. And they report zero complications postabortion in all, across the board, so 100 percent, you know, no complications. Does that fit with your understanding or your experience in the abortion clinic...such situations? [LB187]

SUSAN THAYER: Well, there's kind of two facets to that, I guess, the surgical one and then, you know, the Web cam one. But either way, when a woman has an abortion at a Planned Parenthood facility, she is sent home with a phone number, an 800 number that she can call after hours if she's having trouble. And that's answered, you know, 24 hours a day by a nurse. But

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basically the answer is either wait it out or go to the ER and, you know, get help. But a lot of the women that go to ER don't report back to Planned Parenthood because they're seeing a doctor then and it's not even reported. And regarding the, you know, the Web cam abortion, we would have women come back into the clinic having completed a Web cam abortion, the chemical abortion, not realizing that they were going to see a little ten-week baby and put the body in a Ziploc bag. So Planned Parenthood doesn't count that as a complication or a complaint, but that would happen frequently. [LB187]

SENATOR EBKE: So the reports on complications would be self-reported, is that... [LB187]

SUSAN THAYER: Correct. [LB187]

SENATOR EBKE: To the state? [LB187]

SUSAN THAYER: Um-hum. [LB187]

SENATOR EBKE: Okay. Thank you. [LB187]

SENATOR SEILER: Further questions? Thank you for your testimony. [LB187]

SUSAN THAYER: Thank you. [LB187]

SENATOR SEILER: Next proponent. [LB187]

JOE NEUHAUS: (Exhibits 16 and 17) Chairman Seiler, members of the Judiciary Committee, opponents of LB187... [LB187]

SENATOR SEILER: What's your name? And spell it. [LB187]

JOE NEUHAUS: Oh, excuse me. My name is Joe Neuhaus, J-o-e N-e-u-h-a-u-s, and I represent Nebraska Family Alliance. Opponents of LB187 who will be testifying for you today, including Planned Parenthood, when discussing the issue of abortion in a broader sense point to their desire to protect women's reproductive freedom. These prochoice advocates argue that a woman has the right to define and defend her reproductive autonomy, namely, to quote Roe v. Wade, whether to bear or beget a child. Unfortunately, prochoice activists seemingly fail to realize that a woman has two choices. If they are truly trying to defend women's right to choose, they will not be speaking in opposition to the bill currently before you. In order to develop an educated

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and informed decision, a woman should be equipped with as much accurate information as possible. LB187 is an effort to provide women with information. Nebraska Revised Statutes Section 71-6902.02 states, no parent, guardian, or any other person shall coerce a pregnant woman to obtain an abortion. At the very least, all pregnant women have the right to know this. But our laws should protect women from coercion and allow them their legal right to choose. According to a 2012 study by the Elliot Institute, which I have provided for you, most abortions are unwanted or coerced and many are forced, sometimes violently. I encourage you to read the study, which includes more than 100 cases in which women were threatened, harmed, or murdered because of their pregnancies. The other portion of the bill would allow women to access information and videos on the development of an unborn child. Many pregnant women who seek abortion services are, in fact, children. As you will notice in the Elliot Institute study, there are numerous cases of preteen children who were involved in forced abortions. Even in the cases of pregnant women who have seen ultrasound images, additional viewing of such information should not be seen as a threat to their reproductive autonomy but, rather, a benefit in the form of education. Again, a pregnant woman's choice should be informed and educated. Additionally, LB187 does not force abortion providers to show such ultrasound images and related information to pregnant women, nor does it force the pregnant women themselves to view the information. It simply provides a conduit for women to educate themselves about this life-altering decision. In the spirit of the bill, we should also encourage policies that provide pregnant women with coercion screening by their healthcare providers and protection from those who coerce them. There are many gruesome examples of pregnant women being threatened, beaten, stabbed, and shot because their family members and others close to them did not want the pregnancy to continue. This cannot be condoned. LB187 is a step in the right direction of protecting them from the harm of coercion. Denying pregnant women access to basic factual information about their rights...I see my time is up. [LB187]

SENATOR SEILER: Senator Williams. [LB187]

SENATOR WILLIAMS: If you'd like to finish your statement, please. [LB187]

JOE NEUHAUS: Thank you, Senator. Denying pregnant women access to basic factual information about their rights is tantamount to denying them their right to make an informed decision. It is not consistent with the idea of prochoice and it certainly does not comport with the idea of reproductive freedom. Thank you for your time and consideration. I urge you to vote to protect Nebraska's pregnant women. Please vote yes on LB187. [LB187]

SENATOR SEILER: Questions? Senator Chambers. [LB187]

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SENATOR CHAMBERS: You don't believe in protecting a woman's right to have an abortion though, do you? [LB187]

JOE NEUHAUS: That's not true. [LB187]

SENATOR CHAMBERS: You don't believe that. It's a one-way street, right? [LB187]

JOE NEUHAUS: That's not what I said. [LB187]

SENATOR CHAMBERS: No, I'm asking you, do you believe that there should be protection of a woman's right to have an abortion? [LB187]

JOE NEUHAUS: That's not at issue in this bill. [LB187]

SENATOR CHAMBERS: I'm asking you the question. You came to testify. You don't want to answer the question? If you don't, just say so. [LB187]

JOE NEUHAUS: It's irrelevant to this bill. [LB187]

SENATOR CHAMBERS: You don't want to? [LB187]

JOE NEUHAUS: It's irrelevant to this bill. [LB187]

SENATOR CHAMBERS: Do you care more about this bill than the one who introduced it? Or you don't want to answer that either? [LB187]

JOE NEUHAUS: Again, that's irrelevant. [LB187]

SENATOR CHAMBERS: Did you talk to the introducer of the bill? [LB187]

JOE NEUHAUS: I did. [LB187]

SENATOR CHAMBERS: And did he tell you that it wasn't very important to him? [LB187]

JOE NEUHAUS: No. [LB187]

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SENATOR CHAMBERS: Did he tell you he wouldn't prioritize it? [LB187]

JOE NEUHAUS: No. [LB187]

SENATOR CHAMBERS: Did he tell you there was another bill he thought was more important to him than this? [LB187]

JOE NEUHAUS: No. [LB187]

SENATOR CHAMBERS: Did he tell you that if bill is not prioritized it's going nowhere? [LB187]

JOE NEUHAUS: No. [LB187]

SENATOR CHAMBERS: Had he told you that he's got several years to try to get something like this done? [LB187]

JOE NEUHAUS: No. [LB187]

SENATOR CHAMBERS: But you heard that today, didn't you? [LB187]

JOE NEUHAUS: I did. [LB187]

SENATOR CHAMBERS: And that was pursuant to my questioning, wasn't it? [LB187]

JOE NEUHAUS: Yes. [LB187]

SENATOR CHAMBERS: If he had been like you, you wouldn't have heard that, would you? So maybe you need to have people explain to you how you conduct yourself when you come before a legislative committee at a hearing. That's all I have. [LB187]

SENATOR SEILER: Anybody else? Any further questions? Thank you for your testimony. [LB187]

JOE NEUHAUS: Thank you. [LB187]

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SENATOR SEILER: Next testimony in support. [LB187]

MARIS BENTLEY: (Exhibit 18) Thank you, Senators. My name is Maris Bentley, M-a-r-i-s B-e-n-t-l-e-y, reside in Omaha, Nebraska. As I mentioned previously, I'm on the board of directors of Nebraskans United for Life. And I'm here representing that organization to speak in support of LB187 and to thank Senator Kintner for sponsoring this legislation. This bill is, again, like LB114, an attempt to protect pregnant women. LB114 would protect the physical health of mothers seeking abortion. LB187 would protect pregnant women from being forced or coerced into having an abortion against their will and would provide important educational information that women need to make this so-called choice. It would be hard for me to understand why there would be any hesitancy at all when it comes to the passage and implementation of this bill. From 2008-2010, I was a regular feature outside of LeRoy Carhart's "abortuary" in Bellevue, Nebraska. And I can think of two specific instances in which it looked to me like a pregnant woman, and in one case a pregnant teenager, were being coerced into having an abortion. The first situation involved a man and a woman. The man had the woman by her arm, ushering her into the building while yelling abusive words at me. The man was actually physically abusive to me, too, when he hit my hand to knock the small model of a ten-week-old, unborn baby out and onto the ground. The whole time the woman was silent with downcast eyes, never looking up, never making eye contact with me. It looked and smelled like coercion to me. The second situation involved a young pregnant girl and a woman who appeared to be her mother. As I stood on the sidewalk, a car with the older woman driving and the young woman in the back seat stopped only yards from me. The back door opened and the young girl leaned out and vomited on the pavement. As I approached, offering assistance, the older woman yelled and cursed at me. And then the young, pregnant teenager looked up at me with tears in her eyes and said to the woman, leave her alone, she's only trying to help me. How many times is coercion taking place that is not as visible as this? I can tell you from doing prolife work and from helping postabortive women that it is a regular occurrence. The educational component with the links to a Web site with information on fetal child development is also important. Who could be against providing women with more information to help them make an informed decision? I can think of another example of a young mother at the abortion mill, a woman who did accompany a sidewalk counselor over to the pregnancy resource center for a free ultrasound and who became hysterical when she saw the image of her unborn baby, hysterical because, as she said herself, they lied to me, they told me it was only a blob of tissue. LB187 won't keep coercion and forced abortions from happening and it won't keep women from being lied to, but it will help. Senators, I urge you to vote for LB187 for the sake of these women and thousands of others like them. [LB187]

SENATOR SEILER: Questions? Senator Chambers. [LB187]

SENATOR CHAMBERS: Just one: Why should we on the committee take the bill more seriously than the one who introduced it? [LB187]

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MARIS BENTLEY: I'm not sure why you're asking me that question, Senator Chambers. [LB187]

SENATOR CHAMBERS: Okay, and that's all I have. Thank you. [LB187]

SENATOR SEILER: Any questions, further questions? Thank you, ma'am. Next testimony in support. [LB187]

GREG SCHLEPPENBACH: (Exhibit 19) Good afternoon again, Chairman Seiler and members of the committee. My name is Greg Schleppenbach, S-c-h-l-e-p-p-e-n-b-a-c-h, executive director of the Nebraska Catholic Conference. And I'm here to put the conference on record in support of LB187. If there is one aspect of the debate over abortion for which there should be no disagreement by either side, it is that no woman should be coerced or pressured to have an abortion. There is compelling evidence from groups on both sides of the abortion debate that there is more coercion in abortion decisions than most Americans would think. One study published in the Medical Science Monitor found 64 percent of women studied felt pressured by others to abort. Now, even if the number of pressured is half or a quarter of what this study found, that equates to 150,000-300,000 women who seek abortions in the United States feeling some level of pressure to abort their children. This should be equally disturbing whether one identifies as prolife or prochoice on abortion. We also support LB187's provision to update the fetal development information offered to women as part of the informed consent process prior to abortion. There are women right here in Nebraska who were scheduled for abortions and who made it known that seeing ultrasound images of fetal development caused them to change their mind about having an abortion. Again, regardless of one's position on the legality of abortion, surely we can agree that this outcome from providing women with relevant information is a good thing. LB187 does nothing to undermine the legality of choosing abortion. It merely offers modest provisions to ensure that this choice is freely made and fully informed. I want to respond on the question of the abortion complications in that none were reported over the last ten years or whatever. I think there is very valid reasons to question the accuracy of that reporting given the fact that none of the cases that Jeff Downing has represented--these are women who were taken to the abortion...or taken to the hospital by ambulance from the abortion clinics--none of them were reported in the years in which they occurred. So I think there is sufficient reason to question the legitimacy of the lack of reported complications. And with that, I encourage you to support LB187. [LB187]

SENATOR SEILER: Questions? Thank you. [LB187]

SANDY DANEK: (Exhibit 20) Mr. Chairman and members of the committee, my name is Sandy Danek, S-a-n-d-y D-a-n-e-k. And I am president of Nebraska Right to Life and I'd like to read

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into the record testimony by Kelsey Brechbill. That's K-e-l-s-e-y B-r-e-c-h-b-i-l-l. She's a young woman who contacted us when she knew that this bill was going to be heard and asked if she could, please, testify. Unfortunately, her little one is sick today and she wasn't able to attend. What she says is that, in 2005, she was 19 years old and found out she was pregnant. She says: I was in college and was in a relationship with my now husband. I wasn't in a good relationship with my parents at the time. I had no job other than working part time, and neither did my boyfriend who just wanted to party with no responsibilities. So since I was alone and had no adult to talk to, I turned to the only place I learned about in high school, Planned Parenthood in Omaha near Maple Street. They confirmed I was pregnant by another test and then took me into a small room and asked how I felt about it. I was nervous and unsure of everything so I simply said, I don't know. They threw two pamphlets at me, one on abortion and the other on adoption, and sent me on my way. All I did when I left was cry. I was always antiabortion, being a Christian, so that thought never crossed my mind until they gave me the pamphlet. A week went by and I started having lower pelvic pain, so I went to an OB. An ultrasound was done and all I could see was the egg sac, which was disappointing because I was hoping for more, so I was sent home with a follow-up appointment at my eight-week mark. My parents found out because the bill was mailed to them and all they told me was to get the abortion as soon as possible so my life could go on normally. I was so torn because part of me always wanted to be a mom, but no one was supportive of me having the baby. My boyfriend and parents said to keep it a secret and not to tell anyone and abort because the baby would ruin my life. I fought so many battles in my head about what to do to the point I almost thought suicide was a better option so I wouldn't have to choose. Everyone also kept telling me to hurry up and do it because the longer I waited the harder it would be. I had no idea what that meant or what they were even talking about. My eight-week appointment came and my OB was two hours behind. So when she got to me, she was in a rush. I told her we were thinking about terminating and she gave me two numbers of abortion clinics and also told me I needed to hurry up and decide. I was so disappointed because I thought my doctor, being a good person to talk to about my inner quarrels...but since she was so behind she just shooed me out. So I made an appointment, abortion appointment, on December 16 at a clinic off 40th and Dodge in Omaha. It was a creepy place with an even creepier male doctor. One at a time they took us back, put us in a gown to sit on a cot which then they wheeled into one big, open room with all of us lined up next to each other, waiting for a turn to be wheeled back off into a procedure area. [LB187]

SENATOR SEILER: Yes, Senator Ebke. [LB187]

SENATOR EBKE: If there's more, go ahead and finish. [LB187]

SANDY DANNEK: Thank you. I appreciate that, Senator. Thank you so much. We could all hear because it was in the same room, just behind a curtain in a different area. I saw bloody buckets which had no cover and we were just being dumped...it was just being dumped down a sink in

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the same room with us. The nurse quickly wheeled me behind the curtain and told me to put on a gas mask. The doctor who examined me said I was about nine to ten weeks, which I knew nothing about or what that meant. I never was told the doctor's name or what the procedure entailed. Then the machine turned on and I felt like I was about to pass out and couldn't breathe. I screamed, stop, I changed my mind. And he stopped. Then they sent me on my way home. All I did was cry and threw up all day. The experience was a nightmare. Another week went by and I still had these doubts about everything and someone suggested I call Planned Parenthood in Council Bluffs and make an appointment, so I did. I told the nurse about my experience at the other clinic and she reassured me their abortion procedures were nothing like that and I didn't need to worry. Then she had me start filling out papers asking why I was having one and if I wanted one and I circled "unsure." She said, well, the doctor won't do it unless you circle 100 percent sure. So she erased my answer and circled "sure." I said I didn't know why I was unsure and the other place scared me to death. She just again reassured me I would experience nothing like that and I'd be okay and that the day of my abortion there would be protesters with posters of fake babies and to not look at them and to wear headphones to not hear them, that they do this for scare tactics but it's lies. So December 23 came and I did what she said. I didn't look at the protesters and wore my headphones, so I heard nothing. Before I knew, it was my...excuse me. Before I knew it, my abortion was over and I immediately felt empty inside and like I made the wrong choice. But it was too late. My boyfriend reassured me it was the best...for the best, as did my father. It haunted me to this day. I regret it and so does my husband and we had to go through postabortion therapy at Rachel's Vineyard. Now we want to do anything and everything we can so no one goes through what we went through. Please pass LB187. Thank you for your time. [LB187]

SENATOR SEILER: Questions? Senator Chambers. [LB187]

SENATOR CHAMBERS: Did you know the writer of that letter personally? [LB187]

SANDY DANEK: No, she contacted us. [LB187]

SENATOR CHAMBERS: Do you know that the person who signed that is the one who wrote it? You don't know anything...did somebody hand-deliver that to you? [LB187]

SANDY DANEK: We communicated with her. She wrote it and gave it to us. [LB187]

SENATOR CHAMBERS: She handed it to somebody with your organization? [LB187]

SANDY DANEK: Um-hum. [LB187]

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SENATOR CHAMBERS: And your organization, that person knew that individual to be the one whose name... [LB187]

SANDY DANEK: We don't know her personally. She contacted us because she knew this was coming before you and wanted to tell her story. [LB187]

SENATOR CHAMBERS: So that person...a person handed a letter with somebody's name on it and said, I'm the one who wrote this letter, go read it. That's about what had happened, is that right? [LB187]

SANDY DANEK: Um-hum. She would be here herself today had she not had a sick child. [LB187]

SENATOR CHAMBERS: This is why they don't allow hearsay in a courtroom. [LB187]

SANDY DANEK: I understand. [LB187]

SENATOR CHAMBERS: The one who is supposed to be testifying does it. Senator Seiler is nice. He is indulgent. Other Chairs of the committee won't let letters be read that are supposedly written by other people. I don't know whether that person who purports to have written that wrote it. I don't know if anything in it is true. There are no questions that can be asked, nothing. It's just a letter written. And for my part, I don't think it ought to be entered into the record because there is no evidence that makes it credible, nor should it be a part of the record. But I'm not the Chairperson. [LB187]

SANDY DANEK: But wouldn't that be understandable in the record? [LB187]

SENATOR CHAMBERS: I didn't understand you. [LB187]

SANDY DANEK: Wouldn't that be understandable in the record that she was not able to be present and that I simply read it? [LB187]

SENATOR CHAMBERS: That's what somebody said. Somebody said they were...they had an abortion. We don't know if there is a real person involved. Anybody could come up here and read something and say, this was given to me, and we're supposed to take it at face value. I don't, especially on an issue such as this one. And you don't know the person. That's all that I have though. I wanted that in the record. [LB187]

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SENATOR SEILER: Further questions? Senator Pansing Brooks. [LB187]

SENATOR PANSING BROOKS: Thank you for your testimony today. I...do you find irony in the fact that men are telling this woman to...this young girl to have an abortion and that men are telling us now what we need to do with our bodies, protecting us from ourselves? Do you find some irony there? [LB187]

SANDY DANEK: Um-hum. [LB187]

SENATOR PANSING BROOKS: I do as well. Thank you. [LB187]

SANDY DANEK: Yeah. I'm very concerned when a young woman feels this coerced. And I often hear, you know, having...being present at the Lincoln facility, we will often hear from these young women that if one person would have said you could choose another option, that maybe they would have. [LB187]

SENATOR PANSING BROOKS: Yes. And I also... [LB187]

SANDY DANEK: And so that's what I hear from this story. If perhaps one person could say, you could have another option, I would support you through it, then maybe they would have made a different decision. [LB187]

SENATOR PANSING BROOKS: Well, and I also find irony in all sorts of men telling women what they're to do with their bodies. So that's...it goes the whole spectrum, so thank you. [LB187]

SENATOR SEILER: Thank you for your testimony. [LB187]

SANDY DANEK: Thank you, Senator. [LB187]

SENATOR SEILER: Next testimony in support. Next testimony in support. Opposition. First... [LB187]

MIKE FALKSTROM: Mr. Chairman, members, as a reminder, my name is Mike Falkstrom, F-a-l-k-s-t-r-o-m. And I am general counsel for Planned Parenthood of the Heartland. To begin with, I should note that Planned Parenthood of the Heartland already does thorough, one-on-one--and one on one is important because you don't want the person who is with the patient to be the

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coercer--we do thorough, one-on-one counseling with our patients to screen for coercion. We also do option counseling explaining adoption, abortion, and carrying a pregnancy to term and parenting. So why do we do this? We do this because reproductive coercion of any kind is abhorrent. Reproductive coercion of any kind is anathema to the values of the organization and the values I have spent my legal career defending. So there's something that's not getting talked about here, which is reproductive coercion in the other direction. There are situations where women who would otherwise want to have an abortion are coerced into not having an abortion, are coerced into carrying that pregnancy to term. So, you know, do I think this bill is necessary? No. Do I think this bill would be effective in preventing coercion? No. But if the Legislature makes the determination that this is the way they want to try to prevent coercion in...reproductive coercion in Nebraska, then that standard should be applied evenly. There are centers in Nebraska that do counseling of pregnant women that are not abortion providers. I would call them limited-service pregnancy centers. They provide a very limited array of services, typically some pregnancy testing and some counseling. Oftentimes, they'll have some toys or whatnot there. You might also know them as crisis pregnancy centers. So if this body is going to create this signage requirement that I've heard all kinds of proponents of the signage requirement classify as light, minimal, you know, nonburdensome, then the Legislature should apply that requirement to these other kinds of abortion counselors. It should put...require those particular entities to post signs saying that women cannot be coerced into carrying a pregnancy to term. And moreover, they should be required to link to a Web site with similar sorts of information and with a list of abortion providers to ensure that women are not coerced into carrying their pregnancies to term, just as the Legislature does not want, apparently, reproductive coercion of any kind, a valid goal. With that, that's the comments I have and I'd be open to questions. Senator. Oh, sorry. [LB187]

SENATOR SEILER: Excuse me. Question? Go ahead. [LB187]

SENATOR WILLIAMS: Senator Seiler, thank you, a question. You talked about the signs and some of your philosophical concerns about that. What about updating the information on Web sites? [LB187]

MIKE FALKSTROM: Well, on...you know, we obviously can't really control what the department puts on its own Web site. That's the department's business. You know, in terms of the... [LB187]

SENATOR WILLIAMS: But would you be opposed to that? [LB187]

MIKE FALKSTROM: We would be opposed to being required to link on our own Web site because, of course, we are a multistate affiliate. [LB187]

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SENATOR WILLIAMS: Let me take it one step. [LB187]

MIKE FALKSTROM: Oh, sure. [LB187]

SENATOR WILLIAMS: Would you be opposed to the Health Department having information like this on their Web site, rather than in paper form? [LB187]

MIKE FALKSTROM: I don't know that we particularly have a position on what their own Web site should contain. [LB187]

SENATOR WILLIAMS: Okay. Now go ahead with your linking. [LB187]

MIKE FALKSTROM: Sure. You know, as to the Web link, it's been noted we do...we are a multistate affiliate. You know, I heard some talk about the commerce clause and some other legal counsels justified. You know, there's the old joke: You put two attorneys in a room, they're not going to agree on the same thing. I can tell you...I can't speak to why other affiliates have chosen to comply with similar requirements that may be multistate affiliates. I don't work for them. I can tell you that there is in our analysis a dormant commerce clause issue because there would be potential extraterritorial regulation. You know, you would have an Iowa patient or an Arkansas patient seeing that that, by the terms of the legislation, has to be on the face of the Web site. And that patient would go to that Web site and see that and be...have to be redirected to Nebraska's information. So I do respectfully disagree with my colleague in the bar who believes that's not an issue. [LB187]

SENATOR WILLIAMS: But it evidently, from a technical standpoint, can be done that you could link it only to the Nebraska versus linking it to Kansas or Arkansas. [LB187]

MIKE FALKSTROM: It would...we don't really break out our Web sites by center. It's really a...one broad Web site for the entire organization. So anyone who is looking for any of those centers, and because of the home page requirement, of course, would get to that link to the Nebraska information. [LB187]

SENATOR WILLIAMS: In looking at the type of information that is provided to women to make a decision that is a life-changing decision, do you think that information is state specific... [LB187]

MIKE FALKSTROM: I don't think it's... [LB187]

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SENATOR WILLIAMS: ...that a person in Arkansas would look at a pamphlet differently than a patient in Nebraska? [LB187]

MIKE FALKSTROM: I don't think it's necessarily state specific, although I can't speak to the culture of every single state and what's effective messaging for their residents. But the legal argument here really is sound. The legal argument is, you know, regardless of whether it should be, that's not really Nebraska's judgment to make on behalf of Iowa residents or Arkansas residents. [LB187]

SENATOR WILLIAMS: Okay. Thank you. [LB187]

SENATOR SEILER: Any further questions? Senator Chambers. [LB187]

SENATOR CHAMBERS: I have just a comment. A lot of things relative to abortion were done when I wasn't in the Legislature. Julie Schmit-Albin made it clear that that's what they were going to try to do: make hay while the sun shined. I was not here, so they were going to try to get as much done as they could. They made it clear everything was going to make it as hard on a woman to get an abortion as possible. They put stuff, they required state agencies to put stuff out there that presents a certain point of view. These senators come in here and say Nebraska is a prolife state, so they want to force that kind of material onto these state agencies' Web sites, which I think is abhorrent, I think it's wrong, and they're misusing the state. But since they have the votes, they run roughshod over other opinions. So it would be better for them not to state an opinion at all. But they've got the vote. They're going to keep doing it. But I'm going to make it as hard as I possibly can and I'm going to criticize it. I'm going to condemn it. And then when they bring up other issues, I'm going to bring them right back to this where they want to force this certain opinion on everybody who is going to have access to this state facility. Then they say, we don't like state mandates, we don't want the state interfering with what people do. But they do the contrary when it comes to action. And this is the point I'm getting to: There are senators who bring bills here so that their...they will be bona fide candidates for endorsement by these different antiwomen organizations. So they bring bills that they know are not going anywhere. They don't want them to go anywhere. They put preposterous things in it, like \$500 a day fine and every day that an abortion is performed and a sign is not there, another fine. But that's not all. Any other provision of law that can punish you is to be brought into play. That is not the way legislation should be drafted. It is an insult for it to be brought to us. But the ones who bring it are taking it because somebody else gave it to them. And for people to come before this committee on which I sit and tell me this kind of stuff is not part of a national activity, just like repressing votes, they want to say it's not a Republican agenda, it is. And if they read the newspaper, they see this kind of stuff happening all over the country. Those who advocate it will say that it's their national goal and they're trying to get it done everywhere. Then they come here and say, no, it's not that, or, I

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don't know that it's that. They don't even tell the truth. And this legislation is going nowhere. And the ones who introduced it ought to be honest enough to the people they get to come here and pour their guts out in front of this committee, they ought to tell them, well, the bill is not going anywhere because I'm not going to prioritize it, I'm not going to push it. If it's not prioritized, it's not going anywhere. They don't tell them that. Now you go there and you say this, you say that. And then when the endorsements come out, they've made their political score. And you know what my job is: to tell the truth. And I owe more to the public than I owe to anybody on this committee, anybody in this Legislature, any organization. And when I see these organizations so corrupt and lacking in integrity that they say things that they know are not true, they can be people who may have had a job, they lost it, then suddenly they have a "come to Jesus" meeting and they're going to condemn everything and everybody. And people sit here and take it seriously. I want it on the record that I'm not a member of that kind of a group. I don't like these bills. I don't think they make sense. They challenge the constitutionality of our legislative process if we're asked to put this on the books. But these people here know that it's not going to go anywhere. I will stop it. And they count on it. And they can be prolife and say all these other things. But I think it's unfair, because I've sat through these things for years and the senators bringing them know that the legislation is not going anywhere. Why did they say, well, I've done it all these years, and when they have an opportunity to prioritize it they don't do it? If it's a principle with them, as they say, if it's based on moral conviction, then you don't count up the politics of it and say, well, maybe it won't get out of committee, so my principles that I say guide me will be determined by the rules or the whims of the Legislature. If they really believe it, let them show their belief. There are others whose names are on these bills. Anybody can prioritize a bill and all you have to do is get the introducer's agreement. Senator Kintner could have prioritized it. Senators prioritize the bills of other senators, as Senator McCoy did, and he has not been a staunch supporter of women's rights. These bills are not designed to underscore and undergird women's rights. If these people who come here on these bills were really interested in the rights of women and children after they leave the birth canal, they'd be the ones saying, let us extend the reach of Medicaid. And maybe if a woman could get adequate medical attention and know that if she has a pregnancy and there are complications, there can be some medical help available, if they have moral principles, that's what they should be trying to do: eradicate and mitigate the kinds of things that might lead a woman to get abortion who may not want one but she doesn't have the means to take care of her health. And you don't see these people saying, we'll provide you with housing, if the child comes here we will help you feed the child, we'll buy diapers, we'll buy...I don't...it's been so long since I had little children in my house, but formula or whatever they call it now. You don't hear that. But we see the rooms full when they say we're talking about a zygote, a fetus. But a living child? When we had a bill talking about juveniles being shackled with chains in court, we didn't have a room full of people. We didn't have these people. I would have more regard for them, even though I don't...disagree with taking away with taking a woman's right to make her choice, but I believe they're sincere, if they showed the same concern when that fetus is fully formed and leaves the birth canal by the natural way and cries

and tells the world, here I am, I can't help myself, I can't take care of myself, my mother can't take care of me, are you going to help me, and they...you know what I used to hear them say when I'd push for...and I'm going to quote what they'd say. When I'd push for more assistance for Aid to Dependent Children, they'd say, these women shouldn't bring the little bastards here if they can't take care of them. But if it's a fetus in the womb, they tell that woman, no, you're not going to terminate that pregnancy and we're going to do everything we can to stop you. And then when the child is born: She couldn't take care of it, not him or her, couldn't take care of it. I've been in this Legislature and I've heard it and we will hear it before this session is over. You will hear them talk about tax breaks for farmers on their equipment, give Woodmen of the World tax breaks so they'll stay in Omaha. This is why I quote their Bible on them. These...human beings were not made for these things. These things were made for human beings. And who in here would trade their place of being self-righteous, pompous, and meddlesome for a pregnant, poor woman not knowing what's going to happen to a child if she brings that child into the world? It's easy for them because they have nothing to do after that. But for her, it's a lifetime situation. And because she doesn't have the wherewithal, the lifetime of that baby may be very short. Now they don't want a fetus terminated, but they don't mind if the child in the world is terminated through hunger, malnutrition, disease. And I sit here and I listen to it session after session, year after year, hearing after hearing, and never does any of them say, what becomes of the child? I understand children. And for some reason, children understand me. Their parents hate me but the children don't. I've got pictures on my wall where little babies in the Chamber crawled up to me and I didn't even know who they were. Maybe children do understand. But until some of these hardhearted people want to meddle, got their noses in other people's crotches, their ear to the bedroom wall, their eye to the bedroom keyhole, and then they're going to be self-righteous and say, we want you to post these signs, it's not going to do anything. But it'll inconvenience somebody. And that's what I listen to. But you'll notice, unless there's some emergency, I stay here through these hearings and I participate in them. And I try to limit my questioning to people who are in a position to know them. So I am glad for Planned Parenthood. I am glad for organizations who will genuinely help women when they're in distress, who'll be nonjudgmental, who will not see somebody trying to make a decision and stand out there and scream like banshees, holler like harpies, blow up abortion clinics, kill doctors. I saw an obituary the other day of this guy who was involved in demonstrations that led to the bombing of abortion clinics. Doctors have been killed. The workers have been harmed. And these are the ones who are prolife? I wanted that into the record. And I used you as a sounding board because I...if somebody who was for the bill had heard me say this, then they might have thought I had disregard for them as a human being. It's because I respect their dignity as a human being. I respect the right they have to be treated with honesty and straightforwardness and that's why I put it on the record that they care more about these signs than the ones who bring the bill. They take it more seriously than the ones who come here and say, I'm for women and, therefore, this, that, or the other. It's a sham. It's a Barnum and Bailey world, just as phony as it can be. And when you find them prioritizing some other senator's bill that has nothing to do with so-called

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prolife issues, then questions should be asked. But, see, I'm talking to the wind. But really I'm talking to the record. I want my position open and out there. And I want these prolife groups to start asking these senators, are you going to prioritize the bill, you can prioritize it, I heard Senator Chambers say you could and you admitted you could but you didn't, will you prioritize it this time, and see what happens. See, they hate me the most, but I'm more honest with them than anybody else. And that's why they hate you. That's why Jesus got hung up on the cross. So I don't carry it as far as he did. I don't tell them I can save them. I don't say I can heal the sick. All I say is, if I'm the Legislature and have a vote, I will vote for programs that will put money at the disposal of those who know how to heal the sick or at least treat the sick to the extent that they can. And for putting you through this, I apologize. [LB187]

MIKE FALKSTROM: Thank you, Senator. [LB187]

SENATOR CHAMBERS: But I'm through, Mr. Chairman. [LB187]

SENATOR SEILER: Any further questions? Thank you for your testimony. Next in opposition. [LB187]

DELORIS TONACK: (Exhibit 21) Good afternoon, Judiciary Committee. DeLoris, D-e-L-o-r-i-s, Tonack, T-o-n-a-c-k. I am here in opposition to LB187. Again, I am here as an individual and also as a representative of the American Association of University Women. I will not repeat my comments about AAUW's stand but will get directly to the bill at hand. I cannot understand how a government agency would mandate signs with such specific wording and specific placement in private offices and dictate the specifics of a Web site. As I looked through the bill, I couldn't believe all of the details it had. This, again, is so against the Nebraska spirit of individualism and self-control. I am a science and math educator. This bill does not even make sense from the point of view of education, scientific knowledge and mathematical calculations. I would guess that, if this were passed, within a short time there would be different thoughts on what should be on a sign or on a Web site. There already is good information out there in the Web world. The expense of doing this and the expense of enforcing penalties seem ridiculous in this time of trying to make budget dollars spread to many areas. This bill is not about information. It is a bill focused on coercion. It is the coercion. The bill says something about harmonizing provisions. There is no harmonizing in this bill. Address your needed time and attention on things that do need your attention. Thank you. [LB187]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB187]

SCOUT RICHTERS: (Exhibit 22) Chairman and members of the Judiciary Committee, my name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s, and I am a legal fellow at the ACLU of Nebraska. I

am here today to voice our opposition to LB187. I will briefly address both our policy concerns, as well as legal concerns, with the bill. First, as a matter of policy, abortions performed in Nebraska are extremely safe. Medical professionals, like the AMA and American Congress of Obstetricians and Gynecologists, oppose these and other similar measures because they do not serve a medical purpose. LB187 is not about safety. It is about harassing providers and shaming women who seek to exercise their constitutional right to safe and legal abortions in Nebraska. Apart from policy concerns, we oppose LB187 for two legal reasons. First, LB187 may violate the single-subject rule of the Nebraska Constitution. This bill attempts to combine two separate bills from previous sessions. And while the bill relates to abortion in general, it imposes two unrelated requirements on private clinics and a third requirement for DHHS, all within a single bill. Our second, more significant legal issue with the bill involves the First Amendment. Both the provision requiring a clinic to display a link and information on its Web site and the provision requiring a clinic to display the signs on its walls present serious First Amendment issues. The Supreme Court has long held that the First Amendment protects the right to speak, as well the right to refrain from speaking. As the Supreme Court said in a case concerning a New Hampshire requirement to display "Live Free or Die" on the state license plate, the First Amendment secures the right to proselytize religious, political, and ideological causes and the right to decline to foster such concepts. It is also important to note that courts have recently struck down abortion restrictions on First Amendment grounds. For example, a North Carolina ultrasound bill was held to be compelled speech because it mandated that providers convey a particular ideology. Like the North Carolina law, LB187 mandates specific speech that conveys an exclusively prolife message. In closing, the ACLU of Nebraska believes this legislation is suspect from a policy standpoint, as well as a legal standpoint and we, therefore, urge the committee to oppose advancement of LB187. Thank you. [LB187]

SENATOR SEILER: Further questions? Thank you for your testimony. [LB187]

SCOUT RICHTERS: Thank you. [LB187]

SENATOR SEILER: Next opponent. [LB187]

JUSTIN OSTERMAN: Good afternoon, Mr. Chairman, Senators. I am the Reverend Dr. Justin Osterman, O-s-t-e-r-m-a-n, the minister of the Unitarian Church of Lincoln. And I want to express my opposition to LB187 and encourage you not to support this because I think this is a thinly veiled attempt to legislate morality in Nebraska. Over the years, as a pastor I have counseled women in all phases of motherhood, women who have gotten pregnant and given their children up for adoption, women who have elected to terminate pregnancies, women who struggled as mothers, women who struggled because they couldn't become mothers. And this has taught me, as a man, humility and it's taught me to honor women and to support their right to

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decide what happens to and inside their own bodies without me or anybody else trying to dictate, legislate, coerce, or control their reproductive powers. There has been a lot of concern expressed about women being coerced into having abortions. I've never had a conversation with a woman like that in my church, but I've had a lot of conversations with women who are coerced into having sex by their husbands, by their boyfriends, a college sophomore, a high school senior. That's the coercion I'm concerned about. I'm concerned about sexual violence against women. So from my perspective, LB187 is meant to intimidate, shame, and bully women into surrendering the power to decide what happens inside their own bodies. The posting of messages on Web sites and signs in reproductive health centers is tantamount to hanging the image of an ominous, unblinking eye on the wall with a message that says God is watching and judging you. I don't believe in a shaming, judging, punishing God but, rather, a God of grace, love, and compassion. And I can tell you as a minister that any woman wrestling with the life-altering decision about whether to continue or end a pregnancy needs grace, love, kindness, and compassion. She does not need the Nebraska Legislature inviting itself into the conversation between her and her doctor. I oppose these efforts to restrict Nebraskan women's access to safe and legal abortions and to shame and intimidate women into not exercising their legal right to have the final decision about what does and does not happen inside their own bodies. I ask you, Senators, to support the women of Nebraska. Thank you for your thoughtful consideration. [LB187]

SENATOR SEILER: Questions? Thank you for your testimony. [LB187]

JUSTIN OSTERMAN: Thank you, sir. [LB187]

SENATOR SEILER: Next opposition. Further opposition to LB187. Neutral, anybody in the neutral. The record is closed. (See also Exhibits 23 and 24.) Senator, you may close. [LB187]

SENATOR KINTNER: Thank you for your time and attention. Appreciate it. [LB187]

SENATOR SEILER: Waived. Senator Garrett. Yes. Waiting for you. [LB187]

SENATOR GARRETT: Oh. My apologies. [LB358]

SENATOR SEILER: You may open on LB358. [LB358]

SENATOR GARRETT: (Exhibit 1) For the record, I am Senator Tommy Garrett, T-o-m-m-y G-a-r-r-e-t-t. I represent my fellow citizens in Legislative District 3, which includes parts of Bellevue, Papillion, and Sarpy County. Thank you, Senator Seiler. And my other colleagues on the Judiciary Committee, thank you for welcoming me here once again and it's my hope that this

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bill will be a shorter hearing than it was last time when I was introducing a bill. This bill, LB358, is of vital importance to the state of Nebraska. America has a sexual assault problem. According to RAINN, the Rape, Abuse and Incest (National) Network, 298,000 Americans are sexually assaulted each year, meaning that approximately three Americans will be sexually assaulted during the time frame of my introductory remarks today. The U.S. Department of Justice and the American Journal of Obstetrics and Gynecology estimate that between 25,000 and 32,000 rape-related pregnancies occur each year as a result of our sexual assault epidemic. The RAINN studies show that victims of sexual assault are three times more likely to suffer from depression, four times more likely to contemplate suicide, and six times more likely to suffer from posttraumatic stress disorder, or PTSD. These women deserve better protection. However, in the state of Nebraska some of our victims are forced to be continuously revictimized. Our Nebraska women are forced to coparent with their attackers and have to relive the vicious emotional and psychological anguish they endured at the hands of their attacker. This is unconscionable. Last year Nebraska was 1 of 31 states that did not protect sexual assault victims from having to coparent with their attackers. Nineteen states terminated parental rights of rapists and those found guilty of sexual assault in cases of rape-related pregnancies. Fortunately, ten states were proactive this past year and passed legislation to terminate parental rights for rapists, so that number is now 29. It is imperative that we make Nebraska the 30th state to terminate the biological father's rights in cases of rape-related pregnancy. The only way for women in these situations to ensure that their assaulter is out of their life is to terminate their pregnancy or put their child up for adoption. This simply is not fair and puts our slogan, "Nebraska Nice," to great shame. We are forcing mothers to bargain with their rapists and giving these criminals continual control of their victims. Nebraska women deserve peace, security, and safety. Nebraska women deserve the opportunity to nurture their children, rebuild their life, and spiritually grow after an assault. The bottom line is, they should not be forced to keep their assaulters in their lives and the lives of their children. I look forward to answering any questions. I have submitted an amendment to require that paternity be proven through DNA evidence. This amendment also gives the individual convicted of a sexual assault the right to have his parental rights restored if his conviction is ever overturned. That concludes my remarks and I'll entertain any questions. [LB358]

SENATOR SEILER: Is that the main difference between your green bill and the white bill is the restoring of the paternal rights? [LB358]

SENATOR GARRETT: Yes. Yes. [LB358]

SENATOR WILLIAMS: And the DNA? [LB358]

SENATOR GARRETT: And the DNA, yes. [LB358]

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SENATOR SEILER: Okay. Any other questions? Senator Pansing Brooks. [LB358]

SENATOR PANSING BROOKS: Yes. I'm just wondering, is there an issue with if a 19-year-old had relations with a partner that was 16? And I could see a case where...I mean that would be basically statutory rape. I could see a case where the family and the couple would want to go on. They have a baby. They decide that they want to have a family together. It's my understanding that that would not be allowed. Is that correct? [LB358]

SENATOR GARRETT: Currently under state statute, a statutory rape, the perpetrator, the rapist, has no parental rights. That's currently in statute for statutory rape when the girl is 16 or younger. [LB358]

SENATOR PANSING BROOKS: Okay. But I think there are cases where the...where...there have been cases where they want to go on and marry, so I'm just interested in... [LB358]

SENATOR GARRETT: Oh, indeed. One of the things in our bill as well is that, you know, the county attorney has the right to take away the parental rights of a convicted sexual perpetrator. The birth mother and/or legal guardian can choose to keep the biological father in the...allow them to keep their parental rights if they so choose,... [LB358]

SENATOR PANSING BROOKS: Okay. Is that... [LB358]

SENATOR GARRETT: ...if that answers your question. [LB358]

SENATOR PANSING BROOKS: Is that within this bill? [LB358]

SENATOR GARRETT: Yes. [LB358]

SENATOR SEILER: It's in the amendment, I believe. [LB358]

SENATOR GARRETT: Yes. [LB358]

SENATOR PANSING BROOKS: In the amendment? Okay. Sorry. I didn't catch that was part of the amendment. Thank you. [LB358]

SENATOR SEILER: Any further questions? Thank you very much. You're going to stick around? [LB358]

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SENATOR GARRETT: Yes. [LB358]

SENATOR SEILER: Thanks. First proponent on the...yep. You're on the line right now?  
[LB358]

SHAUNA PREWITT: Great. Thank you very much. Can everyone hear me okay? [LB358]

SENATOR SEILER: Yes. [LB358]

SHAUNA PREWITT: (Exhibit 2) Great. Good afternoon. My name is Shauna Prewitt. I'm an attorney in Chicago, Illinois, and I'm unable to be there in person today because of a series of client obligations and commitments. But I greatly appreciate your granting me the courtesy of testifying by phone in support of LB358. I'm testifying today wearing two hats. The first hat is that of a rape survivor and a mother to a beautiful girl who I conceived in rape. The father's parental rights were terminated over eight years ago after a very lengthy court battle. Personal experience and interaction with the court system during that time is what prompted me actually to enroll in law school. The second hat I wear is that of an attorney who has advocated for and on behalf of women who conceive in rape since 2008. I'm also a published author in this area, having published articles in the Georgetown Law Journal and in a legal textbook. It is in my role as an advocate that I speak most significantly today. First, to put into context, between 8,000 and 11,000 raped women every single year in America conceive from rape and decide to raise their rape-conceived child. That's 8,000-11,000 rape-related potential custody battles every single year. This raises the possibility of a raped woman being forced to coparent with her rapist. One case I'm familiar with out of (microphone malfunction)...like Nebraska, there are no laws explicitly restricting the parental rights of men who father through rape. A raped woman has been ordered to make parental decisions with her attacker via e-mail and to exchange her child with her attacker in a public place. The solutions, although perhaps creative, are really no solutions at all. Just ask the mother of that child who relives the trauma of her own rape when her child returns home, returns home smelling of the soap of her rapist. Other women have been more fortunate. Their attackers were not so much interested in actually exercising custody privileges as they were in gaining leverage. In fact, North Carolina passed its rape conception custody law based on the testimony of three women there who had felt compelled to bargain with their rapist. Their rapist would agree to drop the child custody case in exchange for the women not testifying against them in a criminal court. Women should not be forced to coparent with their rapist, nor should they feel compelled to bargain with their attackers because the state which they live in has not provided them with adequate protections under the law. I submit that Nebraska should be the next state to join the many others enacting laws to stop this from happening. Accordingly, I am here today to ask you to adopt LB358, which makes rape conception a statutory basis for termination of parental rights. LB358 protects two types of raped

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women: first, women who have secured a criminal rape conviction, that is, their attacker has been...has pleaded guilty to or has been found guilty of rape in a criminal court; and, second, women who have clear and convincing evidence of a rape conception. I believe that LB358 strikes the appropriate balance between protecting women and children, on the one hand, and the parental rights of fathers, on the other. This is so for three reasons. First, a criminal conviction requirement is out of step with Nebraska law. Currently Nebraska permits judges to terminate the parental rights of parents who abuse, neglect, or abandon their children. Each of these acts is a crime. You can have a criminal conviction for child abuse or child neglect or child abandonment. However, Nebraska law does not require a criminal conviction for these acts before termination can occur. Instead, only clear and convincing evidence of abuse, neglect, and/or abandonment is required. I submit that raped women should not be unfairly burdened by being required to secure a rape...a criminal rape conviction when parents seeking to terminate on other grounds are not required to do so. Second, a criminal rape conviction is out of the hands of a raped woman. As a former prosecutor myself, I know the prosecutors often engage...a decision to plea bargain is not left to the victim. Instead, prosecutors may exercise this option in their own discretion. So imagine, if you will, a raped woman who goes through the criminal process only to have her attacker strike a deal with prosecutors, plead guilty to a nonsexual offense. Unfortunately, under Nebraska law that would require a criminal rape conviction. Because a nonsexual offense, such as simple assaults, is not a rape conviction, this woman wouldn't be able to avail herself of the rape conception termination law. And, in fact, we've seen that this happens in other states. For example, in North Carolina they state this very issue where in North Carolina law only a conviction for first- or second-degree rape will qualify for a rape...for a termination based on rape conception. They had a case go up to the Court of Appeals of North Carolina where a man had pleaded guilty to attempted statutory rape. There was no doubt about it that, whatever act happened, it resulted in the conception of a child. However, because of a plea bargain, he was able to plead guilty to attempted statutory rape. The Court of Appeals said there that, unfortunately, that's not a conviction for first- or second-degree rape, so this woman was not able to utilize North Carolina law in order to protect her or her child. Third, a criminal conviction would have unintended consequences. I told you earlier about the women who have often felt threatened in order to plea bargain with their attacker. You can see that if a woman is faced with the possibility of securing a criminal rape conviction, which, as I said, is out of her hands, versus striking a deal with her attacker so that she doesn't have to go through that process, I'm afraid that the choice is clear. She's going to choose her child. So I have...finally, I also want to conclude by talking a little bit about this clear and convincing evidence standard. Now I told you that this is the standard that the judges in Nebraska currently use to terminate parental rights on other grounds. I also just wanted to mention one small thing. There's currently a federal bill going through Congress which, if passed, would allow states that have a rape conception law where the standard of proof is by clear and convincing evidence to get an extra \$1 million every single year under VAWA, the Violence Against Women Act. So I would encourage Nebraska, as kind of an extra incentive to the extent it wants it, to go ahead and pass the bill with clear and

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convincing evidence standards so that Nebraska could take advantage of that law. For these reasons, I do hope that you'll support LB358. I'm happy to take any questions you may have, but I do thank you for your time. [LB358]

SENATOR SEILER: Shauna, will you do me a favor? Pronounce your name and spell it. [LB358]

SHAUNA PREWITT: Yes. It's Shauna Prewitt, first name S-h-a-u-n-a, last name Prewitt, P-r-e-w-i-t-t. [LB358]

SENATOR SEILER: Any questions from the... [LB358]

SENATOR CHAMBERS: I have a question. [LB358]

SENATOR SEILER: Yes. [LB358]

SENATOR CHAMBERS: This is Ernie Chambers. Suppose the woman does not want to keep the child but wants to put the child up for adoption. What happens in a case like that? [LB358]

SHAUNA PREWITT: So in...it just depends on the state. So oftentimes what happens is a raped woman is required to notify the father of her intent to place a child for adoption. In a number of states they've relaxed that requirement where a woman has evidence that she has conceived through rape. And I'm not familiar with what Nebraska's law is in that regard. But in any event, it normally requires the consent of two parents where consent is able to be had. [LB358]

SENATOR CHAMBERS: And the reason I asked the question: so that if anybody who is in the room and intends to testify, they may be able to address it. So I wasn't trying to trick you or ask a "gotcha" question. [LB358]

SHAUNA PREWITT: No problem. [LB358]

SENATOR SEILER: Any further questions? I'd like to thank you very much for appearance by phone and we will terminate the call at this time. [LB358]

SHAUNA PREWITT: Thank you. [LB358]

SENATOR SEILER: Okay. Next proponent. [LB358]

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NOEMI MARTINEZ: Hello, Senators. My name is...oh, can I start? [LB358]

SENATOR SEILER: Yes. [LB358]

NOEMI MARTINEZ: My name is Noemi Martinez, N-o-e-m-i M-a-r-t-i-n-e-z. I was sexually assaulted about four years ago and I have a three-year-old due to the rape. I'm here to speak for victims like myself as a mother. Most victims of rape choose to abort their babies so they don't have to...they don't have anything to do with the rapist. I honestly understand the feeling of not wanting to be tied to this person for life. But why kill an innocent baby that had...that did nothing wrong? The choice to keep an innocent child should not give the rapist any right or privilege to be in the child's life. I have had to deal with the feeling of being bullied and controlled by the rapist. I was here last year and I shared some of my story. As a mother, we want what is best for our child and we want them to be safe. The guy who sexually assaulted me has been having visitations with my child. This year his visitations increased and he's allowed to take her where he chooses accompanied by Isabel's (phonetic) supervisor. Most people get references and trust the person that they leave their child with. And right now I'm obligated by law to take my daughter to visits with a man I don't trust and physically damaged me. If a rape is unconsensual, visits...I mean...I'm sorry. If a rape is unconsensual, it is not possible to have a beneficial relationship if one of us is emotionally and physically damaged. Most victims like myself suffer from posttraumatic stress disorder. There were times when I was in complete fear of him coming to my house to take my baby and I would constantly be paranoid and checking the windows at any noise that I would hear. It was hard for me to sleep or concentrate. I would stay awake watching over my daughter. I don't understand how it could be in the best interest of a child to have a relationship with someone who does so much harm. If they really want to be parents, they should not have to rape to get that right. In my opinion, they do not deserve parental rights because it is like rewarding them. As of right now, my daughter would not have a say until she is 13 and right now she is not old enough to understand who he really is or if she even wants a relationship with this man. Visitations are forced upon her because he wants rights. And it's terrible to know so many states allow such individual to have control over our child, who is also a victim of the situation, by allowing custody or visitations to such individuals. Rape is a crime. And why should any rapist get benefits or privileges with the child of an unconsensual relationship? Whether the rape is violent or not, the rapist violated trust. And I ask you to, please, consider this bill. It is in your hands to help us not feel pressured and punished for doing the right thing and seeking help. Thank you for your time. [LB358]

SENATOR SEILER: Questions? [LB358]

NOEMI MARTINEZ: (Inaudible). [LB358]

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SENATOR SEILER: Thank you for your testimony. Next proponent. [LB358]

ANGELA GROGG: (Exhibit 3) Hello. My name is Angela Grogg, A-n-g-e-l-a G-r-o-g-g. Before I start, I just want to say I do not feel that this bill should be claimed or touted as a prolife bill. I believe that it's a human rights issues because, at the point that a woman chooses to carry that pregnancy through, then this becomes a human rights issue. It's no longer a prolife issue and we should protect the woman and her child. Thank you for the opportunity to testify in support of LB358. For the past several years, I have dedicated myself as an advocate for rights protective of women who mother through rape. I am testifying today, however, in my role as a mother of a rape survivor. A little over four years ago, during what should have been the happiest time of year, Christmas, our then-14-year-old daughter was raped. [LB358]

SENATOR CHAMBERS: Just take your time. [LB358]

ANGELA GROGG: However, she would not find out that she was pregnant for almost five months. I would find out on Mother's Day weekend 2011 when we learned that Pyper was pregnant and she was one of approximately 25,000-32,000 U.S. women who become pregnant through rape each year. Pyper's pregnancy brought a host of emotions: shock, fear, and confusion. But most profoundly, as Pyper has said time and time again, she was experiencing an emotion towards her unborn child that our family would not understand until his birth, an emotion that surprised and enlivened Pyper. Her body, a body which felt so dead after her rape, had not only created life but was nurturing it and we were all amazed by this. Pyper said she felt a sort of kinship, a partnership, perhaps the kind that only develops between those who have suffered together. She has also felt a bond with the life growing inside of her. In September 2011, she gave birth to a baby boy and made the choice that at least a third of raped women who conceive make each year. Pyper chose to raise her son. We helped her and we encouraged her to be the best mother she could. After my grandson's birth, our family, believing the worst was behind us, we could not have been more wrong. First came the criminal trial, then Pyper's rape assault, for full custody of our grandson. My husband and I naively thought that there was not a court in America that would entertain granting a rapist parental rights, but we were wrong. You see, without explicit legislative authority permitting judges to terminate the parental rights of a man who...men who father through rape, judges too often feel compelled to grant some rights. But we got lucky. After finding our daughter's rapist in criminal court and then family court, his parental rights were finally terminated. But prevailing under these circumstances should not be about luck. It should be about the law. As I close, I wish to share a few things with you. First, a quote that has kept me going for the past 1,548 days since my daughter was raped, this is my mantra and this is what I say every day and sometimes more than once depending on the day, "Silence in the face of evil is itself evil: God will not hold us guiltless. Not to speak is to speak. Not to act is to act," Dietrich Bonhoeffer (sic). Today I speak. Today I act. The day after I was invited to come testify, my doorbell rang. [LB358]

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SENATOR SEILER: Excuse me, ma'am. Just a second. Need a motion. [LB358]

SENATOR WILLIAMS: If you'd like to continue. [LB358]

ANGELA GROGG: Thank you. The day after I was invited to come testify, my doorbell rang. It was a process server. My husband, my daughter, and I were all served and again are being sued by the monster who raped my child, this time because I refuse to be silent, because I refuse to allow this man to further victimize my daughter. So what does he do? He uses the legal system to attack, to bully, to intimidate our daughter and our family. And you know what I say to that? No more. No more. No more being bullied. No more to this revictimizing of my daughter. And no more to intimidating our family into silence. I will never be silent about what happened to our daughter and what happened to our family. Although my family continues to be tethered to my daughter's rapist on account of his legal maneuvering, I am grateful that we are separated in at least one significant way. We do not have to coparent with the man who raped our daughter or be a family with our daughter's rapist. Won't you, too,...won't you all permit the women of Nebraska the same freedom by passing this bill and giving them their day in court to serve...to sever the parental ties of their attackers. Thank you for your consideration and thank you for all of your time. [LB358]

SENATOR SEILER: Any questions? I have one. Is the current lawsuit in Nebraska or Missouri? [LB358]

ANGELA GROGG: It was in Missouri. [LB358]

SENATOR SEILER: Missouri? [LB358]

ANGELA GROGG: Um-hum. [LB358]

SENATOR SEILER: Okay. Thank you for your testimony. [LB358]

ANGELA GROGG: Thank you. [LB358]

SENATOR SEILER: Next proponent. [LB358]

GREG SCHLEPPENBACH: Good afternoon again, Chairman Seiler and members of the committee. My name is Greg Schleppenbach, S-c-h-l-e-p-p-e-n-b-a-c-h, executive director of the Nebraska Catholic Conference. And I'm here to put the conference on record in support of

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LB358. When a woman conceives a child as a result of sexual assault, the situation cries out for an exception to recognition of any parental rights of the rapist, an exception that puts the safety, health, and welfare of the child and mother first. Clearly, the best interests of the child and mother are under consideration when discussion turns to protecting them from contact with a man who has a history of violent behavior. Furthermore, we are concerned that, as our law stands now, the specter of the rapist asserting parental rights surely must weigh heavily toward a mother's decision to abort the child. If not having this concern in the mother's decision-making process tips the scales against her choosing abortion, then this bill will do a great service towards the common good. I just want to point out as well that that provision that gives the biological mother an out is in the green copy--it's on page 6--if she consents otherwise from terminating the parent's rights. We urge you to advance LB358 to General File. [LB358]

SENATOR SEILER: Okay. Any questions? Senator Chambers. [LB358]

SENATOR CHAMBERS: It's not really a question. This bill, the underlying basis for it is understood I think by everybody. But because I'm aware of people who have been falsely convicted, some people put on death row who were innocent, and even in some rape cases where years later the victim, purported victim, recanted...and there was one man, who was released, that's what he was being held for. He'd been in prison over two decades. And the purported victim recanted, not by saying something was consensual, but that he didn't do it. So I can understand. If we knew for sure that everything was as presented, I would have an easier time of it. But I am aware even in Nebraska of some people convicted of a murder because of the pressure put on them by the county attorneys and they were called the Beatrice Six. And so effective was their interrogating and threatening that one woman insisted that she actually participated in the murder and the sexual abuse of this woman. And it took therapy to make her realize that, in fact, she hadn't, that she couldn't have done it, because they had the person, based on DNA, who did it and he didn't have help. They had to convince her she was not there. She finally became aware of it. So as a policymaker, I have to be in the role of the person who lacks compassion, who is not sympathetic, who does not understand. But what I have to do is be as concerned about the rights of Mata Hari as Mother Teresa, Jack the Ripper as Martin Luther King. And if the only ones we are concerned about are those people who are favored by society, their rights will be taken care of. But the others are the reason we have due process. So if you have a situation where, let's say, the evidence appears to be overwhelming...and I have been reading reports lately where people known to be innocent by the prosecutor, federal prosecutors especially, and their own attorney would tell this person, if you go to trial it's likely you're going to be convicted, accept the deal we're offering now because even if you change your mind later we're not going to give you the same deal. There's a federal judge in New York who wrote at least two articles for The New York Review of Books talking about the cases he knew about where there was the coerced confession of people who were innocent. There were several young men who pleaded guilty to having sexually assaulted and battered a white woman in Central

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Park. They were Latinos and black. Then they found out they had nothing to do with it, nothing whatsoever. Some had completely served their time. Now there was not a child born as a result, but I'm looking at how flawed this system is. So let me put it like this since we can be theoretical for the sake of the discussion: There is a child who is born and the woman brings the child into the world for whatever, religion or whatever, reason but does not want to keep the child and is going to put the child up for adoption. Should it still hold true and be applied that the father, though a purported rapist, could not gain custody of the child? [LB358]

GREG SCHLEPPENBACH: Should it be from a legal perspective or just do I think from what is right? [LB358]

SENATOR CHAMBERS: Legal, because that's all we can talk about. And it's opinion. [LB358]

GREG SCHLEPPENBACH: Yeah. [LB358]

SENATOR CHAMBERS: And if you don't have one, I don't want to push you into even giving an opinion if you don't have one, because this is like being surprised with something. [LB358]

GREG SCHLEPPENBACH: No, no. I mean I'm thinking more of your concern, you know, which we've talked about and I...that concern isn't lost on me and it was weighed into, you know, our consideration of this bill. But I think in the end we just felt that the weight of, you know, the required conviction...again, I know our system is not perfect, but I think we just felt that, in weighing those concerns, that we came down on the side of the woman. [LB358]

SENATOR CHAMBERS: Then let me complicate it further for you. The purported rapist was 19. The girl, because that's what she would be, is 16 or below whatever the age is, because it varies from state to state. And his parents are irate. And if the child was to be put up for adoption, should they be allowed to adopt the child, the grandparents? And you don't have to answer. But, see, there are questions that I have that I have to deal...I can't hide from them. And whatever people may think is their privilege and prerogative to think that way. But when I agreed to take this job, there are difficult issues to be dealt with and I have to deal with them. And I can't settle the issue for myself by means of what might be called a popularity poll or a survey. And if they talk about what's in the best interest of the child, how does anybody know in this kind of a situation? I say again, if you have everything crystal clear, that there is an obvious, provable rape that, in fact, occurred, then it wouldn't be as difficult for me to say that the rapist should not have any parental rights. But even then you can't alter the fact that that person is the parent of that child. So I'm going to say like they say when they reach a hard position: The ball is in your court. And I'm not trying to force you into an answer but to put the issue out there. And the lady on the phone couldn't give an answer. I can't give one. I can give one, but I'm not sure that it's the

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correct one at this point. But this matter is not as clear cut as it might seem at first blush, for me. [LB358]

GREG SCHLEPPENBACH: Yeah. Well, they're all factors that have to be considered into this, there's no question about it, and I think you just...ultimately has to come down to which factors weigh more heavily and what is right. And that was, you know, really the calculus for which we came to our position on this. You know, we chose to come down on the side of the women in this case and...but recognizing that there are a lot of complications out there that make it tough. [LB358]

SENATOR CHAMBERS: And for the record, I'm not critical of anybody who has the position that the bill is right just like it's written and who would see 180 degrees differently on the issue from the way that I see it. But that's all that I have. [LB358]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB358]

GREG SCHLEPPENBACH: Thank you. [LB358]

SENATOR SEILER: Any further testimony in support? [LB358]

ROBERT SANFORD: (Exhibit 4) Good afternoon, Senator Seiler and committee members. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d. I am the legal director for the Nebraska Coalition to End Sexual and Domestic Violence, which supports LB358. Victims of sexual assault often find themselves facing decisions most of us cannot even begin to imagine. The story of one young Nebraska woman was recently shared with me. This woman had been sexually assaulted by someone she did not know. The incident occurred in an area where there were security cameras and the perpetrator was identified, charged, and convicted of the crime. The advocate working with this individual told me that the young woman found out she was pregnant. She chose to give the baby up for adoption only to learn that doing so required the consent of the biological father since his identity was known. Unfortunately, he would not sign papers allowing the adoption to occur. The advocate noted that the woman was devastated because, even months after the rape and conviction, he had the ability to control her actions and her decisions, preventing her from having the autonomy we desire. LB358 begins to recognize the impact, the power, and control this individual has on the victim of the crime months, and even years, following the actual crime and criminal proceeding. While most victims live with the trauma of a sexual assault for years, this bill provides options to her that can help her, and even the child, find some healing from this trauma. I would like to note that the modification in Section 2, beginning on line 6 of page 4, only considers the conviction of first-, second-, and third-degree sexual assault. Missing from the list, as Senator Pansing Brooks mentioned, and it

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appears in different places throughout statute, is first-, second-, and third-degree sexual assault of a child, as well as, from my reading of the bill, sexual abuse of an inmate or parolee under 28-322.02 or 28-322.03, and sexual abuse of a protected individual under 28-322.04. There may be other provisions outside of the bill as it was written that cover those. This occurs again in Sections 3 and 4, on page 6 of the bill, with modifications beginning on line 4 and again on...at line 26, as well as the modifications proposed in Section 5, on line 4 of page 8. This is important for two reasons. First, we need to recognize the possibility of a child becoming pregnant as the result of a sexual assault. In addition, we need to also recognize that plea agreements occur that can reduce the charge to a lesser crime. The Nebraska coalition supports Senator Garrett's efforts in LB358. We ask that you advance this bill from committee. One of the things... [LB358]

SENATOR SEILER: Questions? [LB358]

ROBERT SANFORD: Can I add one other thought real quick? [LB358]

SENATOR CHAMBERS: Sure, go ahead. [LB358]

ROBERT SANFORD: One of the other things, as I was just reading through the bill, waiting to testify again, is another thing that I noticed that it does not appear to cover would be convictions from other states. So if the sexual assault occurred in Iowa in, you know, Council Bluffs, and the mother lives in Omaha, would this cover it? I don't know that it would. [LB358]

SENATOR SEILER: Senator Chambers. [LB358]

SENATOR CHAMBERS: If every purported rape was caught on camera and you could identify the rapist, that would simplify everything. But they practically always boil down to a he said, she said. Even if sexual intercourse is acknowledged and admitted, one would say it's consensual, the other says it's not. So even when you have the admission of the intercourse, you still have the issue of whether or not it's consensual. And there have been instances where people would be very angry and make an allegation, then retract it. I know of cases where somebody would call me, not on a rape, but where they have to call the police because there was actual physical violence. It would be a domestic violence situation. Then, when the police got there, the person would say, well, no, it didn't happen, and doesn't want the police to even come into the house. Now we could all say we know it happened. And something like that could be caught on camera, as has happened. And the woman might say, well, I provoked it, or, I don't want to file charges. So these things are not as easily resolved as the case you mentioned where it's almost what you could call a textbook example of a crime that was committed and you allow all the factors to be proved so you can discuss it and dissect it, like you would in a laboratory, where you've got all the parts here. So the difference between, for example, to make clear what I'm saying, a

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demonstration and an experiment, in high school and college classes, in chemistry, everything is a demonstration. That's how they can judge you, because they know what the outcome is supposed to be. When you know what the outcome is supposed to be, then you're just demonstrating or showing that if you put all these parts in the proper relationship to each other, then you'll get this result. The experiment is when you don't know what the outcome is going to be so you make different combinations until you arrive at a certain result that you want and you document each step along the way so that you can now replicate it. You know what I put into it to get this result, now I'm going to do that again. And if get the result again and again, then I write to a journal and I say, this is a discovery I made and anybody, if they put these ingredients together in this combination, will replicate it and get the result. Well, when we talk about these kind of situations and...well, I'm not going to repeat everything to you that I said to the other testifier. But it's still not that easy for me. [LB358]

ROBERT SANFORD: I appreciate that, Senator Chambers. And one of the reasons why I actually chose this example was simply because of the fact that this is one that is picture-perfect, textbook example where one would think that parental rights would be terminated and... [LB358]

SENATOR CHAMBERS: Are you a lawyer? [LB358]

ROBERT SANFORD: Yes, I am. [LB358]

SENATOR CHAMBERS: One of the first things you learn in law school, I don't know if you'll remember it. But I went there longer ago than you did. You may not have even been...well, anyway, hard cases make bad law. And yours seems to be an easy case, but the issue that's being dealt with is hard. [LB358]

ROBERT SANFORD: Absolutely. [LB358]

SENATOR CHAMBERS: And if you enact a law that's supposed to be general and universal in its application but you have that incident one time and it's not repeated again, then the law that exists was not made for these other situations. So to make it fit, judges have to interpret, they have to construe, they have to explain and refashion and reshape it to fit this situation. Then they've reached the point, because they know what they did, to say, we will resolve each case on an individual basis and we will make it a fact situation, because the law doesn't apply and they've manipulated it in such a way that it fit one case over here but it's not going to fit this one over here. So they can't make the same application. So they say, now we will do this on a case-by-case basis. And I think that's what might turn out being the way people who are interested in maintaining the integrity of the law would have to do something like this. If you give the case, at first blush maybe everybody agrees this is going to be easy to apply. You've got a square peg;

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you've got a square hole. But the hole is smaller than the peg or other things can happen and that's what I'm looking at. I'm not unsympathetic to all those who have experienced bad things. But I also know, personally, some people who were falsely accused of things. And I know cases. I got a call, believe it or not--and it might be hard to believe--that a young person told me that she wanted her boyfriend to do something, he wouldn't do it, so they had sex and she told her mother that he raped her. But he didn't really rape her, she said. I don't know if she's telling me the truth or not. I don't know if she still just wants to be with him and she really did falsely accuse him or if something actually happened and she reported it the way it happened but now she changed her mind and she wants to be with him. So you know what I told her? I'm not in a position to resolve that, if you have a minister--that's the wrong place to send a child, but I had to think of someplace--or if you have a counselor or somebody you can talk to. But a lot of time...not a lot. Sometimes you'll send a child to somebody who ought to be trusted and that person will see the child as vulnerable and then take advantage of the child. All these things I'm mentioning, I've been aware of them happening. I don't fault you and your organization for supporting the bill. I don't fault Senator Garrett for bringing it. And it wouldn't matter whether I faulted anybody or not. But I want the record clear that I'm not as clear, I'm not as settled in my opinion on this as those who support the bill are. [LB358]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB358]

JOE NEUHAUS: Chairman Seiler and members of the Judiciary Committee, my name is Joe Neuhaus, J-o-e N-e-u-h-a-u-s. And I'm the policy director for Nebraska Family Alliance. At the request of Senator Garrett's office, I appear in support of LB358. We were contacted just a few days ago and, at that time, I was debating whether or not to testify for a couple reasons which kind of boils down to one reason. I wanted to support public policy that provides an appropriate balance between the woman's and the child's safety and the parental rights of the father. To be clear, there is no excuse for rape or any other related offense. They are deplorable always. My first concern rested in the parental rights of the father, but only if he was able to demonstrate a complete rehabilitation. Because I was not very familiar with the topic, I asked a former professor of mine who teaches family law at the Nebraska College of Law and she recommended that I contact Mr. Sanford, who you just heard from. He enlightened me that it is really quite difficult to demonstrate rehabilitation. My second concern was that the possibility of appeal would cause confusion. Actually, Senator Chambers, you had alluded to this concern in Senator Avery's similar bill from last legislative biennium. It appears that Senator Garrett's amendment provides for this concern. Mr. Sanford also provided an example that he shared with you just a few minutes ago, and that really made it more immediate in my mind. This is a father who was not known to the mother and he's...he has to be consulted before the child is given up for adoption. It seems very odd to me that that is how our law functions. Finally, Senator Chambers, your concern about wrongful convictions is perhaps prescient. And my hope is that the appeal process will resolve these potential conflicts. It is a difficult balancing act, to be sure. I think we

must remember that women and children have demonstrably been victims of continued harm, in addition to the initial deplorable act. It was also brought to my attention from Senator Garrett just before I came up here, that I believe Mr. Sanford mentioned, crimes from other states. It looks like AM900 provides for this on page 7, line 5. It says, "or a comparable crime in another state." So I just wanted to add that to the record and I thank you for your time. [LB358]

SENATOR SEILER: Any questions? Senator Chambers. [LB358]

SENATOR CHAMBERS: Since you're not a lawyer, that's why I'm going to ask you these questions. Nobody can determine how long an appeal is going to take. If a person alleges a violation of a right protected by the U.S. Constitution, that person can go through all of the state proceedings, then file a federal appeal. How long is this paternity action going to be stayed pending the outcome of that appeal? And what becomes of the father if the father is not in jail and the appeal is proceeding and the action has been stayed? I know they felt like they addressed the issue I raised and they tried to. But...and I should have asked this of the lawyer, but he couldn't say with precision what would be the longest amount of time he thinks a case could be on appeal. And nobody can determine. But based on the language, I suppose that, as long as the appeal process has not been exhausted, then the stay remains in effect. I can't tell from reading this whether the first appeal, if it went to the Court of Appeals in Nebraska and the court ruled, that would be the end of it. But you can appeal from the Court of Appeals to the Nebraska Supreme Court. And if the Nebraska Supreme Court thinks there is a significant issue that ought to be resolved, and this would be a case of first impression, then the Supreme Court will take it. And then they will do whatever they're going to do and they could either reverse, they can modify it, they can send it back for a new trial. There are other things that can be done in this process of appeal. So it could look again, at first blush, like the issue has been resolved, but there are practical realities in the legal system that I have to take into consideration. And if I know that a long period of time can happen, what standing does the father have as the father since his parental rights have not been terminated? And they cannot be terminated as long as the appeal is pending, from the way I read the language. Does that father have the standing to enforce the right to visit the child or do anything that a father would have a right to do? I'm not asking you for the answer. But without being a lawyer, can you understand the issue that I'm raising? [LB358]

JOE NEUHAUS: Well, actually, I should clarify. I did go to law school and I graduated in 2013. I don't practice. [LB358]

SENATOR CHAMBERS: Then you're trained in the law though. [LB358]

JOE NEUHAUS: Right. [LB358]

SENATOR CHAMBERS: Okay, so... [LB358]

JOE NEUHAUS: Yeah, and I don't practice but... [LB358]

SENATOR CHAMBERS: Okay. [LB358]

JOE NEUHAUS: And I'm certainly not a family law expert. But I think you raise valid concerns. [LB358]

SENATOR CHAMBERS: So then you know these things can go on. [LB358]

JOE NEUHAUS: Sure. [LB358]

SENATOR CHAMBERS: I meant there can be a considerable period of time. [LB358]

JOE NEUHAUS: Right. [LB358]

SENATOR CHAMBERS: And I don't know what the period of time was. But the question that I'm really asking, since the language on page 6 says the court shall stay the paternity action...and maybe everything would be stayed in terms of taking away the parental rights because, at the top of page 7, "biological father may be terminated," the parental rights may be terminated. I am wondering, and I'm not going to put it as a question to you, you don't even have to puzzle over it, if while this process is going on this person, whose rights have not been terminated, would have the rights of a father. If the rights haven't been terminated, you've still got those rights. Which of those rights can you enforce if the mother does not want to allow that to take place? So there could be collateral legal actions being processed at the same time. If I'm the father, I could try to go to court and get an injunction to compel the mother to allow whatever the court wants to say, not necessarily that I have to be in her presence, but the child has to be made accessible to me, maybe at my mother's house, maybe at a third party's place, whether it's an organization or a person. And I don't think those things are answered by the bill. [LB358]

JOE NEUHAUS: I would agree. I don't think they are just from my limited experience with the bill. [LB358]

SENATOR CHAMBERS: You know why I ask you the questions? Because you had similar concerns to those that I had at first and mine haven't been resolved. So I don't have any more questions. And thank you. [LB358]

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JOE NEUHAUS: Thank you. [LB358]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB358]

JOE NEUHAUS: Thanks. [LB358]

SENATOR SEILER: Next supporter. [LB358]

JULIE SCHMIT-ALBIN: (Exhibit 5) Mr. Chairman and members of the committee, my name is Julie Schmit-Albin, S-c-h-m-i-t, hyphen, A-l-b-i-n. I'm executive director of Nebraska Right to Life and we would like to go on record in support of LB358 in the thought that this may remove some of a woman's fear of having a baby conceived in rape and it will not...it will create a second victim, the mother being the first victim, of a violent act and the unborn child, potentially aborted, being the second victim. That said, I share your concerns, Senator Chambers, knowing that things are not always cut and dried. I share Senator Pansing Brooks's first comment. I ran this by our National Right to Life state legislative director. And one of my first thoughts as well was the 19-year-old young man and the...his girlfriend who is 16. And we all know young people who make mistakes but can be rehabilitated. And so my first concern--well, not my first concern but it was raised in my mind--you know, people can be rehabilitated and people can be caught in the justice system on wrong...you know, wrongly accused. And we all know people like that. So that, I concur completely with you and Senator Pansing Brooks as well that things are not, you know, cut and dried in this area. But as Greg said, you kind of have to weigh in the balance, you know, where we come down. But somebody can be rehabilitated and then maybe want, and maybe the mother would want that as well, the relationship. And I know the bill provides that, so. But I just wanted to make that comment. [LB358]

SENATOR SEILER: Any further questions? [LB358]

JULIE SCHMIT-ALBIN: Thank you. [LB358]

SENATOR SEILER: Seeing none, thank you. Next proponent. [LB358]

ERIN DAVISON-RIPPEY: Thank you, Chairman Seiler and members of the Judiciary Committee. My name is Erin Davison-Ripsey, E-r-i-n D-a-v-i-s-o-n, and I am director of public affairs for Planned Parenthood of the Heartland. You heard from my colleague earlier on another bill about our opposition to any forms of coercion. And I just want to reiterate that stance against coercion with this bill. Planned Parenthood of the Heartland is in support of LB358. This bill would provide a woman with protection from a perpetrator of sexual assault and would give her

greater ability to make a personal decision about her pregnancy. The U.S. Supreme Court's decision of Roe v. Wade established that a woman's decision regarding her pregnancy is guaranteed through her constitutional right to privacy. Despite this constitutional protection against government and other interference, women often face barriers about how, when, and if to have a child. When you consider a woman who has experienced sexual assault making those decisions about her reproductive health, the barriers can be magnified significantly. Right now in Nebraska a perpetrator of sexual assault has a looming legal parental right that may be used to coerce a woman when she is deciding how to proceed with her pregnancy. Every woman deserves the right to make her own decisions about her health, her life, and her family. If a woman experiences sexual violence, she should have access to compassionate healthcare and information about all of her options without intimidation or interference from the perpetrator. We know that nearly one in five women in the United States experience sexual assault in their lifetime. At a time when a woman is coping with a traumatic situation, it is imperative that she have access to compassionate care and a full range of healthcare options without interference. Planned Parenthood recognizes a woman's right to determine if she continues a pregnancy and to have all available options to her if she chooses to continue her pregnancy, including adoption and parenting. A perpetrator who caused the pregnancy through sexual assault should have no place in making those deeply personal decisions. A vote for this bill is a vote in support of allowing women to...who have experienced sexual assault to make their own decisions about their health, their families, and their life. We urge you to advance this bill to General File. Thank you. And I'm happy to take any questions. [LB358]

SENATOR SEILER: Any questions? Senator Chambers. [LB358]

SENATOR CHAMBERS: Are you aware that it's recognized now that a woman can rape a younger man, an underage person. But that boy produces sperm. And if she becomes impregnated as a result of a sexual assault by her, should she lose her parental rights and he have the rights to the child? [LB358]

ERIN DAVISON-RIPPEY: So I would say I am not an attorney and I don't know that I've ever been faced with having to weigh in on that type of a situation, so I don't feel that I can answer definitively. [LB358]

SENATOR CHAMBERS: Well, do you know why I say that it's being recognized that a young boy can be raped? Because they've had televised trials where the woman was charged with sexual assault against the boy. One was a Texas cheerleader, Dallas, Texas, cheerleader. So if the state, if the law is recognizing that, it has to be a sword with two edges that cut both ways. If the inappropriate sexual contact is what we're looking at as the determining factor, then we have to forget the gender in terms of arriving at a conclusion. If there is a perpetrator and a child results,

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then the perpetrator's rights should be terminated even if it's the woman. See, all of a sudden, I think that sounds...that rubs people the wrong way. They say that, no, that shouldn't be. But if that's what the legal principle is, it's inescapable because, when they charge a woman with sexually assaulting a male, they use the same law and the same principles and they apply. But what this shows is that that attitude of placing women in one category generally for the purpose of subordinating her carries over into everything. So when they finally get around to saying that, if a woman is a victim of such and such, then the result should be that the man pays the maximum. But if the woman is the perpetrator, then nobody has an answer. But the answer that I think would have to be given is what they're offering in this bill if this bill is passed, that if it can be...you know who the mother is. Like they say, "mama's baby, daddy's maybe." If they establish through DNA that this child is the father and this woman obviously is the mother, then she's got to lose her parental rights under a bill like this. She has to under the same circumstances as the male. Do you agree with that, whether you're a lawyer or not? [LB358]

ERIN DAVISON-RIPPEY: I would say that I'm not familiar enough with the way the bill is worded to be able to say whether or not that is... [LB358]

SENATOR CHAMBERS: Well, if it's worded the way you think it is. [LB358]

ERIN DAVISON-RIPPEY: Planned Parenthood of the Heartland supports a woman's right to make decisions about her medical life and health. When it comes to the legal process after... [LB358]

SENATOR CHAMBERS: Does she have a right to have sex with an underage boy because she's a woman, if a man doesn't have the right to have sex with an underage girl? [LB358]

ERIN DAVISON-RIPPEY: I would say that no person has the ability to effect sexual violence on another human being regardless of gender. [LB358]

SENATOR CHAMBERS: And that's all I'll ask you. [LB358]

ERIN DAVISON-RIPPEY: Yeah. [LB358]

SENATOR CHAMBERS: I understand your situation. [LB358]

ERIN DAVISON-RIPPEY: Sure. [LB358]

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SENATOR CHAMBERS: But I want you to see that, again, it's not quite as simple as what people say. They...there is a parallel universe. If I hold this book up, you see a green page on one side and a white page on the other. When you close them, then let's say that they are mirror images of each other and the only difference is that one is on one side of the line, the parallel universe is on the other side of the line. But the laws according to which they both operate are exactly the same. So if you take the green page and move it to the side where the white page is and take the white page and move it to where the green page is, since they're parallel universes and each other's exact opposite, they still function. They're just on a different side of the line. But they're still different and they still are functioning according to the same laws. So I want people to think about that. Should the woman lose her rights upon the child being born? But, see, she might decide to eradicate all that by having an abortion. So maybe abortion isn't such a bad thing after all. It might be the key to cutting the Gordian knot. Alexander the Great had something to do with that, but that...not a child, but something else. But that's all I will ask you. Thank you. [LB358]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB358]

ERIN DAVISON-RIPPEY: Thank you for your time. [LB358]

SENATOR SEILER: Next witness in support. [LB358]

PATRICIA SAMUELS: (Exhibit 6) Chairman Seiler, committee members, and legislative aides, good afternoon. My name is Patricia Samuels, P-a-t-r-i-c-i-a S-a-m-u-e-l-s. I reside in Norfolk, Nebraska, where I practice as an attorney in the law firm of Copple and Rockey. This is a general practice law firm and, as such, I have the opportunity to work in both juvenile and domestic law matters. In 2013, I came down and spoke before the Judiciary Committee in support of what was then LB182, a bill that was similar to LB358 introduced this year by Senator Garrett. I am testifying in support of LB358. Under the current Parenting Act, the father of a child who was conceived in a rape and who has been convicted of first-degree sexual assault is not allowed to have custody, parenting time, visitation, or any other access to the child. However, if he is convicted of second- or third-degree sexual assault, he may petition the court for custody, parenting time, visitation, and other access to the child. We also have a fact of sometimes these fathers are registered sexual offenders because of their conviction. Now that can have an effect on the visitation under the current law. He may have visits with the child in spite of the fact that he is either required to register as a sexual offender or is convicted of a sexual assault to a lesser degree than the first degree. He only has to show that the offense for which he has to register is not one for which access to the child would be deemed to not be in that child's best interest. And that...those qualifications or standards usually mean that the sexual assault was of a child nature, and so that will require...that will take him out of being able to have the visits. If he is

required...if he is convicted of that lesser-degree sexual assault, then all he has to show is that there's no significant risk to the child and the court may award the relief that he requests. I want to focus my comments on the possible outcome of a petition by a sexual offender for visitation when he has been convicted under the current statute of either second- or third-degree sexual assault. I have experience in cases where the victim agrees to a reduction in the charges in connection with a plea agreement and the reasons vary. Often it is because the victim doesn't want to have to testify. In sexual assault cases it often becomes that the victim doesn't want to again be in the presence of the rapist, even in a courtroom setting, to testify. What she may not know under the current law is that if that plea agreement reduces the charge to a second- or third-degree sexual assault, she can now be faced with the possibility of having to parent that child with her rapist. And I will... [LB358]

SENATOR CHAMBERS: Could she continue if she... [LB358]

SENATOR SEILER: Yes. [LB358]

SENATOR CHAMBERS: ...has more to say? [LB358]

PATRICIA SAMUELS: All he has to show is that he's not a significant risk to the child or it's in the best interest of the child and he is back in that victim's life for as long as 19 long years. I submit that the factors that they now use to define what's in the best interest of the child do not encompass the emotional trauma that this mother may now experience. Those factors, of best interest of the child, focus on the relationship between the parent and the child, not the parent to parent. In order to show that there is a link between her mental health and well-being and the best interest of the child, she is required to bring in expert witnesses. This is costly and it's not easily undertaken by most victims of sexual assault. They often struggle to meet their financial needs, especially since they're raising this child. Victims of sexual assault commonly experience anxiety, posttraumatic stress disorder, sleeplessness, depression, loss of trust, and feelings of low self-worth. And many times they find that they're unable to move forward with their lives if they are, once again, in their assailant's presence. In effect, they are revictimized. Their nonconsent to the sex was disregarded by the perpetrator and under the current laws their nonconsent to the visitation doesn't have much weight either. Again, I support LB358. It gives the mother or the guardian of that minor child who was conceived in a sexual assault a voice in this matter. If she consents to the visits, the court is still obligated to find that the visits are in the best interest of the child and the child is not at significant risk if the visits with the father do occur. If she doesn't consent, she finally has the opportunity to bring this matter to a close. Mothers who choose to give birth to children who are conceived in rape need the support that this bill provides. They should not have to face the time and expense of court proceedings and the possibility of having to parent the child with the rapist. I urge you to move this bill forward. [LB358]

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SENATOR SEILER: Questions? Senator Chambers. [LB358]

PATRICIA SAMUELS: Yes. [LB358]

SENATOR CHAMBERS: If, under whatever circumstances, a woman is found to have sexually assaulted a man and a child was conceived...see, women may not know that a man can get an erection if somebody has a gun on him, if a woman conducts herself in a way to stimulate him. So she could hold a gun and she could care about him and he doesn't want to be bothered with her and she say, we going to do this thing or I'll blow you away. So he goes in, has sex with her, and it's clear from the facts that it was not uncoerced. And there is a conception and the woman does not want to terminate the pregnancy and this bill is in effect. Shouldn't her rights be terminated? The child was conceived as a result of a rape. [LB358]

PATRICIA SAMUELS: I can... [LB358]

SENATOR CHAMBERS: And she shouldn't have parental rights under this bill. He shouldn't...well, let me ask you first, backwards, should the man lose parental rights? [LB358]

PATRICIA SAMUELS: The father who was the victim? [LB358]

SENATOR CHAMBERS: The victim. [LB358]

PATRICIA SAMUELS: No, I don't believe that that's what this bill says. [LB358]

SENATOR CHAMBERS: He shouldn't lose parental rights. [LB358]

PATRICIA SAMUELS: Not if he was the victim. [LB358]

SENATOR CHAMBERS: Right. Should the woman lose hers? [LB358]

PATRICIA SAMUELS: It's when there's a conviction, when we have a conviction for sexual assault. [LB358]

SENATOR CHAMBERS: Yes, and they convict her. [LB358]

PATRICIA SAMUELS: Yes. [LB358]

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SENATOR CHAMBERS: Then she should lose her parental rights. [LB358]

PATRICIA SAMUELS: I think that if...that that's...what that's going to do is constructively encourage more abortions. [LB358]

SENATOR CHAMBERS: Say it again? [LB358]

PATRICIA SAMUELS: It will encourage more abortions then. [LB358]

SENATOR CHAMBERS: But the point is, if the law is like it is written, it would have to apply both ways. [LB358]

PATRICIA SAMUELS: Yes. [LB358]

SENATOR CHAMBERS: Do you agree with that? [LB358]

PATRICIA SAMUELS: Yes. [LB358]

SENATOR CHAMBERS: That's the only point that I really want to make. [LB358]

PATRICIA SAMUELS: Yes. [LB358]

SENATOR CHAMBERS: And your presentation was very helpful and instructive. I appreciate it. Thank you. [LB358]

PATRICIA SAMUELS: I know that it's not a perfect bill. I believe that the number of cases that this would help are...far outweigh the danger that we have. We have to have the DNA test as evidence to get the conviction. There is not much question. And when there is that conviction, when we have the...it needs to be followed through. When we have the issue of an appeal, what happens during the appeal, domestic cases go on a long time. [LB358]

SENATOR CHAMBERS: But you know what I think? With the attitude that they have in this society, they would conclude, everybody would, even in if inside they knew it wasn't the case, that the man really consented, that he wanted to do this, because he couldn't have had an erection. But what they found out when some women obviously were raped, they had what's called an involuntary physical response that lubricated her parts, and that was argued by the perpetrator to show that she was willing. But he was convicted because under all the

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circumstances it was proved to the satisfaction of a jury that, regardless of what her physical or physiological reaction may have been, she was not consenting. And he was convicted. This is not an easy area whenever decisions have to be made by people who were not present. [LB358]

PATRICIA SAMUELS: It's not. It's not an easy decision. But it's not an easy life for these women to carry on and have to have contact with these rapists, and I think that needs to be the overwhelming factor that you use in your vote. And I do urge you to vote it forward. [LB358]

SENATOR CHAMBERS: But we may...because of the realities of legislating and time constraints, we may not have to make a decision on it this session either. [LB358]

PATRICIA SAMUELS: I would urge you to. [LB358]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB358]

PATRICIA SAMUELS: Thank you very much. [LB358]

SENATOR SEILER: Next person in support. Next person in support. Opposition. Anybody testifying in opposition? Neutral? Anybody testifying in the neutral? The record will be closed. The documents... [LB358]

SENATOR CHAMBERS: Hey. He can close if he wants to. [LB358]

SENATOR SEILER: Oops. No. I'm going to...I'm closing the record and ending... [LB358]

SENATOR CHAMBERS: Oh, I'm sorry. I thought you were... [LB358]

SENATOR SEILER: Go ahead and close. [LB358]

SENATOR CHAMBERS: (Laugh) Okay. [LB358]

SENATOR SEILER: (Exhibit 24) The record will be closed and the documents submitted will be made part of the record. Senator Garrett, you may close. [LB358]

SENATOR GARRETT: Thank you, Chairman Seiler, members of the committee. And thank you, Senator Chambers, for your so thoughtful consideration and questions on this bill. I...like so

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many things in the Legislature, this is only my second session. I've had my eyes opened to so many things. And nothing is ever simple in this institution. Nothing is ever cut and dried. I've found that out. I get pretty passionate about many issues. This is one that I got very impassioned about. I know that this previously was before the committee. And we really wanted to tighten this bill up as tight as we could possibly make it. There are obviously some imperfections here that we are more than amenable to amending this in whatever way possible. But I think from studying this issue, you know, the numbers that we threw out that we didn't throw out...the numbers that we quoted, there's some...I think it's but the tip of the iceberg. I think a lot of times when a woman is sexually assaulted, for whatever reasons--embarrassment, shame, family pressure--I think a lot of times they won't come forward and they won't report that sexual assault for a myriad of reasons. So I think the numbers are actually understated. Talking to some of our testifiers here, when...Angie Grogg, when I was speaking with her about her 14-year-old daughter, when I see the kinds of things that defense attorneys will bring up, they had the audacity--and defense attorneys do it in this job, I guess--to say that the fact that this woman didn't...he...they were trying to make the case that this was consensual sex and the reason for that was that, if it was rape, she would have aborted the child. That's the kind of arguments that they make: If it was rape, she would abort the child. And again, these kinds of things are unconscionable to me. This is...one size never fits all with so many things. And I'm an intelligence officer by trade and we had a saying that we always said: paralysis through analysis. And we can "what if" things to death, but the fact remains that this is an issue. And so many times so many bills that I see coming around is...we have laws on the books that we come back and we correct and we tweak and we fine-tune. But it's important I think that we get these protections to women who have been sexually assaulted. And, Senator Chambers, you bring up some good points about, you know, about potentially an underage male who might be sexually assaulted. And I agree with you. The woman in such a case, if she's the perpetrator, then she should not have parental rights. I agree. But I, really, I urge the committee, let's get this bill out on the floor and get it up for the floor to debate. I think this is a necessary bill. If we need to come back, if we can get this bill passed in the next year and the years after that tweak it as necessary, but we should get these protections in place. There are women that, again, to be terrorized by a rapist and then to turn around and have that rapist continue to terrorize that woman and her child if she makes the brave decision to have that child, to have that perpetrator come back and continue to victimize that woman: unconscionable, absolutely, unconscionable. And again, we are amenable to doing whatever we need to do to amend this bill to make it acceptable to the committee. And there was one point I wanted to point out here. We had...one part in the amendment was that without a court, without a sexual assault conviction, we had, on page 4 of our amendment, on line 22, if the biological father is established by DNA evidence and is found by the court at a fact-finding hearing by clear and convincing evidence--this again is without the conviction for the sexual assault but a fact-finding hearing in court by clear and convincing evidence--they could, in fact, deny parental rights to that individual, that perpetrator. So we'll amend this however we need to amend it. But, please, I urge you, let's pass this bill, let's

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protect these women. I think, again, this is but the tip of the iceberg of the number of sexual assaults that are going on out there. And let's protect these victims. With that, I'll take any questions. [LB358]

SENATOR SEILER: Any questions? Senator Chambers. [LB358]

SENATOR CHAMBERS: Just one point: Senator Garrett, DNA can establish parentage but it cannot resolve the question of consent. So you still have one saying one thing, one saying the other, and whichever one the jury believes. The jury can believe that a smooth-operating rapist is not guilty. The facts are that he was but it's based on what the jury was led to accept. So as far as the law is concerned, he wasn't. And if he was not a rapist, then that means that he has parental rights to that child. So these are the things that I think about that I believe other people just go into denial about and say, well, that's not going to happen, or, I don't have to resolve that, let the jury resolve it. But I don't want to put a law out there that can create a situation like that. So I'm saying I still don't have the certitude that everybody else seems to have about it. But, see, with all of them being certain, they can outvote me very easily and I won't be angry if they do it. [LB358]

SENATOR GARRETT: Thank you, Senator Chambers. Indeed, it is an imperfect system. I'll be the first to attest to that. But I think the greater good is served by passing such a law. I mean, a good defense attorney, a real sharp defense attorney is often going to be able to make a compelling case and... [LB358]

SENATOR CHAMBERS: He's supposed to. He's required by his ethics to defend zealously. [LB358]

SENATOR GARRETT: Indeed. [LB358]

SENATOR SEILER: It's his job. [LB358]

SENATOR GARRETT: Indeed. Indeed. So the fact that that happens ought not prevent us from protecting the vast majority of the victims out there. You know, I signed onto your abolishment of the death penalty bill for a myriad of reasons. And if we have ever executed one innocent man or woman, that completely in my estimation voids the entire dignity and respect for that system. [LB358]

SENATOR CHAMBERS: Since he brought...one point: There was a man named Shumway who was executed. They found some clothing of a guy in a stream. They concluded he was dead. The

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guy was dead so they executed Shumway. Evidence came up that the man was seen alive in Kansas. Bob Kerrey, when he was Governor, based on the evidence that was presented, gave him a posthumous pardon. So that's telling him, too late, well, we're sorry, and his family who was made to live with the idea that whatever relationship he is to you is a convicted murderer. And that's the kind of thing that can happen. But here nobody is dead. But I'm just...well, I don't want to go through all of it again because you and I will talk. [LB358]

SENATOR GARRETT: Indeed. And again, my whole point is that there are always going to be exceptions to the rules. We have an imperfect system. We have a great system but it is indeed imperfect. But for the greater good, I honestly and truly, sincerely believe that we could do the greater good for the victims of sexual assault. If I had a daughter or a sister, a relative who is raped and made the brave decision to have that child, to think that the rapist could continue to be terrorizing that woman, the victim, and her child... [LB358]

SENATOR CHAMBERS: Well, we know how to...you and I know how to handle a situation like that and it wouldn't be to...well, let me speak for myself. The courts wouldn't have to worry about some things. [LB358]

SENATOR GARRETT: Indeed. And again, so I'm trying to fight for the greater good. [LB358]

SENATOR CHAMBERS: I understand. [LB358]

SENATOR GARRETT: And there will always be exceptions. And we will continue to tweak and fine-tune our laws to keep those bad things from happening. [LB358]

SENATOR CHAMBERS: I don't have anymore though, so thank you. [LB358]

SENATOR SEILER: Seeing nothing further, it's closed. [LB358]

SENATOR GARRETT: Thank you. [LB358]

SENATOR SEILER: Senator Burke, you're to open on LB463. [LB463]

SENATOR CHAMBERS: Senator Harr, I hope you realize you're keeping us here past 6:30. [LB463]

SENATOR HARR: I know. [LB463]

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SENATOR SEILER: You realize... [LB463]

SENATOR HARR: You introduce one... [LB463]

SENATOR WILLIAMS: It wasn't him. [LB463]

SENATOR HARR: ...amendment for the AG and I see what the reprehension is. [LB463]

SENATOR SEILER: ...realize you've got five hours. [LB463]

SENATOR CHAMBERS: Huh? [LB463]

SENATOR WILLIAMS: It wasn't him. [LB463]

SENATOR CHAMBERS: Well, if he wasn't here, we could leave, if it wasn't for him, couldn't we? [LB463]

SENATOR HARR: Yes. [LB463]

SENATOR WILLIAMS: That's true. [LB463]

SENATOR CHAMBERS: Okay. That's what legal training does. [LB463]

SENATOR SEILER: "Burkie," you've got five hours. [LB463]

SENATOR HARR: Yeah. (Laugh) All right, I'll go ahead and start. [LB463]

SENATOR SEILER: Go ahead. [LB463]

SENATOR HARR: (Exhibit 1) Thank you, Chairman Seiler. Members of the Judiciary Committee, my name is Burke Harr, H-a-r-r. I am from Legislative District 8. I represent midtown Omaha and I come before you today on LB463. LB463 would adopt the Technology Information Management Act in order to ensure a legally appointed fiduciary who manages the estate of a deceased person or the property of a living person can also manage the person's digital assets subject to the terms of service agreements, fiduciary duties, and other applicable law. The act also provides that a provision in the terms-of-service agreement that bars fiduciary access is

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void as against strong public policy of the state of Nebraska unless the account holder agreed to the provision by an affirmative act, separate from the agreement, to the general terms of agreement...excuse me, terms of service. This act is similar to ones that are being introduced in other states and is an important update due to the digital lifestyle we now live in. Years ago, or today for Senator Chambers, people stored files in file cabinets, pictures were stored in family photo albums, and all your mail was delivered by the post office. Today, we use the Internet and much of our information is digitalized, including files, photographs, videos, and mail. These and other digital assets may have real value both monetary and sentimental. LB463 treats these digital assets like all other assets. If a fiduciary has the legal authority to inventory and dispose of all of a person's documents, it should not matter whether those documents are printed on paper, stored on a personal computer, or stored in the cloud. If LB463...when LB463 is passed, a fiduciary would be provided with access to both tangible and digital property. It essentially gives people the ability and the power to plan for the management and disposition of their digital assets by providing them with a way to provide instructions on what to do with the assets. To explain how the act would work and why it is necessary, there are three testifiers following me this evening. I'll make that change. With that, I would end my introduction and would entertain any questions the body or, excuse me, the committee may have. [LB463]

SENATOR SEILER: Senator Chambers. [LB463]

SENATOR CHAMBERS: The question that I would want them each to answer is, what would happen if we don't pass it? [LB463]

SENATOR HARR: Okay. I can do that. Thank you. We can do that. [LB463]

SENATOR CHAMBERS: Unless you know the answer, but you said they would, so I didn't want to deal... [LB463]

SENATOR HARR: They will. [LB463]

SENATOR CHAMBERS: Okay. [LB463]

SENATOR HARR: Yeah. And the answer is it's... [LB463]

SENATOR CHAMBERS: We keep doing it the way we're doing it. [LB463]

SENATOR HARR: Yeah, we keep on doing what we do. You know, I... [LB463]

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SENATOR CHAMBERS: That has brought us this far. [LB463]

SENATOR HARR: That has brought us this far, and I think both...and I've talked to both sides on this, pro and against. [LB463]

SENATOR CHAMBERS: Do you realize that, even though I don't use the gadgets, all the mail that I get by whatever method is "E" mail, Ernie mail? [LB463]

SENATOR HARR: (Laugh) Yeah. [LB463]

SENATOR CHAMBERS: I just want...and mine was before the...before...who was that guy who created the Internet rhythm? [LB463]

SENATOR HARR: Al Gore? (Laugh) [LB463]

SENATOR CHAMBERS: Algorithm...I mean Al Gore, who didn't have rhythm. [LB463]

SENATOR HARR: (Laugh) Yeah, you know, and... [LB463]

SENATOR CHAMBERS: So if you have...you know, an "Al Gore rhythm" is a guy trying to dance who doesn't have coordination. I just thought I'd let you know. [LB463]

SENATOR HARR: (Laugh) Yeah. So to answer your question shortly, what would happen is, and I've talked to both sides and I want to thank both sides for sitting down and working with me on this, is we have uncertainty right now. You know, it's...the Internet is kind of the Wild West. And everyone strives on certainty, and I think the industry eventually wants to get to certainty. The question is, where is that line? And it's really a line in the sand that's drawn because the way accounts work, most data accounts work, is they give it to you for free. Right? And it's great and it's good and it's wonderful. But in return for them giving it to you for free, you in essence give away a part of your privacy, because they have that data about you. And they use that data and that data is very valuable to them, hence, why they can afford to give you something that is a cost to them. They then turn around and sell that data. The question is, once you die, that data doesn't have a value anymore, and so all they're stuck with is the liability. So the question is, when we have a liability, how do we deal with that liability? You know, I don't store, but I know a lot of people store their photos on Facebook, for instance. So what is Facebook's liability to...or what is my liability? That's the question. Is it on the company or is it on the individual to keep a separate record of photos? You know, they go out of their way to encourage people to post on Facebook. I

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think we can all concur on that. Matter of fact, at the end of the year, they give you a yearbook and say, hey, here is your year in the life of Chambers. [LB463]

SENATOR CHAMBERS: So are the...is...are the companies saying, we want to just give it all to somebody and get it out of our hands, or do they want to retain parts of it that they select? [LB463]

SENATOR HARR: Neither. What they would like to do is be able to flush it, I think, is... [LB463]

SENATOR CHAMBERS: Be able to what? [LB463]

SENATOR HARR: To dispose of that property and just have it...I mean that's the question, is what are...where should they do...what should they do with this information? And that's what... [LB463]

SENATOR CHAMBERS: Well, if they dispose of it, do they still have it? [LB463]

SENATOR HARR: No. [LB463]

SENATOR CHAMBERS: If they call themself disposing of it... [LB463]

SENATOR HARR: Yeah. [LB463]

SENATOR CHAMBERS: So there is way they can divest themselves of it and they have no more access to it, any of it. [LB463]

SENATOR HARR: They...nor would... [LB463]

SENATOR CHAMBERS: It's gone, root and branch. [LB463]

SENATOR HARR: Nor would the heirs, and so... [LB463]

SENATOR CHAMBERS: Say it again. [LB463]

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SENATOR HARR: Nor would the heirs to the estate. And there may be things of value on there; there may be bank accounts. I mean, you get your mail delivered to you. My financial statements come in e-mails because it's easier for me to access it then and it organizes it for me. Well, there isn't a paper trail now, you know. So how do we deal with the paperless world, and how do we...if we store it on our e-mail accounts and now we've passed away, what do we do? [LB463]

SENATOR CHAMBERS: This one thing, and then they can answer it. In all of this, you have to take the word of the company that it's been done the way you would want it done, don't you, because you're not in a position to go into their internal operations, can you? [LB463]

SENATOR HARR: I cannot. [LB463]

SENATOR CHAMBERS: Well, but they...I'm putting this out there and they'll answer it when they come up, but... [LB463]

SENATOR HARR: Okay. [LB463]

SENATOR CHAMBERS: Okay, thank you. [LB463]

SENATOR HARR: Thank you, Senator. [LB463]

SENATOR SEILER: Any further questions? Thank you. [LB463]

SENATOR HARR: Thank you. [LB463]

SENATOR SEILER: You're going to stick around? [LB463]

SENATOR HARR: Yes. [LB463]

SENATOR SEILER: Okay. [LB463]

SENATOR WILLIAMS: Yes. (Laughter) [LB463]

STEVEN WILLBORN: (Exhibit 1) Mr. Chairman, Senators, my name is Steve Willborn, W-i-l-l-b-o-r-n. I'm a faculty member at the University of Nebraska College of Law, but I'm here today in my role as one of Nebraska's commissioners on the Uniform Law Commission. I know we've

introduced ourselves to you before, but for the record, the other current commissioners are the Honorable C. Arlen Beam, Jill Robb Ackerman, Joanne Pepperl, Harvey Perlman, and Larry Ruth. As you know, LB463 deals with an important and timely issue: fiduciary access and control over digital assets. These assets range from family photos to digital music to bank accounts and bill-paying sites. Some of the assets themselves can be quite valuable, while others may be valueless on the market but priceless as memories. Some service providers have explicit policies on what will happen when an individual dies; others do not. Even when they do, because the policies are buried away, the thing you click on when signing up, few people read it and even fewer understand it. So this is an important topic. Some of you may recall that the bar association presented you with a similar but more limited bill in 2013. LB37 was an amendment to the Uniform Probate Code and it covered only access by personal representatives at death. A major reason that bill failed to advance was that the Uniform Law Commission was then working on a more comprehensive bill that also covered access by conservators, trustees, and powers of attorney. This act is that more comprehensive bill. Now we have a system for dealing with property when someone dies or is incapacitated. The court appoints another person to manage it for them, an executor or a conservator. That person is subject to a very strict set of fiduciary duties to make sure they act only in the interests of the person or estate. LB463 breaks no legal ground. It just applies these well-established rules to this new category of digital assets. As Senator Harr mentioned, the act has an important provision that says a provision in a terms-of-service agreement that bars fiduciary access is void as against the strong public policy of Nebraska. As you may know, the Nebraska Civil Liberties Union has some concern about the privacy aspects of this act, so I wanted to make a few quick comments on that. First, everyone agrees that there's no privacy concern if the decedent says what she wants done with her digital assets one way or the other, and this act will mean that many more people will say exactly what they intend. Second, when the decedent doesn't say what they want, the need to disclose the information is high and the privacy invasion is low. The need for the information is high because this may be the only way for the personal representative to discover certain things, like bank account information or personal items like family photos. The privacy interest is low because the only person granted access is a fiduciary who is legally bound to act solely in the interests of the estate. Finally, if the act is not enacted, disclosure will be governed by the terms-of-service agreement of the many providers of Internet services out there. Turning the privacy issue over to service providers, instead of just fiduciaries, is an odd way to protect the privacy of Nebraskans. I hadn't realized today how hard you work, so thank you for your service. [LB463]

SENATOR CHAMBERS: May he continue? [LB463]

SENATOR SEILER: Yes. [LB463]

STEVEN WILLBORN: I was done, thank you, Senator. [LB463]

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SENATOR SEILER: He was done. [LB463]

SENATOR CHAMBERS: Oh, you're finished? Oh, okay. [LB463]

STEVEN WILLBORN: Yes, thank you. [LB463]

SENATOR SEILER: Any questions? [LB463]

SENATOR CHAMBERS: I don't understand enough to ask any, but I've got a lot of them.  
[LB463]

STEVEN WILLBORN: Could I respond to your prior question? [LB463]

SENATOR CHAMBERS: Say it again. [LB463]

STEVEN WILLBORN: Could I respond to your prior question? [LB463]

SENATOR CHAMBERS: Yes, thank you. [LB463]

STEVEN WILLBORN: If the act isn't enacted, the terms-of-service agreement says service providers will control what happens, and that's their position. And this act will have...this law provides some guidance on that. [LB463]

SENATOR CHAMBERS: Could you say it a little louder? In a nutshell, they will keep whatever they have of yours if you don't say something, if you don't provide for it some kind of way.  
[LB463]

STEVEN WILLBORN: There are dozens, hundreds of service providers out there--banks, Facebook, Yahoo!, you know, hundreds of them--and they all have agreements that they send to you. And when you sign up, you click on it. And that agreement will say what they will do when you die. And you...I bet those of us around here who do this stuff--Senator Chambers, maybe not you--we've all signed onto those, but very few of us know what they mean. [LB463]

SENATOR CHAMBERS: So somebody would have to know every one of those providers that I have an agreement with... [LB463]

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STEVEN WILLBORN: ...might have different rules for what to do. [LB463]

SENATOR CHAMBERS: And how would...and what would I do in providing for the disposal of whatever these various providers have that would pertain to me? I would have to put each one of these providers into a document. Would I have to specify what they have? [LB463]

STEVEN WILLBORN: Complicated question. So some of the service providers will give you an option if you want to take the time to go in and say, this is what I want to have happen when I die, right, I want it to go to my spouse or I want it to go to my children, some will... [LB463]

SENATOR CHAMBERS: But realistically, do they know that people are not going to pay attention to what kind of agreement they enter into? Is that known in the industry? Do they put a red box around it and write it in red letters and say, read this because it's going to determine your rights? [LB463]

STEVEN WILLBORN: You know... [LB463]

SENATOR CHAMBERS: Do they have it like that so it's the only thing you'll see on the screen when you come in contact with them? Or is it like that... [LB463]

STEVEN WILLBORN: Well, that's a very perceptive point, Senator, because they don't now. But that's one of the things this act will require them to do, to say to you, how do you want it done? [LB463]

SENATOR CHAMBERS: And... [LB463]

STEVEN WILLBORN: And if they don't, then this act will control. So it's really...that's why I say people will be more likely to know what will happen with their digital assets at death because there is this red box that they'll be presented. [LB463]

SENATOR CHAMBERS: Then because I know nothing but I'm willing to acknowledge my ignorance in trying to find out, I will listen to the presentation so that those who do know something can get from it what might be available from an explanation to people who are computer literate, which I'm not. So I'll see what I can pick up. [LB463]

STEVEN WILLBORN: Thank you, Senator. Thank you. [LB463]

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SENATOR SEILER: Any further questions? Senator. [LB463]

SENATOR PANSING BROOKS: Thank you. Thank you for coming today, Mr. Willborn. I was just wondering, could you speak a little bit to the fiduciary duty of the person that's granted access versus the ability of the provider to have access and what that means, really, as far as if I were wanting some pictures, who would I rather deal with, that kind of information? [LB463]

STEVEN WILLBORN: I can only talk about it generally, Senator. But as you know, being a lawyer and a graduate of a fine law school, (laughter)... [LB463]

SENATOR PANSING BROOKS: I am. [LB463]

STEVEN WILLBORN: ...fiduciary duties are very strong. And so the fiduciary who would receive it under any of the provisions of this act would be...have a high standard to look only to the interests of the estate or the person that...who owned the property that we're...that the fiduciary was handling. The service providers don't have those service...those fiduciary duties, of course. They have...they may have contractual restrictions, right, but those would be ones that are basically decided by the service providers themselves. [LB463]

SENATOR PANSING BROOKS: Okay. And so you're saying that this is similar, just for the record, similar to the fiduciary duty that somebody would have pursuant to a will. [LB463]

STEVEN WILLBORN: Oh, yes. [LB463]

SENATOR PANSING BROOKS: Yes. [LB463]

STEVEN WILLBORN: It would be exactly the same for a personal representative. It would be exactly the same for a conservator, trustee, and so on, yes. [LB463]

SENATOR PANSING BROOKS: Okay, and so I've heard some...I've heard from some people saying, well, it's not a good idea because then somebody, a fiduciary who is...who may be some...a fiduciary would be available to access all sorts of information, e-mails from other people, all sorts of things that maybe the person writing to the decedent wouldn't want to be known to any other person. Could you speak to that a little bit and what happens anyway with just general personal e-mail or personal letters, like Senator Chambers might have? [LB463]

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STEVEN WILLBORN: Well, let me make...I'm sure others will talk about this, too, Senator. But one point of... [LB463]

SENATOR CHAMBERS: Reference to me always brings a chuckle, but go ahead. (Laughter) [LB463]

STEVEN WILLBORN: One thing this act will do is it will create incentives for the service providers to get the true intent of the users more often. And so I think everyone agrees that if you say, I want all of it to go to my spouse, that's what should happen. And this act will create incentives for them to know that many...much more often. When people don't say that, this act creates a presumption at death that it would go to the personal...all of the information would be available to the personal representative. That...the alternative is to have the service provider decide what happens to all that information, just my view of it. And, you know, my view is it would be better to have a fiduciary who is legally bound to pay attention only to the decedent to have that information and control over (inaudible) than a service provider who is not under such fiduciary duties. [LB463]

SENATOR PANSING BROOKS: Thank you. [LB463]

STEVEN WILLBORN: Thank you, Senator. [LB463]

SENATOR SEILER: Senator Ebke. [LB463]

SENATOR EBKE: Okay. As a user, I've got Facebook, Twitter, all those kinds of things. And my husband doesn't use, but he would...in our wills, he's my...he would be my personal representative. So what happens? I mean, how does Facebook know that I've died, you know, for one thing. A couple of years ago, I told...my daughter and I were sitting in my office and I said, okay, now, if anything ever happens to me, here's the drawer with all of my passwords, give them to Dad. You know, I mean, well, then is that...how does Facebook or any of the...how do any of these groups know that the person now accessing the account is not the person on the account? [LB463]

STEVEN WILLBORN: You know, there are gentlemen behind me who know more about this. [LB463]

SENATOR EBKE: Okay. [LB463]

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STEVEN WILLBORN: Let me do a first crack at it, I mean. There are a couple of possibilities here. One is you're giving your password to somebody else and they're accessing your account. They have your permission. They can probably do that. [LB463]

SENATOR EBKE: Right, right. [LB463]

STEVEN WILLBORN: Another problem might be, however, that you will die and they don't know what your password is and they can't access it. So this act is mostly directed at that situation, what happens then. [LB463]

SENATOR EBKE: Deals with that, okay, so then my husband has to create a Facebook account. [LB463]

STEVEN WILLBORN: And it can be ruled by the terms-of-service agreement or it can be ruled by something else. [LB463]

SENATOR EBKE: Okay. Okay, thank you. [LB463]

SENATOR SEILER: Senator Morfeld. [LB463]

SENATOR MORFELD: Thank you, Senator, pretty short question. I'm assuming that you have e-mail accounts and maybe you're on Facebook or Twitter and all of those things, correct? [LB463]

STEVEN WILLBORN: Some of those things, yes. [LB463]

SENATOR MORFELD: Some of those things? Okay, not trying to embarrass you. (Laughter) Do you read all of the terms-of-service agreement when you've...when you opened those accounts, did you read the entire thing? [LB463]

STEVEN WILLBORN: (Laugh) Did I read all of them? "Do I read any of them?" might be a better question. I don't read them,... [LB463]

SENATOR MORFELD: Exactly, yeah. [LB463]

STEVEN WILLBORN: ...as I suspect many of you who have these accounts... [LB463]

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SENATOR MORFELD: Yeah. [LB463]

STEVEN WILLBORN: You click through them because you're getting on to other business. [LB463]

SENATOR MORFELD: Well, Mr. Willborn, I'm not trying to embarrass you, but I don't read any of them either. And, you know, I'm an attorney and I'm pretty well versed and I usually...I read a lot and that's one of my concerns. And I have an open mind on this and I talked with some folks in the lobby this morning and said I haven't made the decision on it. But one of my concerns is that I would say that 95 percent--that's my gut feeling--of people, probably more than that, do not read these terms-of-service agreements. And one of my concerns is that, you know, being as pervasive as social media is in our lives these days, being able to have a clear-cut way, as somebody who is a survivor of somebody who has passed away of a loved one, having a clear-cut way to be able to access that information if they need to after they've died is kind of important to me. And leaving it to, you know, ten different, you know, service agreements and all of that, I'm a bit skeptical of that, but I'm willing to listen. And I just wanted to make that point. [LB463]

STEVEN WILLBORN: Yeah. Thank you, Senator. I just wanted to add...I wanted to...can't emphasize too much, I think a big part of the value of this act is that it will encourage service providers to tell you, read this little piece of it, at least this little piece that's really important about what's going to happen when you die. And so we'll have information from each individual user more often about that important part of the service provisions. [LB463]

SENATOR MORFELD: Certainly. Thank you. [LB463]

SENATOR SEILER: Senator Williams. [LB463]

SENATOR WILLIAMS: Thank you, Senator Seiler. Professor Willborn, I'm going to be much more practical. Many attorneys in our state that work in the estate area, one of the most difficult jobs that they have is gathering the assets and figuring out what assets were there. And a personal representative may be appointed, but in our end of the world it's oftentimes the attorney that is leading them through that process. And now we have the situation that Senator Harr really pointed out, that we don't always have the same paper trail that we've had before. Bank statements may still be. But will this help us be able to look at decedents' e-mail accounts in such a way...I'm sure that it still would leave a privacy issue if you find on the e-mail account that, hey, there's evidence that this person has an account at Wells Fargo. But it may lead you to make that contact with Wells Fargo to find that bank account... [LB463]

STEVEN WILLBORN: Yes. [LB463]

SENATOR WILLIAMS: ...or to Hartford to find that insurance policy or whatever. Would you respond? [LB463]

STEVEN WILLBORN: Senator, that's exactly right. This bill would...Mr. Lindsay who is going to speak behind me can speak. He's a trusted estate lawyer, so he'll speak to that more specifically. But that's a major advantage of the act. Used to be these letters would come in and you'd open them and you'd know I had a Wells Fargo account. Now if you don't have access to my e-mail, you may have no idea where I have my account. [LB463]

SENATOR WILLIAMS: Thank you. [LB463]

SENATOR SEILER: Senator Chambers. [LB463]

SENATOR CHAMBERS: Just as an outside observer, I'm like a man who is totally illiterate, sat down in the stacks of a library full of classical literature, and they say, there it all is, go get it. So I'm listening to people who know how to use these gadgets and they don't know...they don't read so I'm the...I'm as knowledgeable as you all are on these things, because you don't read them now either, (laughter) even though it's for a different purpose. Here is the man who is bringing us the plan, but there are things he cannot answer. But there are people with him who can and will. So if all of these highly intelligent, obviously, knowledgeable, presumably, people have to hand the baton off to each other, then ordinary people are not going to understand, even if they have some knowledge of the gadget. So somebody like me, I am lost. So what I'm going to do, I've got a phone call I've got to make. And I won't be any more ignorant when I come back than I am now, and I won't be any less ignorant if I stay. So I'm going to make that phone call, but I will come back. And what I'm counting on seriously is some assistance from members of the committee because I really don't have any idea what is being discussed. When you mention documents, I can understand that. But how they're stored, who can retrieve them, how you go about retrieving them when you retrieve them, are you just getting a copy and something, another version of it, is someplace else that I, the outsider to whom it ought to belong because I generated it, have no access to? So I don't know what you've got. Even this agreement says that, if I do one, two, three, then I get everything, maybe it doesn't work that way. But if that's what we agree to, I don't know whether you're keeping your agreement or not. You can't trust the government. And I'm not one of these antigovernment people. You can't trust lawyers. You can't trust priests with your little children. You can't trust preachers with your daughters. You can't trust accountants not to embezzle. You cannot trust the banks not to bring down the economy. So what difference does it make what I know or don't know? That's what I'm going to leave hanging as I go make this phone call. [LB463]

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SENATOR WILLIAMS: If the spirit of the mountain lion is stored in the cloud, you...your family will want to find that. (Laughter) Now, contemplate that just a little bit. [LB463]

SENATOR CHAMBERS: That's what being in the cloud means. (Laughter) [LB463]

SENATOR WILLIAMS: The spirit of the mountain lion is hidden in the clouds somewhere. [LB463]

SENATOR MORFELD: He just had to bring up mountain lions, all right, (inaudible)...couldn't resist. [LB463]

SENATOR WILLIAMS: Only when he's leaving. [LB463]

SENATOR SEILER: Any further questions? (Laughter) [LB463]

STEVEN WILLBORN: Thank you, Senator. [LB463]

SENATOR SEILER: Thank you. [LB463]

SENATOR WILLIAMS: Who started this at 7:00? [LB463]

SENATOR SEILER: Well, you got four hours. [LB463]

WILLIAM LINDSAY: Senator Seiler, members of the Judiciary Committee, my name is William Lindsay, Jr., L-i-n-d-s-a-y. I'm a practicing attorney in Omaha, Nebraska. I work substantially in the estate and trust area. I'm also here on behalf of the Nebraska State Bar Association to testify in favor of LB463. What this bill is really about is access to information. Information that used to be stored on paper today is often contained in computer systems that may be spread throughout the country and the world. Let's bring it back down to something we can understand. Perhaps a story from my own life can help. My father died in 1987. The Internet was in the...its infancy at that time. I handled his estate. Some months after his death, we found a gadget. This gadget had a cassette recorder on one side, and it turns out there was a tape in the cassette recorder. For the first time in a long time, I heard my father's voice. He was just playing around with my little brother, but there was something wonderful in hearing that voice again, one that I thought I would never hear again. That tape contained information, electronic information. Today, that may be stored on the Internet. The goal of this bill is to provide access to that information which is stored on-line. What if you could go home today and see the image of a

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deceased loved one or hear that voice again? Nebraska has not addressed the ability to access an on-line account at death. The user agreements of the various on-line companies provide a maze for the individual to go through. And in most cases, the rules relating to death are buried in what are called the click-through user agreements where you just click, say, "I agree," and click a button. Back in 1991, this Legislature made a recognition that computer information is important. It adopted Section 28-1342. The bill section reads: The Legislature finds and declares that our society is increasingly dependent on computers, that important personal, financial, medical, and historical data are stored in computers, and that valuable data can be lost due to criminal action. We're just trying to substitute in, effectively, death, loss of access at death. Virginia has adopted the industry's proposed statute. That statute requires the personal representative to file a motion and obtain an order which would allow access to an 18-month period of the user's records to know that there was an e-mail, to know that there was a photo, but does not include the contents of the user's electronic communications. I don't know what would be worse as not having access to it or knowing that you have a photo on-line but you can't get access to it. [LB463]

SENATOR SEILER: Go ahead, Bill. [LB463]

WILLIAM LINDSAY: Okay. You could still file a motion and obtain an order, but the statute requires that this be in a will. Fifty-one percent of Americans don't have wills. Fifty-one percent of Americans under the industry's bill would not have access. That's what this is all about, is access. The question is, do we want to exclude a majority of Americans from being able to access the deceased love one's on-line information? Thank you (inaudible)... [LB463]

SENATOR SEILER: Does the industry bill exclude PRs from exercising the same as a personal representative under a will? [LB463]

WILLIAM LINDSAY: The personal representative under the will, under the industry bill, would have to go to court to get the authority to get this information. [LB463]

SENATOR SEILER: Would the intestate or...the intestate, PR... [LB463]

WILLIAM LINDSAY: The intestate, Senator, would have to go to court. [LB463]

SENATOR SEILER: Same way, okay. [LB463]

WILLIAM LINDSAY: The authority they could get would be to know that there is something out there but not necessarily the contents. [LB463]

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SENATOR SEILER: Okay. How does he get the contents? [LB463]

WILLIAM LINDSAY: I don't know. You know something is out there, but you don't know what it is. I could tell you that there's... [LB463]

SENATOR SEILER: What good does that do you? (Laugh) [LB463]

WILLIAM LINDSAY: ...something in your file, Senator. But, like, if I asked if you if there's a will in your file, you tell me, yes, but I won't give it to you, the person has died, what good does it do me? [LB463]

SENATOR SEILER: Well, okay. But don't under...don't you have a duty under our current probate code to deliver that? [LB463]

WILLIAM LINDSAY: Well, that's what...the duty we're trying to get on the Internet providers. [LB463]

SENATOR SEILER: And that's what your bill does for this bill. [LB463]

WILLIAM LINDSAY: Yes, Senator. [LB463]

SENATOR SEILER: Okay. Thank you. Start with...at the end, Senator Ebke. [LB463]

SENATOR EBKE: Okay. So with this, would this then make it possible or advisable for people who know that they have digital assets out there to include that in their will and in...I mean, is that going to help them in any way? Or is this something that, as part of the agreements, they're going to have to designate, if something happens to me, this person gets my rights? [LB463]

WILLIAM LINDSAY: Well, Senator, just like a life insurance policy, you can name a beneficiary who receives it no matter what the will says. You can make an agreement with the service provider who receives access to that information without...as long as it's brought to the person's attention. So it wouldn't...the personal representative wouldn't have access to that account. The person you named would have that authority. So it's the same thing as a life insurance beneficiary--you know, collect \$10,000 on the life insurance policy, it doesn't go to the estate. It goes to the person you named as the beneficiary. I believe Google, I just saw something the other day, that Google has something like this where you can collect it. It's in their settings

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and you can set in there who is to receive communication if there's been no contact with you for a period of time. [LB463]

SENATOR EBKE: That's what I was wondering, how we get to that point of, you know, Google or Facebook or anybody else knowing that there's something amiss and that you're no longer... [LB463]

WILLIAM LINDSAY: Well, that is probably going to be have to be worked out exactly, but normally you'd have to have some communication with the company to when... [LB463]

SENATOR EBKE: So if you have an access... [LB463]

WILLIAM LINDSAY: Just like if I have a bank account at a bank, they don't know that I've died unless somebody tells them. [LB463]

SENATOR EBKE: Right. But if there's a paper trail, then somebody's more likely to tell them. There's no way that my family would know, for instance, all of the different electronic accounts that I have out there so, you know, I suspect that it's some sort of a sign off or something that...with a designation that, okay, if you haven't heard from me in the last six months, ping me one more time at, you know, my alternate address, and if I don't answer, go over here. [LB463]

WILLIAM LINDSAY: That's what, as they say, I saw, somebody was showing me. I don't admit to having total knowledge of how it works, but... [LB463]

SENATOR EBKE: Okay, okay. [LB463]

SENATOR SEILER: Senator Pansing Brooks. [LB463]

SENATOR PANSING BROOKS: Thank you, Mr. Lindsay. I guess one of the things that I'm hearing about, and I've seen some different correspondence, is about the privacy/confidentiality of business relationships and contracts and assets within all the digital assets. Have you looked into that or discussed that with the bar association, those kinds of issues? Because I know the opponents are going to mention this, and then there won't be somebody speaking after, really, so. [LB463]

WILLIAM LINDSAY: Right. The privacy issue is not really thoroughly discussed. People were more concerned without the...with having access. But the bill itself does provide that if I have a

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concern about that, I can set that up with the company. I just need to know I'm doing it. That's the difference here, is the company would have to pop up Senator Chambers' red box so that I would know that I'm saying I don't want any information on this e-mail account to go anywhere after my death. You'd still have the right to do that, but you should just know you're doing it. [LB463]

SENATOR PANSING BROOKS: Okay. So can you compare back to what has happened prior to the entire digital age? [LB463]

WILLIAM LINDSAY: Well,... [LB463]

SENATOR PANSING BROOKS: So letters and correspondence and all the stuff that people might have that they don't want to be public and the fiduciary responsibilities of whomever does have access, the privacy issues, I'm just interested in the comparisons of that so we can have a vision of what that is. [LB463]

WILLIAM LINDSAY: Yeah. All right. Well, I am...I'll give you one example in my legal career. This was done orally. But the client gave me some information I needed and I was specifically directed not to reveal it to anybody even after the client's death. The client has died. It wasn't necessary for the estate administration. I honored that request. That's an example of attorney-client privilege in that case. But I've also seen circumstances where people might have letters in a file and they will mark on it, "In the event of my death, destroy this." And if they sign and date that, that's theoretically a codicil to the will and is now a command upon the fiduciary. So that's similar to the idea that I could set up an e-mail account that would be subject to being destroyed upon my death. [LB463]

SENATOR PANSING BROOKS: Okay. So what I am asking you, too, is, do you have any problem with whatever fiduciary or whatever person that you might designate prior to your death having access to whatever it is that they might not want to have access...somebody to have access to, because that's what I am hearing. [LB463]

WILLIAM LINDSAY: Well, all I'm saying is that people should think about what they want to have people have access to. [LB463]

SENATOR PANSING BROOKS: (Inaudible). [LB463]

WILLIAM LINDSAY: Yes, it's possible, somebody might have something that somebody, you know, could get access to, but there are some protections. First off, if it's business related, it's not

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covered by the act. So if it has to do with my legal business, my e-mail account at work belongs to my employer, not to me, so there's no access that can be gained by anybody other than a member of my office. So that's an example of, you know, the protection that's there. If it's employment related, it's not covered by the bill; there's no access to it. Could third-party things be received as part of this? The answer is, yes, clearly, third-party things could be received. The individual could leave instructions. They could leave instructions in their will as to what to do with that information. And if the information is not something that is going to be of any benefit or detriment to the estate, then I don't see the reason to reveal that, as a fiduciary, if I was the personal representative. [LB463]

SENATOR PANSING BROOKS: Thank you. [LB463]

SENATOR SEILER: Any further questions? [LB463]

WILLIAM LINDSAY: Thank you. [LB463]

SENATOR SEILER: You've dazzled us, Bill. [LB463]

WILLIAM LINDSAY: (Laugh) Thanks, Les. [LB463]

BEN ORZESKE: (Exhibit 3) Chairman Seiler, members of the committee, my name is Ben Orzeske, O-r-z-e-s-k-e. I'm legislative counsel with the Uniform Law Commission, based in Chicago. Thank you for considering LB463. This bill is based on a brand-new uniform act. It's been introduced so far in 24 states, enacted into law in one. Delaware has a substantially similar version of it. This bill is necessary because of the changing nature of our property, as the previous witnesses have explained. I want to talk a little bit about the drafting process, how we arrived at this model legislation. The Uniform Law Commissioners are appointed by the states. They're all volunteer attorneys. And there is a committee of them from all different areas of the law that formed a committee to work on this legislation. And it's a public process. We invite in stakeholders from anybody who is interested to come and sit at the table and talk to the committee. Two of the people that you're going to hear from today in opposition were at that table, and they were extremely helpful at that table. They are members of the...representing tech firms, and the committee learned a whole lot from them. And a lot of what ended up in the final act was due to them. But not everything they wanted ended up in the final act, of course. The committee balanced concerns and they had...they developed an act based on what was going to be the best public policy. And so at the end of that two-year drafting process, the firms that are here speaking in opposition today, they withdrew their support from the project, decided they were going to oppose it, as is their right, of course. But some of the objections, let me talk about why they say they're opposing this and how the committee handled those particular things. So

one was privacy, and this gets to some of your questions, Senator Pansing Brooks. I want to emphasize that under this law, 100 percent of your digital assets can remain private after your death, even from the person charged with executing your estate. The difference is you control it. As it is now under the current law, the companies control it through their terms of service where they can put whatever they want in there. And if you click through and agree to it, then that's what's going to be what happens to your assets. The uniform law does not take away any rights from the companies. But what it says, you know, if I upload a photo to Facebook, I have some rights in that photo and Facebook has some rights in that photo. When I die, Facebook's rights don't change, but now my fiduciary has whatever rights I had. So if I could download the photo and close the account while I was alive, then my fiduciary can do the same thing after I'm dead. If Facebook could sell access to that photo for profit before I died, they can also do it after my death. It doesn't change their rights at all. It just gives my rights to my fiduciary for the purpose of administering my estate. The second privacy issue is with third-party privacy. So you asked about the situation where there's a doctor or drug counselor who maybe is communicating by e-mail with patients confidentially. I think that's a red herring and here's why. Under the current law...well, that hypothetical doctor or drug counselor probably also has some paper files on those same patients. And when that doctor or drug counselor dies, somebody is going to go through those files and they're going to contact the patients and give them the opportunity to take possession of their medical records. And if they don't want them, they're going to shred them. And the person that does that is the fiduciary charged with administering the doctor's estate. And so the committee felt, and I agree, that it's not a stretch to entrust that same person with the doctor's e-mail and trust that they'll handle it confidentially, the same way they are with the paper medical records. The second objection is a conflict with federal law, and the federal law in question is a criminal law. It's the Electronic Communications Privacy Act, and it makes it a crime for a company handling your e-mail to release that e-mail to law enforcement without a warrant or to a third party without the permission of either the sender or the recipient. It's a 1986 law. No e-mail provider has ever been prosecuted under the law for releasing information to a fiduciary. [LB463]

SENATOR SEILER: Hold it just a second. Would you continue now? [LB463]

BEN ORZESKE: I will, thank you very much. No e-mail provider has ever been prosecuted under that law and is...they are unlikely to be. It would be analogous to, after I die, the bank that...where I held my funds releases funds to my fiduciary, who distributes them to my heirs, and then the government prosecutes the bank for misuse of funds. That's what they're suggesting that the conflict with the federal law is, and the committee didn't think that was likely to happen. But admittedly, the federal law is a little bit unclear. It doesn't say that, specifically, you can release this to fiduciaries. And so the American College of Trust and Estate Counsel has written a letter to Congress--the ULC supports this--to put an explicit exception in there. I don't think it's necessary as...in order to make it legal because fiduciaries have always stepped into the shoes of

the decedent under state law. But we would like that clarification as well, and so we support that effort to clarify the federal law. In the meantime, what's in the uniform law is an effort to codify that common-law rule that the fiduciary steps into the shoes of the decedent. And so it just says that, for the purposes of federal privacy law, the decedent is deemed to have given their consent if the fiduciary consents. Lastly, the objection is interference with contract. The contracts we're talking about are those click-through terms-of-service agreements that have already been discussed. So I'm not going to dwell on that, only to say that, as I said earlier, Facebook or Yahoo! or Google does not lose any rights in the account when I die. It's just that my rights are inherited for the purpose of administering my estate by the fiduciary. And in all respects except one, the fiduciary...this law defers to the terms of service. The fiduciary has no greater rights than I had given in the terms of service. The one exception is if there's a blanket term in there that says no fiduciary access or we delete everything automatically upon learning of your death. If there's a...it has the effect of preventing fiduciary access entirely, that's what we say is void because it's against the strong public policy of Nebraska. And with that, I'll stop and I'll take your questions. [LB463]

SENATOR SEILER: Senator Pansing Brooks. [LB463]

SENATOR PANSING BROOKS: Could you explain what the process looks like with these providers that you could...there is...I mean I think, Google, I've seen something with Google. [LB463]

BEN ORZESKE: Yeah. [LB463]

SENATOR PANSING BROOKS: Could you explain, because it sounds complicated to have to do this with everybody, but the providers... [LB463]

BEN ORZESKE: It's actually really simple. And anybody who has a G-mail account, I encourage you to log in and do this. It's in their settings and it's called the inactive account manager and it's three steps. You choose a period that your account is inactive, so 30 days, 60 days, whatever you want. Then, after that period, if they can't reach you, you tell them what to do. You can say, delete my account, or you can say, contact this person at this e-mail address and give them access. You can actually get granular about it. You can...because Google owns about 12 different services, so you can say, my wife gets my YouTube videos, the family photos, and my business partner gets all the documents I've stored on Google Drive but I want my e-mail deleted because that's personal and no one needs access to that. So you could name different people for different things. And then the step three is you decide what you want to happen afterward, if you want Google to delete the account permanently or to archive it. [LB463]

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SENATOR PANSING BROOKS: So do you have a feeling for why they are against, why you have opponents on this? [LB463]

BEN ORZESKE: I don't want to speak for them. I mean I think, in general, no business likes to be regulated. But I'll let them speak for themselves. [LB463]

SENATOR PANSING BROOKS: Okay. And so with the ability to get granular about it and, I mean, you can have it go according to the will, the personal representative, to your spouse, to...and it can be each different person for each different account. Is that correct? [LB463]

BEN ORZESKE: That's the way Google's is set up, you know, the...Facebook has a feature they introduced recently that gets us partway there, I think, but those are so far the only two companies that have introduced this feature. I think that, you know, this bill will give the incentive to companies to do that because, you know, Google's is all automated. They don't have...they can contact my wife after the account has been inactive for three months. Nobody has to do anything. That's a lot easier from the company perspective than having a team of lawyers to go through my will and determine what I wanted. So I think that that...there is the incentive kind of built into the law without mandating that any company do anything, but I think that will become more common. [LB463]

SENATOR PANSING BROOKS: And do you know if that becomes automatic upon death? Can...I mean, but what could...how would the company know that the person has died? [LB463]

BEN ORZESKE: Well, in Google's case, it's because the account has been inactive for some period of time. [LB463]

SENATOR PANSING BROOKS: Okay, so it's inactivity. [LB463]

BEN ORZESKE: But in other...you know, for instance, Yahoo! terms of service says, if we receive a death certificate, then your rights end and we have the right to delete everything. And so it depends. You know, if nobody notifies them, that's a problem, too, because there are 30 million dead Facebook account users right now, and that's an identity theft problem or at least a potential identity theft problem. And so if nobody notifies them, you know, maybe it'll stay there indefinitely, but that's not what we want either. You know, we don't expect the gas company to figure out which of its clients have died and they can close their account. We rely on the executor to tell them, close this account, the person died, and we ought to be doing the same thing with our on-line accounts. [LB463]

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SENATOR PANSING BROOKS: Thank you. [LB463]

SENATOR SEILER: Senator. [LB463]

SENATOR CHAMBERS: While I was in the horse-and-buggy world of using the telephone with a rotary dial, I heard you mention some...or whoever may have been up here before you, about a federal law that prohibits the granting, giving of information to law enforcement without a warrant or to a third person without permission. How do I know? I don't know whether you've even released the information, do I? [LB463]

BEN ORZESKE: Well, if you're still alive, you presumably might be able to find out and then prosecute under that federal law. But once you're dead, you're right, you won't know. It'll be your fiduciary who is there to enforce your rights. [LB463]

SENATOR CHAMBERS: I mean while I'm alive. If you have something of mine and law enforcement wants it and you give it to them without them having a warrant, how do I know you gave it to them? [LB463]

BEN ORZESKE: You won't right away. [LB463]

SENATOR CHAMBERS: How will I ever know? [LB463]

BEN ORZESKE: If you get arrested, you might know, I mean, if they have to present it. But you're right. I mean I see what you're saying. If you don't... [LB463]

SENATOR CHAMBERS: Here's what I'm getting at: All of this is impressive when you know like everybody else and you're in on it because you accept it. But when you have pure, innocent eyes, such as mine, it's a whole lot of nonsense because it doesn't amount to anything. The public never knows and has no way of knowing what is really going on behind that curtain of the Wizard of Oz. All they know is what he shows on the screen. And if you don't show it, then these people will never know it. So I think I'm better off than all of these people who trust these gadgets and trust the ones who are controlling it. I have no electronic footprint. I have...I pay for things with cash. So they cannot...if I hear that the NSA is going into files and whatever, it makes me no difference because there's nothing on me that I don't care who knows it. But what I was listening to see if I heard was if there is something in the equipment that the innocent user has which will notify that person that this information is going where it shouldn't. There is no such thing as that. There will never be such a thing as that. And the public is completely at the mercy of these big companies, these providers. And I think they've reached the point in their mind

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where they say, whatever will be will be, I just have to hope that it doesn't go wrong but if it does, I'll never know, and if it does, I can't do anything about it. So I don't see where all of this...these gadgets, they're good for some things. But I don't see where they're a benefit to society at large. And I'm going to keep listening without asking any questions other than that specific one I had, which I did understand what was being said, because that's the in the line of the government getting information that it really shouldn't. The constitution means nothing, the laws mean nothing when it comes to messing over ordinary people. And that's what I see these big servers or whatever they call them, or providers, doing to the public. And the public I think has accepted the idea that they can't know. And you can correct me if I'm misunderstanding things. [LB463]

BEN ORZESKE: Senator, I wouldn't presume to correct you, but I'll...I will say that this law won't change the federal criminal law at all. [LB463]

SENATOR CHAMBERS: It wouldn't matter if it did... [LB463]

BEN ORZESKE: Okay. [LB463]

SENATOR CHAMBERS: ...because we don't know whether the law is being obeyed. So if they...because I may have missed something, what will this law do that benefits the public? Or is this only dealing with what will happen after somebody croaks and determining what arrangement they should be made for what will be done with it after they're gone? That's basically what... [LB463]

BEN ORZESKE: This law... [LB463]

SENATOR CHAMBERS: Oh, go ahead. [LB463]

BEN ORZESKE: This law will have the effect, it will greatly benefit the general public because it will have the effect of saying, for people who do have digital assets who are storing their information or their property or their memories on-line, that their descendents, their heirs under their will, will have access to those like they will their tangible assets. The same way you can leave them your money and your car and your house, you'll also be able to leave them your on-line photographs and your on-line bank accounts and such. [LB463]

SENATOR CHAMBERS: But you'd have to know what they put...they'd have to know what I put on there. [LB463]

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BEN ORZESKE: Ideally, you've made an estate plan. But for the most...the majority of people who don't, this bill gives your...whoever is appointed to administer your estate, the executor of your estate, gives them some rights to find that out. [LB463]

SENATOR CHAMBERS: But here's what I'm saying: If you know that I'm dead, my statement to fully apprise my heirs or descendants or whoever the fiduciary is would have to list every single item that you got. And that's the only way they know if, when they go into it, what they're getting from you is what was mine and that I left for them. Otherwise, you tell them, well, yeah, he said you can get all the photographs, these are the photographs. They don't know if you gave them all the photographs or all of anything. So it appears that something is being done. Maybe, because of my skepticism, I'm not trusting and I don't believe that what a person wants done will be done. And I'm not going to keep us here too long, because I'm not going to keep asking questions. But I want to get this out of my craw. Harper Lee, in my view, from the times I've seen them show her on television--she had written To Kill a Mockingbird--she is not competent to make a decision as to whether this manuscript should be published in a book. But the ones who can make a lot of money have gotten the state of Georgia or numbskull Arkansas, wherever she's living, to say, well, we checked her out and she knows what's going on. So they're going to publish it because some people are going to make a lot of money. So she's not in a position, even though she's alive right now, to declare what her wishes are or to know whether or not they're being carried out. Maybe if that manuscript hadn't been stumbled on, nobody would even know about it. So let's take the situation now, with me having said that, where I'm dead and I write a statement that these are all the services that I have that I'm subscribing to or whatever you call it and I want you to be the one to have the identical access to all of that, that I would have were I alive. And you're served with this document however it's to be done under this law. However, they'll...all these are rhetorical questions. They will not know that what you're making accessible to them is what I would be accessible to because I know what's there but they don't. They have to trust you. And I know... [LB463]

BEN ORZESKE: Senator, the answer to that is that you give copies of your plans to everybody that you want to know, all the people who should know. [LB463]

SENATOR CHAMBERS: How do they know that they're getting everything that's there? That's what I'm getting at. [LB463]

BEN ORZESKE: Because you gave it to them. [LB463]

SENATOR CHAMBERS: Then I should keep a copy of every document that I've got on one of those little-bitty things that you can plug into a machine and give those to people and say, now if

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anything you...anything on here that they don't give you, then they're withholding it and go get it. Is that the way I leave this to them, so they know what you've got access to? [LB463]

BEN ORZESKE: No. The way you do it is your documents or mail or whatever is stored on whatever service you have, and all you are leaving them is access to that. And so the fiduciary of your estate has access to that and can download it and distribute it according to your directions. But you give them the list--you know, I want you to be able to have access to my e-mail--and that's what's enforceable then under this law. [LB463]

SENATOR CHAMBERS: Well, you know that I'm dead. You're the one that I have the agreement with. When this fiduciary goes into action, will that take place only when I'm dead? Something like Yul Brynner said, when you see this commercial, you know that I have died, that antismoking... [LB463]

BEN ORZESKE: Yep. [LB463]

SENATOR CHAMBERS: Is there something that signals to you that, when this fiduciary gets into the picture, I am dead? [LB463]

BEN ORZESKE: I'm sorry, I don't understand who I am in your example. [LB463]

SENATOR CHAMBERS: Me, I'm the one who has the... [LB463]

BEN ORZESKE: But you said how will I know, and I don't know who I am. [LB463]

SENATOR CHAMBERS: Oh, well, you're the company. [LB463]

BEN ORZESKE: I'm the company? [LB463]

SENATOR CHAMBERS: Yes. [LB463]

BEN ORZESKE: Okay. [LB463]

SENATOR CHAMBERS: Will you, the company, the provider, whatever they call you, will you know that when this fiduciary that I've designated begins to obtain access, does that fiduciary identify himself or herself or...as a fiduciary or, for all you know, it's me still alive and functioning? [LB463]

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BEN ORZESKE: No, they have to identify themselves as the fiduciary and they have to be legally...they have to have the legal authority under Nebraska state law in order to access your accounts. [LB463]

SENATOR CHAMBERS: So you would know that, when they begin to do that, I am no longer living. [LB463]

BEN ORZESKE: Yes. [LB463]

SENATOR CHAMBERS: Okay. Now we're on the same page, at least at this point. When that fiduciary obtains access, but before that person can actually get the access, you can take out of that, that is mine, whatever you want to. You don't have to...what guarantees that you give the fiduciary everything? [LB463]

BEN ORZESKE: Senator, in our society, we rely on lawmakers like you to make the laws that...and we rely on our courts to enforce them. And there are legally enforceable rights in the contract that the company is not supposed to do that. But understand you're not trusting. I'm not always trusting, either, so I can't promise that it works the way it does every time. We're just trying to do the best we can under the law system that we have. [LB463]

SENATOR CHAMBERS: The constitution protects me, supposedly, against unlawful searches and seizures, but they happen all the time. So the mere fact that it's written in the law does not touch what I'm talking about. This is like saying, if we catch you with your hands in the cookie jar, we're going to slap your wrist. But if there's no way to know and you as the company can withhold, let me ask that question. Can you as the company limit what this fiduciary is going to receive if you choose to do that? [LB463]

BEN ORZESKE: Only if I could have limited what you could have received when you were alive. The fiduciary gets whatever rights you had. [LB463]

SENATOR CHAMBERS: After you know that I'm dead, you mean that you cannot do anything with that account, it just stays the way it is, and you cannot alter it, you cannot take anything from it? [LB463]

BEN ORZESKE: No, I didn't say that. The company may have its own rights in the account. They may have the right to delete it or the right to use the property in there under certain circumstances because you gave them those rights when you were alive. [LB463]

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SENATOR CHAMBERS: Now...so this law doesn't mean anything, not in reality. [LB463]

BEN ORZESKE: I disagree 100 percent with that. [LB463]

SENATOR CHAMBERS: You all worked hard and I admire you for running and chasing your tail, never catching it. But you expended a lot of energy so after it's over you said, I'm tired, so I must have done something. So I'm going to give you credit for having done something, but you didn't catch your tail. And that's all. I'm not going to prolong it. But I thought I could get an understanding, which I can't, so I'm not going to interfere with you all, as I said, getting what you can from it. [LB463]

SENATOR EBKE: Senator Chambers, I think you're in charge and... [LB463]

SENATOR WILLIAMS: I...no, it's Senator Morfeld. [LB463]

SENATOR MORFELD: He left me in charge for some reason. [LB463]

SENATOR EBKE: Oh, did he? [LB463]

SENATOR PANSING BROOKS: Oh, no. [LB463]

SENATOR EBKE: Okay, okay. [LB463]

SENATOR MORFELD: Do you have a question, Senator Ebke? [LB463]

SENATOR EBKE: Yeah, okay. (Laughter) He left you in charge? Okay. Okay, so let's say that, hypothetically, all of my passwords and user names are all destroyed in a fire in which I'm killed as well, and after the funeral my kids... [LB463]

SENATOR WILLIAMS: I wasn't going to cry at this hearing. [LB463]

SENATOR EBKE: (Laughter) And after the funeral is all over, my kids are saying, hey, I wonder if Mom had this kind of an account. Okay. And my kids, whichever one it is, is the legal fiduciary. Can they at that point go on a fishing expedition to Ancestry, Amazon, that sort of thing? I mean what...is this something that's contemplated by this, that they could send communications to those companies and say, hey, is there an account in the name of Laura Ebke, this address, that sort of thing? [LB463]

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BEN ORZESKE: That's not anticipated by this law. There is a company I read about recently that is now offering that service to kind of go out and find those accounts for a fiduciary's estate. But the process under here, if there's a lost password and you when you were alive could have had that password reset, then your fiduciary can have that password reset. [LB463]

SENATOR EBKE: But they'd have to know that I had the account. [LB463]

BEN ORZESKE: They have to know that you had the account. And that's why the access to e-mail is so important, because that's generally how they would find out whether you did business with a certain company or whether you banked somewhere is probably...it would be...there would be some communication in your e-mail address, or sometimes even your log on is your e-mail address, and so that might be a way to find out. [LB463]

SENATOR EBKE: So in that instance, I need to make sure that my Google accounts have my, you know, my contact information that says, if I don't have activity for 60 days, ping me, and then if I don't answer, ping my daughter, and then she gets all my e-mail information. [LB463]

BEN ORZESKE: Exactly,... [LB463]

SENATOR EBKE: Okay, gotcha. [LB463]

BEN ORZESKE: ...unless you've directed them to delete it, in which case it gets deleted. [LB463]

SENATOR EBKE: Okay, thanks. [LB463]

SENATOR SEILER: Did you have a question? [LB463]

SENATOR PANSING BROOKS: Well, I guess that's what I just wanted to clarify, because I think at least two members of the Judiciary Committee were out of the room when we discussed this. But again, you can sign up quite easily on the...in the settings. Could you explain that one more time? [LB463]

BEN ORZESKE: Sure. So far, one company has offered this: Google. It takes about three minutes. It's a three-step process. It's called the inactive account manager. You choose the period after your account is inactive for some period of time, 30 days, 60 days or so. They'll try to reach you. And if they can't reach you, then they go on to step two and you say what you want to

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happen to your account. So you can direct Google to delete everything, or you can say, contact this person at this e-mail address and phone number and give them access to my account. And you can get granular about it, so you can give different persons access to your e-mail and your photos and your documents that are stored on-line. And then step three is you tell them what you want to happen after that, whether you want it deleted or archived. [LB463]

SENATOR PANSING BROOKS: Thank you. [LB463]

SENATOR CHAMBERS: I do have a question. [LB463]

SENATOR SEILER: Yes. [LB463]

SENATOR CHAMBERS: Now you mentioned deleted; that's touching on what I wondered. When you say "deleted," what does that mean, that it's gone completely, forever? [LB463]

BEN ORZESKE: It depends entirely on the terms of service that the company has signed with you while you were alive. [LB463]

SENATOR CHAMBERS: Okay, nevermind. (Laugh) I'm back where I was. I'll just listen because I thought I heard something. [LB463]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB463]

BEN ORZESKE: Thank you. [LB463]

SENATOR SEILER: Next proponent, proponent, in favor of the bill. Seeing nobody, opposition? [LB463]

CARL SZABO: (Exhibits 4 and 5) Mr. Chairman, members of the committee, my name is Carl Szabo, spelled S-z-a-b-o. I'm policy counsel for NetChoice. We're an e-commerce trade association whose members include AOL, Yahoo!, Google, Facebook, eBay, and PayPal. And before I delve into my testimony, I do want to warn you, Senator Pansing Brooks, before you set up your inactivity account manager at Google, that on line 26, page 6, if you enact this bill, those choices will be obliterated because they were made prior to the date of enactment. So if you're going to go set up your inactivity account manager, you might want to hold off till after this bill is passed. And that's going to be very sad news for all the people who have taken the affirmative steps to set up their inactivity account manager. So on-line service providers, we take privacy

very seriously for a number of reasons. One is that the federal law, which was mentioned by Senator Chambers, ECPA, Electronic Communications Privacy Act, and just to be 100 percent crystal clear, we have been sued under it and we have been required to make payouts under it. One example is AOL. They were handed a warrant. Turns out the court never actually signed that warrant. AOL disclosed information. Well, too bad, there's no real good-faith exception for that disclosure and AOL had to pay millions of dollars in settlement fees. Second, we treat privacy very seriously because we are liable for every term of our contract and privacy policy not only under federal law but under state law. So much like the example of an individual who takes their letters and writes on them, please burn when I die, when an individual stores their e-mails and IMs and--instant messages--and iMessages with an on-line service provider who has promised to delete those when you die, we have to be able to comply with that promise. Much in the same way that somebody puts on their letters, please burn when I die, this bill would not only override that contract provision, it would force us to make a disclosure in violation of the privacy promise we made to that user when they signed up. And, yes, many of us don't read privacy policies or terms-of-service agreements. Likewise, I didn't read all the terms in my mortgage agreement or in the car rental agreement that I signed the other day. That doesn't necessarily mean the contracts should be invalidated by default. Senator Chambers, I know you went out to use a rotary phone, but I think rotary phone is actually a better analogy to on-line service communications that were used than a letter, because the way that we use electronic communications today, and I know that many of us have sent e-mails, sent instant messages, Senator Chambers notwithstanding, during the course of these hearings, most of whom and most of them have been sent without the expectation that anyone would ever see or read them ever again... [LB463]

SENATOR SEILER: You can continue on. [LB463]

CARL SZABO: Oh, thank you, sir. Unfortunately, this is a disclose-everything-by-default law that you're looking at. What would happen under the Uniform Law Commission model is, even if you have set in your user terms and privacy settings to delete everything, unless you hired an attorney and put a statement in your will that you do not want anything disclosed or you don't want certain contents disclosed, those contents are disclosed to your next of kin by default. We went out and commissioned a survey of over 1,000 registered voters. You have it in front of you. The cross tabs and questions are available on-line. And four to one said no one should get access to their content when they die without consent. Only 15 percent said executors should have it by default. Well, if you pass LB463, those 70 percent who don't want the content shared by default, they'll be pretty disappointed. But LB463 will also disappoint the 15 percent who do want it shared by default because on-line service providers will not disclose the contents without evidence of consent because we are put in a position of choosing between violating federal law or violating state law. So along with the privacy and legal concerns, that's why you see groups like industry, like the chamber and the ACLU, arm in arm in opposition against this bill. Now

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we're not here to come to say, hell, no. We have come up with an alternative called the PEAC Act. It has just been passed unanimously by Virginia. I'm happy to discuss that further. And finally, with respect to the 24 states this year who have considered the Uniform Law Commission's model, not a single one has passed it this year, not a single one. In fact, it's already been rejected in North Dakota, Maryland, Virginia, Mississippi, and Wyoming. The Uniform Law Commission has said before that they want to do a test case on the legality of this. I do not think Nebraska should be the Uniform Law Commission's guinea pig on this issue. And this is a very complicated issue. It is certainly one that warrants serious discussion. And we're happy to discuss with the sponsor the alternative that passed in Virginia that has the support of industry, of private sector, and allows fiduciaries to wrap up your estate. And with that, I will answer the many questions that I suspect will be coming my way. [LB463]

SENATOR SEILER: Senator Chambers. [LB463]

SENATOR CHAMBERS: This is not a question, necessarily, that you would answer, but it would be something for the committee to consider. I doubt, and I'm not trying to put anybody down, that anybody in the time we have left in this session could read and...we could read this bill in a relatively short period of time, but understand it, then look at this recommendation and know what we are doing with enough certitude and confidence to enact it into law, which we can't do anyway because I don't think it's prioritized. But I think there should be some kind of a study, and I don't mean the kind where you just delay. And this is the man who knows nothing asking for it, so others who know more than I do may not see that it's of value. But in listening to this man, I got a clearer notion of the concerns that I had than in the presentations of the others. And I think it's not their fault. It's just that my level of understanding was not high enough to get what they're saying. But he recognized, just being blunt, a dunderhead that I am, he made it as straightforward as he could for somebody who doesn't understand. And my conclusion is that we might should consider having a study. He has offered to be available. I'm sure that those who are doing this uniform law study, because they're here in the state, would be amenable to that. But as I stated, I won't ask additional questions because I can't frame a question in such a way as to even let the one I'm asking know how to answer it. [LB463]

CARL SZABO: Well, that was the nicest question I've ever been asked, so thank you. (Laughter) [LB463]

SENATOR SEILER: Senator Pansing Guenzel (sic). [LB463]

SENATOR PANSING BROOKS: Yeah, whoever. [LB463]

SENATOR SEILER: "Guenzel," I had to get that in. [LB463]

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SENATOR PANSING BROOKS: (Laugh) Okay, well, first off, when I'm asking questions, I get to ask questions without having criticism about...I mean I will ask you questions, too, so I would appreciate that recognition. I'm interested, were you part of the study that they talked about with the Uniform Law Commission? [LB463]

CARL SZABO: Mr. Chairman,...oh, the... [LB463]

SENATOR PANSING BROOKS: I get to ask you the question, and then you... [LB463]

CARL SZABO: I don't have to go through the Chair? [LB463]

SENATOR SEILER: No. [LB463]

CARL SZABO: Okay, excellent. Senator, actually, I was present at every single meeting of the Uniform Law Commission. And at almost every meeting I not only raised the issues of privacy, conflicts with federal law, those concerns were noted in as recently as the final draft of the Uniform Law Commission's draft. They recognize that federal law, there are a lot of outstanding issues, lot of complications. They tried to address it. They can't because state law can't supersede federal law. And much like many of you, even though you may work with somebody on a bill, you sometimes end up in a place where you just can't support it because it's just...you know, you hope to steer the ship in the right direction and sometimes it's just unable to be corrected. [LB463]

SENATOR PANSING BROOKS: Okay, so what about Google's...is Google here today? [LB463]

CARL SZABO: They are not. [LB463]

SENATOR PANSING BROOKS: Okay, do you know why they have gone forward and created a system to help provide access to family members for pictures and things like that? [LB463]

CARL SZABO: So... [LB463]

SENATOR PANSING BROOKS: And I'm sorry to sound aggravated, but I didn't appreciate the direction of the initial part of this conversation. I'm happy to hear both sides of this. [LB463]

CARL SZABO: Oh... [LB463]

SENATOR PANSING BROOKS: So let's go forward from that positive standpoint. [LB463]

CARL SZABO: Senator, I meant no offense at all actually. [LB463]

SENATOR PANSING BROOKS: Thank you. [LB463]

CARL SZABO: The point that I was trying to raise is that one of the provisions that's oft overlooked is the statement that any choices made prior to the date of enactment are obliterated. And that creates a lot of concern for me because, as somebody who has set up his inactivity account manager, even though I am intestate--I, you know, took the easy step to set up an on-line inactivity account manager--the idea that I should have to worry that my choices will be ignored because I did them too soon, because I was too proactive. [LB463]

SENATOR PANSING BROOKS: So could an amendment be placed on the bill to correct that? [LB463]

CARL SZABO: Very much. [LB463]

SENATOR PANSING BROOKS: Okay, so that's one thing that's simple that could be done, so...but I want to hear more about privacy issues that you have. [LB463]

CARL SZABO: So the privacy issues are centered on several levels. First is not only the privacy of the deceased. So as you know, many of us use electronic communications the same way we would have used a phone call back in olden days. A lot of us send what I like to call the vent texts. So, you know, for example, you know, I had a tough day getting out of the house this morning and I'll send an instant message to my brother saying, my wife was a pain and my son just kept crying all the time. And I have no expectation that my wife would ever see that, that my son would ever see that. And that's kind of how I use electronic communications. But under this act, my wife by default would have access and get to read those e-mails, those instant messages. Now that is not exactly the most salacious of e-mails or instant messages, but I'm sure we can all create examples in our minds. So it's not just...so it's the privacy of the deceased. Second is the privacy of everyone with whom they communicated. So back in the olden days, AA members would meet in a church basement once a week to discuss their problems. Now, through the advent of technology, we can use systems like Yahoo! groups to meet on a daily, even hourly, basis. Well, if one of those AA members dies, the privacy of every single one of those AA members is exposed by default to that deceased next of kin. And that creates a lot of privacy concerns for us. Finally, ultimately, where this ends up is the federal law says we may not disclose unless we have express consent from the user. Now in the PEAC alternative, which has

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been an act passed unanimously in Virginia this year, what would happen under that is, if a statement is made in a will, for example, then that constitutes express consent, statement in a will saying, I give my electronic communications to Senator Pansing Brooks. So that would constitute the express consent that we need for purposes of compliance with ECPA. So what we've done in Virginia is, by default, the next of kin will get access to the records. That's the outside-of-the-envelope information. So, for example, it's kind of the "to" and "from" lines of an e-mail is the way to describe it. So my wife would see every month I received an e-mail from Wells Fargo, Fidelity, and Comcast. And she would get on the phone with Wells Fargo, Fidelity, and Comcast and say, Carl is dead, per the terms of our agreement I am now taking control of these two bank accounts and the Comcast account. In the event that she were to even have access or have accessed the contents of those e-mails--for example, from Wells Fargo, I've gone to on-line banking--if she were to open up that e-mail, all she would see is, your bank statement is now available, click here. In fact, federal law precludes banks from sending account numbers or other sensitive information in those electronic communications. So even if she could access the e-mail, she'd say, click here, click there, and then she would be faced with a user name and password at [wellsfargo.com](http://wellsfargo.com), at which point she would pick up the phone and call Wells Fargo. So under the PEAC Act, these records of communication will be disclosed by default. And that way, the fiduciary can take the necessary steps they need to wrap up the estate, to find the money, to begin the trail and the hunt for all the things that they need. If there is some e-mail where they've got family photos or something else that they want to get access to, they can actually get the consent of the other person on the end of that e-mail. So ECPA allows consent of the sender and recipient for purposes of disclosure. So if, for example, Senator...my wife saw Senator Williams sent me a photo, my wife could actually contact Senator Williams, get his permission for disclosure. So that would allow that access. With respect to accessing the contents of e-mail... [LB463]

SENATOR PANSING BROOKS: Let's just talk about privacy for a second on all those things. [LB463]

CARL SZABO: Okay. [LB463]

SENATOR PANSING BROOKS: Sorry. First off, you talked about...I have three children and we have beat into their brains every day, do not ever assume anything you send out over the Internet is private or unable to be sent to any single person or forwarded to anybody. So I am surprised to hear you say that because I think anybody who thinks they have any privacy on the Internet is crazy. I think it's totally accessible by all sorts of people. And I don't know how you can even really say that and expect that, because I would never let my children...we've said on Instagram, Facebook, e-mails, everything, everything is forwardable, everything you could take a Snapchat picture of, everything you can take...sorry to talk in terms you don't know about, Senator Chambers. But you can take a picture of it on your phone, so nothing is truly private anymore. And if people are working under the assumption that it is private, that's erroneous. I don't think

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that's true at all. So that's number one on that issue. On express consent from a user, so are you talking about that you're...that it's easier to have a court order and set up who the next of kin is, rather than having...just typing into Google, here's who I want, I want Senator Ebke to get my e-mail accounts. And so immediately, within 60 days, you know, if you can't get to me, you can give all that information to Senator Ebke or I put my daughter to get all my pictures. And that seems way easier to me than waiting for a court order to determine and tell you and then we have to send the court order to you guys to determine that, oh, it's okay to give her daughter or her best friend all of her pictures. Why is that easier? Why is that preferable to me stating what I want? [LB463]

CARL SZABO: Senator Pansing Brooks, I completely agree with you, actually. So the PEAC Act actually allows for two options. One is a statement in a will. The other is through use of a user choice mechanism like the Google inactivity account manager or the Facebook legacy contact manager. So that would actually control in both scenarios. [LB463]

SENATOR PANSING BROOKS: Okay. [LB463]

CARL SZABO: So you wouldn't have to wait for that court order or do any of those steps because you've gone ahead and used one of those user consent mechanisms. The purpose of the court order is...the best example is the example of John Smith and making sure that the e-mail account or on-line service account that's being requested actually belongs to that John Smith and it's...so... [LB463]

SENATOR PANSING BROOKS: But if you get the e-mail, then...of who that would be, then I think that the company has lost any liability issues if the person, when they were alive, who dies tells you it's JohnSmith@google.com or Gmail.com or whatever it is, then how does the provider have issues of liability at that point? [LB463]

CARL SZABO: So the federal law holds us strictly liable. In fact, there's no good-faith exception. And as I... [LB463]

SENATOR PANSING BROOKS: But if the standard of the industry and practice becomes that every provider creates this plan of how to let people tell where they want their digital assets to go, how does the federal government then come in and say, oh, no, even though this is the standard of the entire industry, we're not going to accept this? [LB463]

CARL SZABO: So it's actually not the federal government that's the one that would bring the cause of action. It would be any aggrieved party by the unauthorized disclosure. So, for example,

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AOL disclosed the electronic communications of an individual. This is before "don't ask, don't tell" was enacted. And a police officer in New England said, I have a warrant. Turns out it wasn't actually signed by a court, it wasn't duly authorized. AOL, acting in the most good faith possible, made the disclosure. This gentleman was summarily removed from the military and AOL had to settle for millions of dollars. That was the most good faith of good faith. Likewise, so anyone aggrieved by an unauthorized disclosure, that's a disclosure without express consent, the on-line service provider is strictly liable. [LB463]

SENATOR PANSING BROOKS: Okay, thank you. [LB463]

SENATOR SEILER: Any further questions? Thank you very much. [LB463]

CARL SZABO: Thank you. [LB463]

SENATOR SEILER: Next opponent. [LB463]

WILL CASTLEBERRY: Mr. Chairman, members of the committee, my name is Will Castleberry, C-a-s-t-l-e-b-e-r-r-y. I am the director of state public policy for Facebook. It's wonderful to be here tonight. A very long day, I think we started with life and are ending with death, so I apologize to be here as part of that. First, I do want to thank Senator Harr for all his terrific work. Though we are not on the same side of this issue, his door was always open, and we had several conversations and we do really appreciate his working in good faith to come to some sort of terms. The problem is, is it's an extremely complicated issue, as I think Carl went over. It's complicated legally. There is a federal law, ECPA, and it clearly prescribes when we can give information. And that's under consent. And the case law that exists today says that you can't construct consent, that it has to be will consent. Now to the ULC's credit, one of the cases that discussed that, Negro, the judge issued the order after the model bill was released, so they didn't have the benefit of saying that. But there was a case against Facebook where they asked that question--you know, provide information, the fiduciary stands in the shoes. We directly asked the judge, Your Honor, are you telling us that under ECPA this equals consent? And the judge says, no, I'm not telling you, I'm reading ECPA and I can't tell you that. The later case, Negro, essentially said, in looking at 28 years of precedent since the introduction of ECPA, we've seen no evidence that consent can be constructed. In fact, the courts have rejected it. So there are real legal issues. There are real privacy issues, which I'll let the ACLU go into. But essentially, this is kind of flipping the whole concept, which is now this information is private, it's not released to the extent that things can be private on the Internet. It's not released. This is saying it's all released. And the proponents' arguments, though well reasoned, are based on two premises, one, that most of this electronic communication are important e-mails or information that's needed to settle the estate, which I don't think is true. If you look at your iPhone, if you

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look at all of the information you have, all of this is protected by ECPA, as it should be, because we don't want the police and other people coming and saying, I'm giving this person's location data, without a warrant. We don't want them coming and saying, you know, I want to see their friends list, without a warrant. There should be these protections. The second premise is that all the estates are settled by trust and estate's attorneys who recognize their obligations and their duties as such. I think the reality is, last number I saw, 70 percent of cases do not go to probate and the executor is simply a spouse or a...may I continue, Mr. Chairman? Thank you. [LB463]

SENATOR SEILER: That's okay. [LB463]

WILL CASTLEBERRY: ...a spouse or a sibling or a child, a person who doesn't understand those obligations. And again, if they release that information, as Carl indicated, we are absolutely liable to damages suffered by any party. So it doesn't take long to imagine just all the things that will happen. If someone gets information from a business or from a sordid affair or from any sort of reason, they can come and then sue us. And the third issue, very briefly, is there are real constitutional concerns with this issue. You know, the constitution doesn't put many restrictions on the state, but one of them is that they can't invalidate contracts in the contract clause. And Nebraska and all states have been very judicious in making sure they didn't do that. And what this does is in two instances. One, it dissolves the choice-of-law provision, which means that states can no longer choose the venue, which makes things very difficult to do business in the country. And again, the second thing is that we can't have these terms that say upon your death your account is deleted. And again, if you go back to the first idea of all the different types of accounts, from your running app to your MapQuest to your dating app if you're single to your inappropriate dating app if you're married, all of those things would be released. So it's not inappropriate and it's not crazy public policy to say, look, I'm in an Alcoholics Anonymous app--I'm not, that's an example--when I die, that becomes deleted so other people in that app aren't exposed as alcoholics. So again, I certainly understand why this makes sense, but I think these really complicated, deep, troublesome issues are why, candidly, the bill has not passed in 24 states this year and it's dying in most. And the bill that passed last year, Delaware, similar to the ULC model but obviously introduced before it was released. So with that, thank you again for your time and consideration. Considering the hour, I will take any questions that you have. [LB463]

SENATOR SEILER: Oh, this committee, this is early. (Laughter) Senator, you got... [LB463]

SENATOR PANSING BROOKS: No problem. [LB463]

SENATOR SEILER: Okay. [LB463]

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SENATOR MORFELD: (Inaudible)...taxpayers' dollars (inaudible)... [LB463]

SENATOR SEILER: Senator Pansing Brooks. [LB463]

WILL CASTLEBERRY: Well, then I'll hunker in, Mr. Chairman, thank you. [LB463]

SENATOR PANSING BROOKS: Mr. Castleberry, thank you for staying here and testifying so long. I just am interested, could you speak to why Google is not having these privacy issues and why they're going forward on all of this? [LB463]

WILL CASTLEBERRY: Well, I certainly do think that they're having the same issue, and I know that they share our concerns. And Facebook has a similar application where you can name your digital executor and that person can post your farewell post and can accept friends upon your death and do similar things. And we believe strongly that that should be the choice of the consumer, that they should make those decisions purposefully. In addition to that, they should, you know, choose apps. And if they don't read the terms of service, and we can assume that they probably don't, there are still expectations that rise with those. I would assume that any sort of dating app disappears when I die. I don't think that my MapMyRun is passed on for posterity. So Facebook and Google have done these things. And engineering is hard, so we started them prior to this effort because there is a need for them. We're not disputing that people want to control what happens upon their demise. They do. Mr. Orzeske mentioned the 30 million dead users on Facebook. You know, the majority of those are celebrated pages of people who have passed away. It really is a wonderful thing when someone dies at an appropriate time and age to see what happens on their Facebook page with memories being shared and photographs being shared. And there's no reason that that should go away simply because the person dies. We have a process now for memorialization. At any point, the next of kin can ask and we will respect their request to delete a page. We understand that sometimes they cause pain. But to have this, we think, kind of blanket overturning of the current privacy expectation and regime, you know, again, not to mention the serious problems with federal law, just isn't timely and isn't the right policy move. [LB463]

SENATOR PANSING BROOKS: Okay, could you explain what happens now with most of these things, like Facebook or...I understand you have some slight ability to make or direct what happens. But, I mean, normally, do you have to go to court to go get the pictures back or what happens? What does the... [LB463]

WILL CASTLEBERRY: So again, with content clearly governed by ECPA...and again, I would start by saying we believe that, at Facebook, the user makes the choice of the audience they want to share information with every time they post. So every time you post something on Facebook,

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you choose if you want that to be a public post, if you want it to go to all of your friends, your friends and their friends or, you know, I have groups of friends of mine from high school that we have small pages and we communicate. Not that we're sharing anything secret, but the rest of the world probably doesn't share our love of Maryland basketball. So, you know, it's just kind of...I probably shouldn't have said that in Nebraska. But it's the idea that people make those choices all the time. Right now, the process is, anyone can memorialize an account. So if they send us...and again, if they send us an obituary, we memorialize an account. What that means is the privacy settings of the decedent are locked in, so you don't add new friends, things aren't made more public. And we stopped doing some of the things that would appear and, candidly, are unsavory for a deceased person--no more friend requests, no more kind of, you know, this person liked Nebraska basketball or this person, you know, liked Bruce Springsteen. And again, it just becomes a place we start looking more for trolls and for inappropriate information and content on the account. The second thing that happens is, again, if the next of kin...and they do need a letter of probate... [LB463]

SENATOR PANSING BROOKS: And how do you determine that? [LB463]

WILL CASTLEBERRY: ...saying that they are the next of kin. [LB463]

SENATOR PANSING BROOKS: Okay, it's a formal probate to get that, so... [LB463]

WILL CASTLEBERRY: Yeah, so...which is seamless and which every next of kin should have regardless of going to court, is my understanding, so it's very easy. And then you simply...you have...search "help deceased" and we take you through this process. And if they request it, we delete the account. We will absolutely honor that. And last, the person has chosen the on-line executor, the new application, in which case the person who they have chosen can add friends. So, you know, my kids are not old enough to be on Facebook, but Facebook has years of my life in posts and stories. And so were I to pass away before they got accounts, to me, it would be tragic that they couldn't see that stuff. So my wife, who is my digital executor, can add friends. She can add my kids as they become older and other people who are interested. My mom doesn't have a Facebook account, long story. But if she decided to after I passed away, then she could log on. [LB463]

SENATOR PANSING BROOKS: Thank you. [LB463]

WILL CASTLEBERRY: Does that make sense? [LB463]

SENATOR PANSING BROOKS: Um-hum. [LB463]

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WILL CASTLEBERRY: I was kind of long-winded, I apologize, but I (inaudible)... [LB463]

SENATOR PANSING BROOKS: No, that's okay. If...so...but a probate can take quite a while, I mean, if you want to get...it is a much longer process than the decedent... [LB463]

WILL CASTLEBERRY: It... [LB463]

SENATOR PANSING BROOKS: I mean either...then either way, once they determine that person, isn't that person in the same position as the fiduciary that is determined by the decedent? Take the Google person that's appointed by just typing and saying, I want my pictures to go to Senator Ebke. [LB463]

WILL CASTLEBERRY: Yeah. [LB463]

SENATOR PANSING BROOKS: Okay. So that...sorry to pick on you, but it is late. [LB463]

SENATOR EBKE: (Laugh) I'm here. [LB463]

SENATOR PANSING BROOKS: It is late. So then in the next instance, the other idea is you wait through the entire probate of the estate and then somebody is determined to be, by a court, the next of kin. So then they write to you and say, here is the probated estate, here is what the judge said, I'm clearly the next of kin, now give me the information, give me access to that account. What's the difference? [LB463]

WILL CASTLEBERRY: Sure. So I'm sorry if I was unclear. In the digital executor situation, again, they would still have that information. And that is seamless. That happens when we're presented with a death certificate. [LB463]

SENATOR PANSING BROOKS: Okay, so that person can have all the exact, same privacy concerns. You're only spreading it out by... [LB463]

WILL CASTLEBERRY: Sure. [LB463]

SENATOR PANSING BROOKS: ...the duration of the probate estate. [LB463]

WILL CASTLEBERRY: Sure. Well, and again it goes back to the vital issue of the federal law. The federal law says we cannot provide content without consent. [LB463]

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SENATOR PANSING BROOKS: So... [LB463]

WILL CASTLEBERRY: At that moment, the person is clearly consenting to the release of that content. In the same way, if a person has a will that says, provide my wife with a download of my information, again, clear consent, under ECPA we can provide that information. [LB463]

SENATOR PANSING BROOKS: So it's not direct enough from the decedent as they're setting up the account or creating whatever. [LB463]

WILL CASTLEBERRY: I'm sorry. [LB463]

SENATOR PANSING BROOKS: That's not clear enough that the decedent...the person, while they're alive, sets up the parameters of where they want the digital information to go while they're alive by... [LB463]

WILL CASTLEBERRY: That's clear enough. We would absolutely accept that. [LB463]

SENATOR PANSING BROOKS: Okay. [LB463]

WILL CASTLEBERRY: What we don't accept is this concept of constructive consent as...what the bill does essentially is says that we recognize the case law and we recognize that consent is needed under ECPA, therefore, in Nebraska, we're deeming that the executor has consent for the purposes of ECPA. We don't think that will stand in Nebraska. If it does, and that's a point of argument, it certainly won't stand at the federal level. Right? People could still sue us in federal court. And it certainly won't stand in Kansas, right? Nebraska cannot dictate law for the federal government, nor can it for any other state in the union. So any other person communicating with the Nebraska resident would have every right under ECPA to sue us. And again, you know, it takes a moment to think of the horrific cases in which someone would be harmed by the release of this information and could immediately come and sue. [LB463]

SENATOR PANSING BROOKS: Okay, well, I'm sorry to keep questioning, but I don't think these people are going to be here anymore, Senator Chambers, because they're from out of town. So anyway...but thank you. [LB463]

WILL CASTLEBERRY: No, I am at your disposal. We will be here as often as you like. Thank you for the opportunity, very much appreciate it, Senator. [LB463]

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SENATOR PANSING BROOKS: Thank you very much. [LB463]

SENATOR SEILER: Any further questions? Seeing none, thank you very much. [LB463]

WILL CASTLEBERRY: Mr. Chairman, thank you very much. Members of the committee, thank you. [LB463]

SENATOR SEILER: Next opponent. [LB463]

ALAN PETERSON: (Exhibit 6) Chairman Seiler, members of Judiciary, I'm Alan Peterson. I represent ACLU of Nebraska. I wrote out my arguments. They're in two pages. I'm only going to hit one point, and it's something that bothers me a lot. In this room we have tremendous experts and expertise. Nowhere, however, have I heard anybody purport to represent the privacy interests of all those people who wrote me or Senator Pansing Brooks--Senator Chambers not by e-mail, I'll assume, went through Cynthia, perhaps--or the other senators. Privacy in Nebraska is protected. We have some statutes on it, but our constitution, our Bill of Rights in our state constitution protects it. Article I, Section 7, in our Bill of Rights is our Fourth Amendment, and it sets out that people's effects, their stuff, shall not be available for unreasonable searches and seizures. The standard for determining what's unreasonable in this state is set by our courts and common law. It says, where there is a reasonable expectation of privacy, that's where you've got to get a warrant if you're going to go after something. And that expectation of privacy goes clear back. I think it precedes our constitution. Article I, Section 1, talks about the autonomy of Nebraskans and it says we're free and independent, autonomous. And autonomy is a little bit of a pseudonym for that right or feeling of privacy. We're individuals and what we say to others all our lives, or what others say to us, now using a term I heard earlier, is done through our digital lifestyle. We're just about there. Look around any restaurant, the Village Inn or whatever, you see half or more of the young people on their cell phone, on their smart phones or cell phones. It's how we're living. The problem I've got is I don't see why the default, that is, the cases where the intestate person did not give instructions or the person who wrote a will didn't give instructions, why should the default be that, oh, okay, then that gets released? And that's what this bill calls for. ACLU didn't like that. We think that the privacy interest not only of the testator but of everybody who she or he has communicated with is kind of sacrificed to the efficiency of the probate system. You could go to...I would finish if I could... [LB463]

SENATOR SEILER: Go ahead. [LB463]

ALAN PETERSON: ...just a moment. [LB463]

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SENATOR SEILER: Go ahead. [LB463]

ALAN PETERSON: Thank you, Senator Seiler. You can go to court, if you really need something, in order to find the assets. And that's the main thing that we're understanding this is for: find the assets. You can get that. Now it's been...it's available. Go ask the probate judge. Should we just skip that in favor of this kind of a bill? I don't think the need has been shown for it. And I would ask you to keep in mind all those confidential messages that you've received from family, from business associates, whatever. Did they consent? Did they sign a terms of service? Heck no. So where does the consent come from for all those folks? I don't think this bill ought to be passed. Thank you. [LB463]

SENATOR SEILER: Any questions? (Laugh) [LB463]

SENATOR PANSING BROOKS: I certainly don't want to get into a constitutional argument with you, Mr. Peterson. But again, the rub lies in what is reasonable expectation of privacy. That's the rub and that's what... [LB463]

ALAN PETERSON: Yes. [LB463]

SENATOR PANSING BROOKS: And I think that, you know, if we are expecting there to be privacy with all this digital...all these digital...we certainly don't have digital...we don't have privacy with Facebook or any of those groups. The providers we have no privacy expectation with. So where is the privacy? That's what I would ask. And then how do we protect our privacy? There...that's a whole nother bill. [LB463]

ALAN PETERSON: I don't think the fight is over as to whether e-mails contain a reasonable expectation of privacy. There was an Iowa case some years ago that said, now, if you put it on the e-mail, you shouldn't be expecting it to be private. But that's not been generally accepted. And there is attorney-client privilege. There may be doctor-patient or even priest-penitent privilege, and confidentiality is expected. [LB463]

SENATOR PANSING BROOKS: High schools. [LB463]

ALAN PETERSON: If I write to a troubled daughter, and I've got a couple of them sometimes, they're great, but they have their troubles, and if they express them to me, I didn't ask for that, but they didn't ask for it to be shown to whoever my executor or personal rep is going to be. So I just don't see that consent. I don't think we're quite there yet, although I fear it perhaps as much as you were suggesting you do. [LB463]

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SENATOR PANSING BROOKS: Yeah, I do. [LB463]

ALAN PETERSON: Yeah. [LB463]

SENATOR PANSING BROOKS: Thank you. [LB463]

ALAN PETERSON: Thank you. [LB463]

SENATOR SEILER: Any further questions? Seeing none, further opponents. [LB463]

JACK PEETZ: (Exhibit 7) Good evening, Chairman Seiler and members of the committee. My name is Jack Peetz, J-a-c-k P-e-e-t-z, and I'm a registered lobbyist here in opposition on behalf of Yahoo!, Microsoft, and the Omaha Chamber. And I'm going to be really brief and get you caught up on your hearing schedule today. So the only thing I really want to do is register the opposition of our clients and also did want to share with the committee and introduce into the record, which is being handed out now, a report on the...a report of the Law of Commerce in Cyberspace Committee, business law section of the Washington State Bar Association, dated January of this year. That is a pretty good synopsis of the equivalent of LB463 which was presented in the state of Washington, which the committee reviewed. And I did talk to and exchange e-mails with the chairman of that committee. This report is out on the bar association Web site, and it points out a lot of the serious concerns with reference to what you're looking at as LB463. And it was their recommendation, as you can see from the document, that the Uniform Fiduciary Access to Digital Assets Act not be introduced or supported in the state of Washington in its current form. I think it's pretty good reading. It gives you kind of a condensed version of what's there. And with that, I will conclude. Thank you. [LB463]

SENATOR SEILER: Any further questions? Oh, no questions? Thank you very much. Any further opponents? Thank you, Jack. Anybody in the neutral? Oh, come on, we've got a couple more hours. Burke, I'll declare the record closed and all the exhibits will be made part of the record. (See also Exhibit 8.) [LB463]

SENATOR HARR: Thank you. If I can just quickly close on this, I appreciate it, Mr. Chairman. So I hear Tommy Garrett or Senator Garrett's previous, he said, analysis through paralysis, or paralysis through analysis. And to a certain degree, that's what we have here. But the issue here is we are creating policy. And there is no right or wrong. You heard from the industry in opposition. And they're very smart and they're good people. But what they're focused on is different than, say, what you have from the attorneys who represent their clients who have a different focus and a different policy agenda than the ACLU who has a different focus and

agenda. And so I just want to kind of go through there and talk about that. I brought up some of this in my initial opening, is...and there's nothing wrong with making money. But the industry is about making money. And that's good and that's right and that's what makes America, America. When we get an account, we turn over our information to them and they take what we do and they sell that and that's fine. But it's what Senator Pansing Brooks talks about--we give up our privacy. And maybe we don't give up our anonymity, but we give up our privacy because...go to...Google has a great...where you can do wonderful and exciting research on what people search for. You want to know how someone gets...where the flu is going? Don't wait for the CDC. That's a waste. They're too slow. Go to Google and see where there are Google searches of people looking up how to treat the flu. So we get instantaneous information and it's available to everybody and it's great. They sell that information. When that person dies, that is no longer of value. When Twitter went public, their value per user was something like \$2 for everyone who signed up a Twitter account, \$1.93 I think. So that tells you what the market thought the value of each one of these accounts is. Now they probably sell it for more than that because they've figured out how to monetize that since then. They are monetizing our use of their product. When we die, they cannot sell that, they cannot monetize it. So I'm always a little leery when what we...our expectation of privacy changes and they now say they're concerned about our privacy. It's kind of like when the government says, I'm here to help. I'm a little leery of that. So that's one point of view. And so they came with their bill and it's Virginia, right? And it's not a bad bill. Must be...but what we are doing today and what is going on across the country is we are fighting to determine where that line is as far as responsibility on these accounts. Is it with the individual user? If so, read the terms of service, is one argument. There was an old SNL skit. Jason Sudeikis played the devil and he said, you're all coming here, to hell, you agreed to go to hell when you signed those terms of agreement, because no one reads those terms-of-service agreements. We all know that. That was the joke, because you may say 95 percent, I say 99.99, and the only ones who do read it are the ones so they can get up and testify and say, I've read it. (Laughter) So you...that's one. Okay? So where is it? Is it with the industry? Is it with the individual? Where do you want that responsibility? Now I heard the ACLU come out and worry about privacy, and we heard talk about the Fourth Amendment. Folks, Fourth Amendment has nothing to do with this. Fourth Amendment has to do with the government search of your privacy, search and seizure, government, not between individuals. And it's about an expectation of privacy. And again, this is not a government actor. We have seen constantly where the government...or where corporations have willingly given over to the government information about ourselves that we had no idea about and we weren't supposed to know about and we couldn't ask about. So there is search and seizure going on all the time, but that's not what this bill is about. This is about the right of what happens when you die. What are we going to do? What is that individual going to? What is that widow, what's that widower going to do? How are they going to know what assets are out there? How are they going to see those pictures? Who has the responsibility when they're alive to make sure that that person, when they pass away, can see what was before? You know, my mother always taught me, don't do something you don't want

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someone to find out about. It's not that much different with the Internet. The Internet gives us a sense of anonymity, and so we think we can do things without anyone finding out and, lo and behold, we found out that's not true. Look, you could just as easily have a love letter from a mistress that's handwritten today that you don't destroy as you could have an e-mail from a mistress. You could just as easily...you know, the other argument that was made was, who consents that e-mail is searched? When I send an e-mail out and then I die, that person who wrote the e-mail didn't consent for the third party to read it. That's no different than the written word today. If someone writes down on a piece of paper, I think you're the greatest person ever, Burke, which has yet to happen, and I save it, and instead of saving it electronically I save it on paper, I don't know why there's a different expectation of privacy on behalf of the writer. There isn't. What we're doing now is we're trying to figure out how to deal with common-law privacy issues in the technology age. It's no different than what the Attorney General's Office did five, ten years ago when we introduced a whole bunch of new bills that dealt with issues related to the Internet. And they're there. You know, part of me says, we have common law, why do we need all these new laws for...that deal with the Internet? Because the world of the Internet is different, it just is, folks. But that doesn't mean it has to be nonresponsive. What we have to do as policymakers is decide where we want that line to be. And this is a fight that's going on in Nebraska. It's a fight that's going on in Kansas. It's a fight that's going on in Virginia. It's a fight that's going on across the country. And at some point, we're going to get to a tipping point and the companies are going to say, okay, this is where the line is, we want that certainty, and then they'll push for that. And the individuals will understand this is where the line is. Maybe it takes some court cases or maybe it takes us introducing laws. I don't know. You know, this bill isn't prioritized. It's not going anywhere this year, I can tell you that. We need to work on this over the summer, but I think it's important, as Senator Chambers' saying, we do work on it. And I appreciate the individuals that came and testified today because this isn't their first time here. They have flown here repeatedly because this is very important to determine where we as a society decide that line goes. [LB463]

SENATOR SEILER: I take it you're going to apply for an LR. [LB463]

SENATOR HARR: I am not on Judiciary, but I could, yeah. I mean I want to work with the Judiciary Committee. I would do an LR. [LB463]

SENATOR SEILER: We've got enough LRs to last us all summer. [LB463]

SENATOR HARR: Well, I have staff. [LB463]

SENATOR SEILER: I'm down to \$2.25 an hour. [LB463]

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SENATOR HARR: Yeah, exactly. But it is about where we want to draw the line as a society. With that, I close. [LB463]

SENATOR SEILER: Thank you. [LB463]

SENATOR CHAMBERS: Why so early? [LB463]

SENATOR PANSING BROOKS: Yeah. [LB463]

SENATOR HARR: I know, right? Thank you. [LB463]

SENATOR SEILER: Three hours early, wow. [LB463]