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Judiciary Committee  
February 17, 2016

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[LB670 LB847 LB975 LB1010 LB1098]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 17, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1098, LB670, LB847, LB1010, and LB975. 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, so we will get started. Just some preliminaries: I'll introduce the people here. And other senators are introducing bills in other committees, so they'll be joining us. On my right, your left: Senator Williams from Gothenburg; Senator Krist from Omaha; our legal counsel, Josh Henningsen; my name is Les Seiler, I'm Chairman; I thought I saw Laura, okay; Senator Pansing Brooks from Lincoln; and our clerk is Oliver VanDervoort. Just for a few things, if you're going to testify, make sure you pick up a testifier's sheet, fill it out, hand it to the page when you come up to testify. We will run on the clock today. You get three minutes. Be careful about saying anything slanderous in the back row. These are new mikes and they'll pick up anything. (Laughter) So if you don't want to be part of the public record, then make it really quiet. Senator Morfeld, you may begin with LB1098.

SENATOR MORFELD: Thank you, Senator Seiler, members of the Judiciary Committee. My name is Adam Morfeld, that's A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District, here today to introduce LB1098. First of all, I'd like to thank my fellow committee members who cosponsored this legislation: Senators Krist, Pansing Brooks, Williams, and Ebke. There's still time for the rest of you to join. LB1098 would increase court fees by \$1 from \$5.25 to \$6.25 to provide additional funding to the Legal Aid and Services Fund. The Legal Aid and Services Fund was created in 1997 with a \$2 filing fee to address the significant gap between the civil legal needs of indigent Nebraskans and available legal representation. It also was in response to dramatic cutbacks in federal funding for civil legal services for low-income Nebraskans. The fee was raised to \$5 in 2002 and again to its present fee of \$5.25 in 2005. It has not been raised in ten years. While this stream of funding has decreased in annual total amounts collected and disbursed to service providers in recent years, 17.6 percent in the last six years, for example, the demand for these critically important civil legal services for low-income Nebraskans continues to increase. It has recently been estimated by Legal Aid of Nebraska that seven of ten low-income families face at least one significant civil legal problem each year and the average number of problems per low-income households has tripled in the last year. The current \$45 fee for civil actions in county courts in Nebraska is the lowest in the region. Nebraska's \$82 filing fee for civil district court cases is also one of the lowest in the region. But not all states around us have a two-tier county and district court system for filing. It is also accurate to say that we have extremely low filing fees on a national level as well in comparison. There are a lot of reasons behind low filing fees, but Senator Chambers may actually be the

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biggest reason, as far as I can tell. The Legal Aid and Services Fund, administered by the Commission on Public Advocacy, provides civil legal services funding only for nonprofit qualified and certified civil legal service providers. Each recipient of the funding must provide free civil legal services to eligible low-income individuals. And that means income below 125 percent of the poverty line. Grant awards are distributed statewide annually based on a competitive process. These services include representation in vital areas of basic needs, including family, housing, consumer, civil welfare, employment, and public benefits law. The following entities have received grants: Catholic Charities; Central Mediation Center; Concord Center; Creighton Legal Clinic; Justice for our Neighbors; Legal Aid of Nebraska; Lutheran Family Services; the Mediation Center and many others. I'll save you the long list. Recent studies of the long-term economic impact of civil legal services for low-income families show that for every \$1 invested in legal services, the community receives \$4 to \$10 in immediate and long-term consequential financial benefits. Raising the legal services fee from (sic--by) \$1 to \$6.25 per covered filing would provide approximately \$400,000 to \$450,000 in additional annual funding for the Legal Aid and Services Fund. This, in turn, would guarantee a significant increase in the availability of free civil legal services for low-income Nebraskans throughout the state, helping many more families stay together, gain security, and realize opportunities to become self-sufficient. I'd be happy to answer any questions; however, there will be many that will follow...not too many but several people that will follow me to answer your questions in detail. I urge your favorable consideration of LB1098. Thank you. [LB1098]

SENATOR SEILER: Senator Coash. [LB1098]

SENATOR COASH: Thank you, Chairman Seiler. Senator Morfeld, a few years ago I think another senator from the "Fighting" 46th brought a bill to sweep some money from a particular fund into the Legal Aid and Services Fund. Did you look at that as another option as far as...we had found...because this committee has dealt with this since I've been here. [LB1098]

SENATOR MORFELD: Certainly. [LB1098]

SENATOR COASH: And using those funds that your predecessor used was something that was pretty palatable to this committee. I just wondered if you'd considered that. [LB1098]

SENATOR MORFELD: Well, to be honest with you, I wasn't aware of that and I'm not aware of which fund that is, but I'm sure I could find out right after this. We did have some people come up and say, well, why didn't you do a General Fund request? And the bottom line is that I think that that's been tried in the past and that's one of the reasons why the Legal Aid and Services Fund was created, was to provide stability and continuity with those types of funds for critical legal services because the people that are providing these different services are usually attorneys,

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almost always, or their support staff and you have to have stable funding to be able to keep those folks employed and to have that caliber of expertise and experience. So this has been a stable funding source. That being said, with the decline in court filings because of mediation and other alternative dispute resolution, the fund has been slowly declining unfortunately, which is the point of this. So to answer your question, we did look at a potential General Fund allocation, but for us that wasn't very palatable because that was the original reason why this fund was or the fee was created in '97. [LB1098]

SENATOR COASH: With alternative dispute resolution, there's no filing in that process? [LB1098]

SENATOR MORFELD: There's no filing; there's no centralized filing process or fees. Now some alternative dispute resolution folks, they do charge fees obviously. But it's not in a way, a centralized way, that the court system collects fees that are easily to be collected and then redistributed. [LB1098]

SENATOR COASH: Be something to look at. [LB1098]

SENATOR MORFELD: Certainly. [LB1098]

SENATOR COASH: Thanks. [LB1098]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB1098]

SENATOR MORFELD: Thank you. [LB1098]

SENATOR SEILER: You'll be here for closing? [LB1098]

SENATOR MORFELD: I will. I'll be right over there. [LB1098]

SENATOR SEILER: Okay. First proponent. [LB1098]

DAVID PIESTER: (Exhibit 1) Mr. Chairman, members of the committee, my name is David Piester, D-a-v-i-d P-i-e-s-t-e-r. I live in Lincoln. I am here both as an individual and also as the president of the board of directors of Legal Aid of Nebraska. Legal Aid is one of the recipients of the grants from the Public Advocacy Commission. For over 50 years, Legal Aid has provided free legal civil services to low-income Nebraskans who cannot afford a private attorney. Legal

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Aid is the only statewide provider of direct and free legal services to Nebraska's poor, with approximately 70 staff members, including 40 attorneys, located in seven offices across the state. Legal Aid seeks to provide representation in every county in Nebraska through its staff attorneys working alongside dozens of private attorneys and pro bono attorneys. To qualify for Legal Aid, generally an individual or a household must be at or below 125 percent of the federal poverty level. Approximately 315,000 Nebraskans--about 17.5 percent of the population--live below or at 125 percent of the federal poverty level and, therefore, financially qualify for Legal Aid's services. Legal Aid receives thousands of calls every year for legal assistance. In 2015, Legal Aid received 17,379 requests for assistance, with 10,748 cases eligible for legal services from Legal Aid. In 2015, 10,457 cases were closed having been provided some level of legal assistance, from advice to extended service. Of these cases, 1,604 were closed after receiving direct attorney representation or similar legal services. These numbers reveal that Legal Aid was able to provide an attorney in only approximately 15 percent of the cases it closed. The availability of lawyers is key, because for the thousands of low-income Nebraskans facing major life challenges each day, the most powerful and effective response often involves direct legal help. I will skip ahead. To put this into further context let me say, before my career in the judiciary, I was the executive director of Legal Services of Southeast Nebraska, which was one of the predecessors of Legal Aid of Nebraska. During that time, some 40 years ago, our funding was almost entirely from a federal source, the Legal Services Corporation. This federal funding has continued but, in inflation terms adjusted, has gone from \$12.30 per eligible client in 1994 down to \$5.67 per eligible client in 2012. We have also suffered other declines in sources of funding, including IOLTA funds from the Nebraska Bar. LB1098 continues the commitment to providing equal access to justice and will lessen the gap between available legal services, including through Legal Aid, and the growing need for these services in Nebraska. LB1098 is an opportunity to help in a modest way this commitment to address this social problem of equal access to justice. I realize I skipped a lot. You have it in your hands. Are there any questions? [LB1098]

SENATOR SEILER: I'm going to ask you, do you want your written document made part of the record, which would pick up all the stuff you skipped? [LB1098]

DAVID PIESTER: Yes, please. [LB1098]

SENATOR SEILER: Okay, it will be received. [LB1098]

DAVID PIESTER: Okay. [LB1098]

SENATOR SEILER: Any questions? Thank you very much. [LB1098]

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DAVID PIESTER: Okay, thank you. [LB1098]

SENATOR SEILER: Next proponent. [LB1098]

MILO MUMGAARD: (Exhibits 2-4) Good afternoon, Senator Seiler and the members of the committee. My name is Milo Mumgaard, M-u-m-g-a-a-r-d. I am the executive director of Legal Aid of Nebraska, a post I've held since August of 2015. I'm just going to spend a minute or so here giving you a real peek into a window into the work done at Legal Aid of Nebraska across the entire state to address poverty through our civil legal services. First of all, it needs to be known, and we think, that to have a strong Legal Aid strengthens the entire justice, legal, and social service systems in the state. Without a strong Legal Aid, the promise of equal justice, of course, is going unrealized. But frankly, low-income Nebraskans of all shapes and sizes must fend for themselves in their individual efforts to have the legal system work for them. Without Legal Aid to step in and work with them to help them get up and out of poverty, these folks are really without any...few, if any, options. So LB1098 is, indeed, simply a small and important step towards making that challenge less difficult for Nebraska's poor. Very quickly, Legal Aid has eight offices, as has been talked about today, or seven offices. We have a very experienced and competent legal staff, one of the most experienced legal staff in the state. Thousands of clients rely upon this service every day, as has been reiterated here today in terms of the types of the numbers of cases we do. Our primary practice areas are family law, housing law, consumer law, juvenile law, and state and federal public benefits, although we do indeed have a full range of other issues. As has been described, we use funding from a variety of sources. And again, our clients are all low income and receive these as free services. There are many ways that folks can initiate Legal Aid services. The primary means is our centralized access phone line and on-line intake services, but also our walk-in offices across the state. And once that has begun, we look for the most cost-effective way to deliver the service. We do, in fact...we are, in fact, a full-service law firm. We do everything from, in terms of civil legal services, from the brief advice and consent counsel work to assistance with self-representation and educational clinics to direct and extensive representation in legal forums, both at the state and federal levels. So we do, indeed, address issues the best way we can with the legal help that we have available to us. The materials that I have given you today include a description of the caseloads that actually are in each of your districts. And as you'll note from the document that I've distributed to each of you, that in your particular district or, in the case of multiple counties, the counties, the number of cases opened and closed we reflect there in the thousands for, for example, in Douglas County, also the population living in poverty in your particular county, as well as the cases closed by poverty status by Legal Aid. So you can see in your own districts there is a tremendous amount of activity by Legal Aid representing low-income people on these civil legal services. I also want to emphasize here two last points, and that is--and of course you have the testimony in front of you and we'd like to get that into the record if possible--is that when you look at this caseload analysis, what you're really seeing is just a fraction of the legal demand that's actually out there

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and the need that's out there for our low-income communities as has been described here today. And in that sense, we have really taken seriously the proposition that our limited resources needs to not only be delivered efficiently, but also we need to be thinking in terms of how effectively are we helping to address the causes and effects of poverty throughout the state through our legal services. So in 2016, we're going to be doing a very significant and are doing a very significant look at the poverty issues around the state and to what degree can Legal Aid more effectively address those issues. And that includes, for example, the tsunami of debt collection and landlord/tenant eviction suits and so on that we see. So to conclude, the answer to Senator Coash's statement earlier, we have, in fact, received one-time appropriations in the recent past. But again, to clarify, that's the only time Legal Aid of Nebraska has received an appropriation, or the Legal Aid and Services Fund, independent of the Legal Aid and Services Fund fee. So the fee itself is the source of funds for this ongoing work. So with that, I'd be happy to answer any questions you might have. [LB1098]

SENATOR SEILER: You mentioned in your testimony that you wanted your two handouts to be made part of the record. [LB1098]

MILO MUMGAARD: That would be great, Senator. [LB1098]

SENATOR SEILER: It will be. [LB1098]

MILO MUMGAARD: Thank you. [LB1098]

SENATOR SEILER: Yes, Senator Coash. [LB1098]

SENATOR COASH: Thank you, Senator Seiler. That one-time appropriation is it...or that appropriation was...that was a one-time appropriation or did the budget increase? [LB1098]

MILO MUMGAARD: It was a one-time appropriation and then it was distributed by the Commission on Public Advocacy, which annually distributes it to a wide variety of recipients, as Senator Morfeld described earlier. [LB1098]

SENATOR COASH: Do you recall how much that appropriation was? [LB1098]

MILO MUMGAARD: Oh, boy, I don't. I think it was a million dollars, if my memory serves. And Senator Conrad was the champion for that particular distribution. [LB1098]

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SENATOR COASH: All right, thank you. [LB1098]

MILO MUMGAARD: Well, thank you very much. [LB1098]

SENATOR SEILER: Next proponent. [LB1098]

KATIE VOORHEES: Good afternoon, Senator Seiler, members of Judiciary Committee. Thank you. [LB1098]

SENATOR SEILER: Ma'am, why don't you just hold up a second until... [LB1098]

KATIE VOORHEES: Okay. [LB1098]

SENATOR SEILER: ...they clear so we can hear your voice. [LB1098]

KATIE VOORHEES: Sure. [LB1098]

SENATOR SEILER: Okay. [LB1098]

KATIE VOORHEES: All right, thank you. My name is Kate Voorhees, of Lincoln. I am a client-eligible board member of Legal Aid of Nebraska. I have a lot of experience with this excellent organization and I am pleased to give this committee a perspective of Legal Aid that you may not have heard already. I live in senior housing in Lincoln. Every day I visit with seniors who regularly have problems and concerns with lots of things, including harassment from debt collectors, questions about Medicare, lost benefits, difficulties with their families, and fears of where they will live in the future. Seniors simply have a lot of worries on their minds, especially low-income elderly who live on fixed incomes and cannot afford a whole lot. They certainly can't afford lawyers to represent them, and this is where Legal Aid fits in. Legal Aid provides a lot of great services, but one in particular is the elder access line. I have learned to regularly refer my senior friends and neighbors to this hot line. When they call, they speak to an experienced lawyer or paralegal about their problems or concern, and wind up with highly qualified advice and services. I have seen firsthand people going from terribly stressed over their affairs and desperate about the future to knowing their rights, having a plan, and doing what they need to do to help themselves, all because of Legal Aid. You can expect that I would praise Legal Aid services due to my present role on the board as a board member. But I have long known about and supported Legal Aid and what they're able to do for low-income Nebraskans. In fact, I was a client once. Legal Aid helped my daughter and I escape an abusive marriage and got my children to safety. I'll always be grateful for this help. Legal Aid simply helps people deal with their legal

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problems and get some fairness in court. I know though only a fraction of Nebraskans who need these services can get it due to the limited funding. A \$1 increased filing fee through LB1098 is really minimal and a simple way to get more funding to Legal Aid and its partners across the state. I encourage you to advance LB1098 and I would be happy to answer any questions you have. [LB1098]

SENATOR SEILER: Will you state your name and spell it, please, for the record. [LB1098]

KATIE VOORHEES: Yes. Katie Voorhees, V-o-o-r-h-e-e-s. [LB1098]

SENATOR SEILER: Thank you. Any questions? Seeing none... [LB1098]

SENATOR PANSING BROOKS: I just... [LB1098]

SENATOR SEILER: Oops, excuse me. [LB1098]

SENATOR PANSING BROOKS: That's all right. [LB1098]

SENATOR SEILER: Senator Pansing Brooks. [LB1098]

SENATOR PANSING BROOKS: Thank you, Chairman. I appreciate your coming, Ms. Voorhees, and thank you for all your work. And I just for the record want to state that my dad was the cofounder and one of the first directors of the Lincoln Legal Aid Bureau, which I think was the predecessor to Legal Aid of Nebraska, so I want to thank you all for your continuing work and efforts in this area of helping those in poverty and those who are needing representation. Thank you. [LB1098]

KATIE VOORHEES: Thank you. [LB1098]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB1098]

KATIE VOORHEES: Thank you, sir. [LB1098]

SENATOR SEILER: Next proponent. [LB1098]

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LIZ NEELEY: Senator Seiler, members of the Judiciary Committee, my name is Liz Neeley, L-i-z N-e-e-l-e-y, and I am the executive director of the Nebraska State Bar Association appearing today in support of LB1098. One of the goals of the NSBA is to promote equal access to the justice system. And as Senator Morfeld explained, we all know that the number of Nebraskans in poverty is increasing. We know that the number of Nebraskans representing themselves in court because they can't afford an attorney is also increasing. And at that same time, due to decreases in filings, the amount of funding available to civil legal service providers continues to decrease. The other source of funding that was previously mentioned was IOLTA funding, which is the interest off lawyers' or clients' trust accounts, and that's declined by 90 percent between 2007 and 2014. And the reason for that is because it's the interest rates from the bank, not because of other forces. We recognize that there's really a small irony here. Every time that filing fees are raised, it makes accessing the justice system less affordable for those who need it most. And for that reason, the association rarely supports a filing fee increase. But in this case the filing fee would directly improve access to the courts by improving funding for civil legal service providers. The Bar Association's Volunteer Lawyers Project is primarily funded through this grant from the Legal Aid and Services Fund. Those funds coordinate the placement of hundreds of cases each year for low-income Nebraskans who could not be represented by Legal Aid of Nebraska due to conflicts or eligibility. It also coordinates assistance for thousands of pro se litigants through our six self-help centers located across the state. These are Nebraskans and they need legal services. They're people facing home foreclosure, job loss, spousal abuse, custody issues, and have nowhere else to turn. Each life improved through legal assistance makes lives and communities in Nebraska stronger and we encourage your support for LB1098. Be happy to answer any questions. [LB1098]

SENATOR SEILER: Senator Krist. [LB1098]

SENATOR KRIST: Thanks for coming, Liz. [LB1098]

LIZ NEELEY: Yes. [LB1098]

SENATOR KRIST: And I know you're not an expert on fiscal notes. [LB1098]

LIZ NEELEY: Yes. [LB1098]

SENATOR KRIST: But I need some clarification. Do you have a copy of the fiscal notes?  
[LB1098]

LIZ NEELEY: I do. [LB1098]

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SENATOR KRIST: Okay. [LB1098]

LIZ NEELEY: I just received it. [LB1098]

SENATOR KRIST: So if you look at the Department of Administrative Services' risk management division, this is telling me that first of all they don't know it's going from \$5.25 to \$6.25, but let's disregard that. But they're saying that, per the reference, all tort claims approved over \$25,000 must be approved by the Lancaster District Court. To get approval from the district court, risk management is responsible for paying the fees associated with filing the request. Can you explain that to me? [LB1098]

LIZ NEELEY: I cannot. [LB1098]

SENATOR KRIST: That answers that question. I hope somebody can answer that question for us when they come up here. Thanks, Liz,... [LB1098]

LIZ NEELEY: Yep. [LB1098]

SENATOR KRIST: ...for entertaining my stupid question. [LB1098]

LIZ NEELEY: I'm sure it's a great question. I just don't know the answer. (Laughter) Any other questions? [LB1098]

SENATOR SEILER: The diplomat. Thank you. [LB1098]

LIZ NEELEY: Thank you. [LB1098]

SENATOR SEILER: Thank you. Next proponent. Next proponent. Next opponent. [LB1098]

TESSA HERMANSON: Good afternoon, Chairman Seiler, members of the committee. My name is Tessa Hermanson, T-e-s-s-a H-e-r-m-a-n-s-o-n. I'm an attorney in Grand Island, Nebraska. I'm here today on behalf of the Nebraska Collectors Association in opposition to LB1098. I'd like to clarify that the NCA does not oppose this extra assistance being given to the Legal Services Fund. We understand the need of the Nebraska Legal Aid and support that. Our opposition is more to the source of the funding. As touched on by a couple before us, there are downsides to increasing court cost, limiting access to the courts in most cases by those who can least afford it. But it also extends to businesses that we represent. Those increased court costs are

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a burden on them. We fear that driving up the fee will kind of put us back here next year in the same position. Court filings will go down. The fund then will not receive as much money as it has in the prior years. We're just asking this committee to consider other sources of funding prior to raising the filing fee. Right now the filing fee for county court matters are made up of several different funds. It includes an education fee, dispute resolution, the legal services fee; there's an automation fee. In 2009, our industry dealt with LB35, which did provide a \$2 increase to the automation fee. The testimony on that bill, which was originally LB333, indicated that that \$2 increase had two specific purposes. It was to get e-filing, the electronic filing system going in Nebraska courts, as well as to get Douglas County District Court and the juvenile court systems on-line, onto the user systems. That was seven years ago. We believe those are in place now, so we'd ask this committee to look: Can a \$1 from that fund be diverted over to the Legal Services Fund and used for this purpose? I think that e-filing in Nebraska has made a lot of savings for our courts and maybe some of those funds are not needed anymore. The General Fund was another suggestion that we had. It might be a better source to remedy this situation. You know, talking about a stable source of funding, with the fluctuation in court filings, that might not be the case for this fund. I have nothing further but would answer questions. [LB1098]

SENATOR SEILER: Senator Pansing Brooks. [LB1098]

SENATOR PANSING BROOKS: Thank you, Chairman. Is your argument that by increasing it, that you guys will file less or...I'm trying to understand what your...is. [LB1098]

TESSA HERMANSON: Sure. At a county court level, the amounts that, you know, in the collection action are so minimal that at some point a higher court cost, it's just not worth it to file a collection action to recover. So that's always balanced I think with members in our membership of, is it worth it to pay X amount to recover a small, you know, medical debt of \$200? [LB1098]

SENATOR PANSING BROOKS: Okay. And do you have an idea of how many cases the people in your...the groups in your association have filed in the state or even in Lancaster County in the past year? [LB1098]

TESSA HERMANSON: I don't have an idea. I know of us as an association, I know as for my client, you know, it ranges, you know, 3,000 lawsuits if in county court on a monthly basis, so over a year, you know, you're looking at a significant amount. I do believe we're one of the highest users of the county court system. [LB1098]

SENATOR PANSING BROOKS: So maybe increasing it would be better because, I mean, I can't remember how many lawyers Legal Aid has, but if we're talking 36,000 or--is that 3,000 times 12?--yeah, about 36,000 cases that are filed... [LB1098]

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TESSA HERMANSON: Yeah. I think that they have the numbers of how many are filed statewide. [LB1098]

SENATOR PANSING BROOKS: Yeah. [LB1098]

TESSA HERMANSON: I mean it would...I think she said it would generate \$450,000 annually,... [LB1098]

SENATOR PANSING BROOKS: Yeah. [LB1098]

TESSA HERMANSON: ...the fee increases. You know, I'm just saying they were saying when they were getting these funds prior there were more suits filed even then, and that will continue to lessen as, one, court costs go up, but also as people look to other dispute resolution measures. [LB1098]

SENATOR PANSING BROOKS: Okay, thank you. [LB1098]

TESSA HERMANSON: Yes. [LB1098]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. [LB1098]

SENATOR SEILER: Senator Williams. [LB1098]

SENATOR WILLIAMS: Thank you, Senator Seiler. Thank you for being here. I want to be sure. So your testimony is that a \$1 increase in this fee that your client is going to pay, not you, would stop you from filing claims for \$200, \$300 medical bills? [LB1098]

TESSA HERMANSON: No, you know, members in our industry, not necessarily my client and, yes, not myself personally. At some point, I don't know if the dollar itself, but there's always a need for increased funds and at some point it becomes less practical to continue to pay for those fees. It's less practical for the hospital or the business trying to recover it to front that extra money or whatever it may be to try to recover a smaller amount that they're (inaudible). [LB1098]

SENATOR WILLIAMS: So you would weigh that \$1 against the ability to provide legal services for the poor people of Nebraska? [LB1098]

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TESSA HERMANSON: No, certainly not. I... [LB1098]

SENATOR WILLIAMS: But that's what your testimony is. [LB1098]

TESSA HERMANSON: My testimony is that the Legal Services Fund, we're not disputing that it's needed, that the increase is needed or that they're providing a good service, just that maybe there's a better way to do it than increasing the court cost. [LB1098]

SENATOR WILLIAMS: So was that neutral testimony or opposition? [LB1098]

TESSA HERMANSON: We oppose it because it does currently increase the court costs. [LB1098]

SENATOR WILLIAMS: Okay, thank you. [LB1098]

TESSA HERMANSON: You bet. [LB1098]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB1098]

TESSA HERMANSON: Thank you. [LB1098]

SENATOR SEILER: Further opponent. Further opponent? In the neutral? Testimony in the neutral? Seeing none, Senator Morfeld, you may close. [LB1098]

SENATOR MORFELD: Thank you, Chairman Seiler, members of the committee. While I guess I understand the argument that the opponent just made, I just think that, you know, \$1 is very little to collection agencies and their clients but it means a lot to people who just cannot afford access to justice. And I know that it's a balancing act with how much fees are too much fees, but I don't think we've even come close to a point where it's tipping in the favor of not increasing the fees to make sure that we have these critical services. In terms of technology fees, you know, that's something that we considered. I did appreciate them coming and talking to me about the potential of tech fees. But the need for technology is ever increasing in the courts, and upgrading that technology, so I think that that's an important fee to keep in place. And with that being said, I will end my testimony and be more than happy to answer any questions. [LB1098]

SENATOR SEILER: Senator Krist. [LB1098]

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SENATOR KRIST: Senator Morfeld, this is a question and a comment. I'll start with the comment. In my time here in the Legislature there have been so many hard-fought battles trying to put streams of funding in place to serve critical services throughout the state. We get to a point where we think we have funded it correctly--and I'll use the example of the technology fee--and then somebody comes up with a bright idea of stealing money from that fund or that cash fund or this fund or the way we're funding it. We've gotten ourself in trouble with education because we're doing just that: robbing Peter to pay Paul down the line. I honestly believe that we need to pay our bills. And if Senator Chambers were here, and I'm sure he's listening, I would hope he would say we can't always do everything on the cheap. We need to make sure that everybody has equal justice and equal justice is available to them. So that's a long-winded example of how I think we need to watch our funding mechanisms that are in place. And if we need to pay for more services or we see the efforts, then we'll debate on the face whether a fee is the right way to go or whether General Funds are the right way to go. I think you've taken the right approach with fees, so I will...that's really not a question either, but I'll allow you to respond if you'd like to I mean. [LB1098]

SENATOR MORFELD: Well, I appreciate the sentiment, Senator Krist, and I do believe that this is the most stable funding source that we can find, particularly for this type of service. And it's a funding source that's directly related to legal services, so I think it's an appropriate one. And I think that past legislative history shows that General Fund appropriations have not been supported in this area. So I think it's an appropriate fee. I think it's a very modest increase and it will go a long way to helping low-income Nebraskans. [LB1098]

SENATOR KRIST: Thanks for putting that on the record. [LB1098]

SENATOR MORFELD: Thank you. [LB1098]

SENATOR SEILER: Thank you. Any further questions? Okay, Senator Krist, LB670. [LB1098]

SENATOR KRIST: (Exhibit 1) Good afternoon, Senator Seiler and fellow members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with the north-central portion of Douglas County which includes the city of Bennington. I appear before you today in introduction and support of LB670. This bill requires a mental health professional to provide immediate notification to a county attorney about their judgment concerning an emergency protective custody, or EPC, release. Off script, I was very deliberate about how we constructed this, in part because I wanted to get feedback and I wanted to find out how we could close the loop that exists, and let me describe it to you. You've heard about the swinging doors. We've talked about it in the corrections system and in the judiciary in general. Judge O'Neal came to me as part of

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the Juvenile Detention Alternative Initiative project across the state which I cochair at the state level. And he said, there's a problem in the fact that I can refer a child for an evaluation--of course, the EPC then and an evaluation is done--and two weeks later that young person is back in my court. No notification to the home jurisdiction and they're back in the court and we start this all over again and it happens again and again. The attorneys, in general, on both sides of the aisle, so to speak, came to me yesterday and we present to you an amendment on the bill which actually replaces the bill. It's AM2187. The biggest disagreement with trying to close that door and get the feedback loop all the way around, that that child--or an adult, for that matter--is being released and not put into EPC or being let out of the evaluation process with the findings that they are not a danger to themselves or those around, the way to close that loop was potentially to have a hearing every time the person was released. Well, we know what that does to the legal system. So the amendment, and I'll refer you to the bottom of page 1, line 25, "A court may refer a juvenile to be evaluated by a mental health professional pursuant to this section. After evaluation, the mental health professional shall immediately notify," next page, "referring court in writing of his or her determination." That same language is repeated throughout this bill in terms of both the juvenile and the adult. I think it's reasonable. I think it's sensible, and I think it's the right thing to do that when a person who is referred by a judge from a jurisdiction goes into the evaluation process that when the determination has been made, and that's a legal term within our statutes, that that information get back to the jurisdiction--very simple, very straightforward. It allows Judge O'Neal to potentially watch the track of that young person and make sure that they are taken care of or that they don't come back to a dangerous situation. And I have applied this both, again, to the adult and to the juvenile. [LB670]

SENATOR SEILER: Did the attorneys that talked to you consider that the 36 hour...hearing being held within 36 hours a problem? [LB670]

SENATOR KRIST: Right, that hasn't changed in... [LB670]

SENATOR SEILER: I know it hasn't changed, but has it been a problem? Because getting the evaluations done in 36 hours, getting the information back to the county attorney, getting the document filed could be a problem. [LB670]

SENATOR KRIST: You and I have heard that in other hearings. I didn't intend to fix that with this. I only intended to fix the feedback. [LB670]

SENATOR SEILER: Okay, not a problem. [LB670]

SENATOR KRIST: But I'm sure you will hear from some attorney representing their testimony and you can ask that question, sir. Thank you. [LB670]

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SENATOR SEILER: Any further questions? Thank you. You'll be here for closing? [LB670]

SENATOR KRIST: Absolutely. [LB670]

SENATOR SEILER: First opponent...proponent. Excuse me, proponent. Any opponents? In the neutral? [LB670]

SENATOR PANSING BROOKS: There was somebody. [LB670]

SENATOR SEILER: Oh, oh, wait a minute. Got a...he was hiding behind a post. [LB670]

BRAD MEURRENS: (Exhibit 2) Good afternoon, Senator Seiler and members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy specialist with Disability Rights Nebraska, a designated protection and advocacy organization for persons with disabilities in Nebraska. I'm here today in opposition of LB670 as it is currently written. Now we have not been...seen the amendment, so I'm going to just kind of state what our original concerns were about the bill and leave it at that. We're concerned that it undercut...that the bill as it was originally intended undercuts the professional expert opinion of the mental health professionals, discretion is removed from the county attorneys in the juvenile context, and that there is some discretion removed from the county attorney in the juvenile system, and it requires the county attorney to convene a new hearing in the adult system. Again, these are our initial concerns. We're still in the process of consulting with our legal staff and our policy staff to analyze the implications of the bill and we'll definitely take a look at the new amendment. But we were unaware that the amendment has been produced. So I have submitted my written comments and would be happy to answer any questions that I may be able to answer at this time. But we also would be willing to work with Senator Krist and the committee to address our concerns and the senator's concerns at a further date when our analysis is more complete. [LB670]

SENATOR SEILER: Questions? What exactly is your concerns on this? [LB670]

BRAD MEURRENS: Well, on the...well, originally as it was written we were concerned... [LB670]

SENATOR SEILER: No, no, just what's your overall concern? [LB670]

BRAD MEURRENS: Well, I think the overall concern is that there's some confusion about the language in that there needs to be some discretion provided to both the county attorneys in both

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the juvenile context and in the adult context. We're concerned that there may be an extra...adding the hearing portion on the adult side, you know, is another sort of hurdle, another barrier, and does...we don't think that it needs to be there given that the mental health professionals will be the ones that will have the requisite experience and knowledge to make the determination about whether or not the person should be or should not be released from... [LB670]

SENATOR SEILER: You're not talking about the 36-hour hearing? [LB670]

BRAD MEURRENS: No, we're not talking about that, no. [LB670]

SENATOR SEILER: What additional hearing then? [LB670]

BRAD MEURRENS: I'm sorry, what? [LB670]

SENATOR SEILER: What additional hearing are you talking about? I don't find one. That's why... [LB670]

BRAD MEURRENS: Well, the new language in the last section of the original bill. [LB670]

SENATOR SEILER: Okay. Okay, we know where to look for it then. Thank you. [LB670]

BRAD MEURRENS: Great. Thank you. [LB670]

SENATOR SEILER: Any further questions? Thank you. Now the neutral. [LB670]

COLEEN NIELSEN: Good afternoon, Chairman Seiler, members of the Judiciary Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I'm the registered lobbyist for the Nebraska Criminal Defense Attorneys Association. We, too, had some concerns about the extra hearing that was provided in the green copy of the bill and so we, along with the County Attorneys Association, approached Senator Krist and worked on an amendment that...so we asked Senator Krist, what is it exactly that he's trying to address? And essentially this is the EPC process: emergency protective custody. When a person is brought in as a result of some concerns about their mental stability or whether they're a danger to themselves or others, they can be put into emergency protective custody. The 36 hours is the mental health professional must evaluate that person in a 36-hour time period. The mental health professional can decide whether or not to release that person if they determine that they're not a danger to themselves or others, or they can notify the county attorney that they are a danger to themselves or others and the county attorney

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then files a petition. It's then, after that, that the case goes before the Mental Health Board for commitment proceedings. The problem was is that apparently a judge was concerned that they had seen someone in their courtroom who...and they referred this person for emergency protective custody and they were never notified by the mental health professional whether or not that person was released or whether that person was then filed against by the county attorney. And so the court is just asking that in these particular situations that they would just like to know what is happening. And so what we've provided for in this particular amendment is that the mental health professional, if they decide in any...well, whatever they decide, must notify the judge that has referred them to emergency protective custody. And so with that I'd be happy to answer any questions. [LB670]

SENATOR SEILER: You don't have a time limit on that notification? [LB670]

COLEEN NIELSEN: No, we decided to leave that alone. [LB670]

SENATOR SEILER: Okay. [LB670]

COLEEN NIELSEN: Well, I take that back. Under the juvenile I think we did provide that they have to report to the juvenile judge immediately. The juvenile situation is a little bit different because there's actually a case open in juvenile court, whereas for an adult emergency protective custody there's often not a case open and so it would just be notice to the judge that referred them to emergency protective custody. [LB670]

SENATOR SEILER: Okay. Has your organization had problems with that 36-hour rule? [LB670]

COLEEN NIELSEN: You know, we didn't talk about that and I have not heard... [LB670]

SENATOR SEILER: Okay. [LB670]

COLEEN NIELSEN: ...whether or not that's a problem. [LB670]

SENATOR SEILER: Used to drive me crazy when I was judge (laughter) so, okay. Any questions? Thank you very much. [LB670]

COLEEN NIELSEN: All right, thank you. [LB670]

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DAVID PARTSCH: Chairman Seiler, members of the Judiciary, my name is David Partsch, P-a-r-t-s-c-h. I'm the Otoe County Attorney, from Nebraska City, and we are here...I'm here representing the Nebraska County Attorneys Association. And similar to the previous testifiers, we originally had voted to oppose the bill as it was written. We do appreciate Senator Krist working with our lobbyist on the amendment. And I think the amendment is a good resolution to the problem. I think the problem, as outlined by the senator, certainly understandable that the judge referring someone to an EPC would want feedback about what happens, especially if that individual is released when they thought they were protecting the public. So in regard to the 36-hour issue, we do have times when that becomes a problem I think. We don't always get the evaluation. There's another 24-hour period after that evaluation that they have to get the county attorneys the reports from that evaluation. And then the county attorney has time to consider the filing of that petition. I think the...usually the crisis center that I deal with will call my office before they release someone and ask me, as county attorney, if it's okay to release that individual. So I usually do get at least a phone call. A lot of times I'll have to ask them to send a fax or written confirmation of what they're doing, but... [LB670]

SENATOR SEILER: Well, that 24 hours is not only to notify you as county attorney but also to set it for hearing within 24 hours. [LB670]

DAVID PARTSCH: Actually, that's not correct. On the evaluation is within 36. [LB670]

SENATOR SEILER: That's what it says. [LB670]

DAVID PARTSCH: There's a...are you looking at the bill? [LB670]

SENATOR SEILER: "Shall proceed to hearing before the court within twenty-four hours..." [LB670]

DAVID PARTSCH: That's the bill as drafted. [LB670]

SENATOR SEILER: That...no, that's the original bill. [LB670]

SENATOR PANSING BROOKS: Yeah. [LB670]

DAVID PARTSCH: Right. [LB670]

SENATOR SEILER: But that's... [LB670]

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DAVID PARTSCH: Yeah, and that's what we opposed, true. [LB670]

SENATOR SEILER: Okay. So that was changed. [LB670]

DAVID PARTSCH: It was changed, yes. [LB670]

SENATOR SEILER: Okay, thank you very much. [LB670]

DAVID PARTSCH: Yep. [LB670]

SENATOR SEILER: Any further questions? [LB670]

DAVID PARTSCH: Thank you. [LB670]

SENATOR SEILER: You bet. Any further neutral? [LB670]

TRACEY LATTURE: My name is Tracey Latture, L-a-t-t-u-r-e. This isn't the actual bill that I was going to share my opinion with you, but it seems as good a time as any. A year ago in August, my son was exhibiting some, what now is being termed, sexually deviant behavior. I went to the Child Guidance Center, met with Rebecca Dacus there. We'd been seeing them for a year. The behavior accelerated a year later. I through my counseling wanted to often be included more, but because he's 14.5, I kind of was backing off and letting, you know, her kind of run the show, resulting in not her taking me seriously enough or giving me the coping skills that I needed to deal with these kinds of behaviors. I sought to find other counseling. I contacted Families Inspiring Families, got in touch with Shelly Noerrlinger. She had visited my home twice. We had a plan written up. I met with a Suzanne Jouvenat--she's a Christian counselor--and a Jami Blomstedt at the bottom of the Advocacy Center. And my son and I decided to go with Suzanne Jouvenat because she was older and Jami had just returned from maternity leave. As soon as...oh, when I was leaving Child Guidance, I said some things under stress that I shouldn't have, such as, I'm leaving him here, I don't know what to do. That was the first call to CPS. There was never...you know, they didn't know what to do. They said, sorry, we've got no help for you, you need to take him home. Well, I was contacted by a Curtis Reeha (phonetic) then after that as a result of that call. I was invited to the Child Advocacy Center with my son. That next Monday we went, did not realize that they were investigating me. I thought they were trying to maybe get to the bottom of why these behaviors were happening, which is, I think, you know, a really good idea. I got a letter saying the investigation was unfounded, that I was actually being investigated. And in the meantime, Suzanne Jouvenat realized that Child Protective Services was involved in this case and she didn't want to see us anymore. So in the meantime, I contacted a

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Mary Paine who is an adult sexual addiction or perpetrator counselor. The way I understand it, and again, I'm new to this system, but there's Child Guidance, there's Mary Paine, and then there was one other services. But anyway, Mary Paine...you know, I'm going to skip over a bunch. But long story short, Mary Paine said, to get him the services he needed, he needed to be made a ward of the state. I didn't think much of it. She said she wanted him in for a psych eval before the weekend so he didn't sit there over the weekend. I didn't want to do it but I did it. I sat at the hospital, CAPS, for four hours on the 30th of September. I was tired after sitting there for four hours. I said, I need to go home, I need to see the doctor, we're tired, we're hungry. They said, doctor's been real busy but you will not be admitted. So I went home. Mary Paine called all day, cell phone, home phone. I went to work, took him to school--I needed to get some hours in--picked him up from school, went home, called Mary Paine and I said...or she said, you've got to get him admitted right now, if he was bleeding to death you wouldn't have left, you stay there until. I said, Mary Paine, I'm not sure that's what he needs. He's not a danger to himself. He's not a danger to others. I don't believe, you know, this is the appropriate path. And she was mad. The day that I did agree to take him in there, she called Bryan and I think that's what torqued her off is she had called them, said we were coming, and we weren't admitted. And that's what she was mad about. I called the hospital again, asked... [LB670]

SENATOR SEILER: Ma'am, your time is up. [LB670]

TRACEY LATTURE: Okay. Long story short, she had the sheriff come and take my kid from my home. He was released the next day but not brought home. I contacted my... [LB670]

SENATOR SEILER: Ma'am, your time is up. [LB670]

TRACEY LATTURE: All right, thank you. [LB670]

SENATOR SEILER: Wait a minute. Is there any questions? Senator Krist. [LB670]

SENATOR KRIST: Who...have you been in touch with your state senator or with the Ombudsman's Office? [LB670]

TRACEY LATTURE: I have made a call to Senator Coash and he returned my call but, no, I have not spoken with him. [LB670]

SENATOR KRIST: Okay. And I'm not trying to cut you off, but it really...what this bill is trying to do sort of, kind of relates to your situation. [LB670]

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TRACEY LATTURE: Right, right. [LB670]

SENATOR KRIST: And you have a serious situation. [LB670]

TRACEY LATTURE: I do have a very serious situation. [LB670]

SENATOR KRIST: And I would encourage you to sit down and talk. Senator Coash is one of those people who has been around for a while. [LB670]

TRACEY LATTURE: Okay. [LB670]

SENATOR KRIST: And he knows the process. [LB670]

TRACEY LATTURE: Okay. I've had two court-appointed attorneys also. [LB670]

SENATOR KRIST: Okay. [LB670]

TRACEY LATTURE: And they don't have the ability to represent me like I need represented. And now I've got a private attorney on a 24 percent interest credit card. [LB670]

SENATOR KRIST: Well, now you're on the record that you need some help. Senator Coash has heard it and we'll get the Ombudsman's Office help you (inaudible). [LB670]

TRACEY LATTURE: I hope so. It's not a good situation. And I was not aware of how bad it was, so I started researching it. We have got a serious problem with untruths and not being properly represented as parents for these children. [LB670]

SENATOR KRIST: Thank you. [LB670]

TRACEY LATTURE: He's in a non-English speaking foster family and my hearing isn't going to be until the end of April. [LB670]

SENATOR KRIST: Thanks. [LB670]

SENATOR SEILER: Thank you, ma'am, for your testimony. Any further neutral? [LB670]

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ELAINE MENZEL: Chairman Seiler and members of the Judiciary Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, and I am appearing in a neutral capacity. Initially we were opposed. But for the same reasons that previous testifiers have indicated, we are no longer opposed, thanks to Senator Krist's amendment. And if there's any questions, I probably am not the best person to try to answer them, but I will find the person who is. [LB670]

SENATOR SEILER: Okay. Seeing none, thank you for your testimony. [LB670]

ELAINE MENZEL: Thank you. [LB670]

SENATOR SEILER: Further neutral. Senator Krist, you may close. [LB670]

SENATOR KRIST: Thank you, Committee, for listening to the bill and for understanding the subject matter. I'm hoping we can take some positive action and get it out. I would put this on the record. Normally I say this in a more demonstrative way. But it's always good to talk to the senator, the introducer, before you come up and testify on something that you don't know anything about because he's been putting an amendment together to solve the problems. How's that? [LB670]

SENATOR SEILER: That's wonderful. [LB670]

SENATOR KRIST: Is that clear? Thank you. Thank you very much. Any questions, I'll take them. [LB670]

SENATOR SEILER: Any further questions? Thank you very much, Senator. Senator Pansing Brooks, LB847. [LB670]

SENATOR PANSING BROOKS: (Exhibit 1) Good afternoon, colleagues, Senator Seiler and fellow members of the Judiciary Committee. For the record, my name is Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I represent Legislative District 28 right here in the heart of Lincoln and I'm here to introduce LB847. This is a bill that seeks to modernize jury selection. It was brought to me by the Nebraska Association of County Officials. Elaine Menzel from that association will provide testimony, as will the clerk of the district court in Cedar County, Janet Wiechelman. The two of them have hands-on experience and will be much better able to explain the bill, how the bill would affect the work that they do. I will just briefly state that LB847 seeks to update jury selection to accommodate modern court practices and defines related terminology. In addition, the bill updates gender references and clarifies a number of issues related to jury

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selection and jury service. It prohibits the preservation of jurors' notes and requires judges to mutilate and destroy such notes upon the return of a verdict. It also removes and replaces a cumbersome description that's currently in law based on a potential juror's prior sentence and instead replaces it with the term "felony" to describe persons who are disqualified from serving on a jury. The bill also strikes a redundant process for nursing mothers to be excused from jury duty. There is an amendment before you that I wish that you would make a part of the record that addresses the concerns brought to me by the State Court Administrator and the State Bar Association. So I would ask that it be added to the committee's amendment and ask that you move forward this bill, LB847. [LB847]

SENATOR SEILER: Any questions? Senator Chambers. [LB847]

SENATOR CHAMBERS: Senator Pansing Brooks, who did you say asked you to bring this bill? [LB847]

SENATOR PANSING BROOKS: The people that asked...it was brought to me by the Nebraska Association of County Officials. [LB847]

SENATOR CHAMBERS: Do they go by the alias NACO? [LB847]

SENATOR PANSING BROOKS: Yes, they do. [LB847]

SENATOR CHAMBERS: Senator Pansing Brooks, I feel that I've come to know you pretty well. I consider you to be my friend. [LB847]

SENATOR PANSING BROOKS: Thank you. [LB847]

SENATOR CHAMBERS: And I'm wondering why and how such a nice lady as yourself got involved with this NACO operation. [LB847]

SENATOR PANSING BROOKS: You know, there's some really good people in that organization. [LB847]

SENATOR CHAMBERS: Because you say so, I won't pursue it any further. [LB847]

SENATOR PANSING BROOKS: Okay. [LB847]

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SENATOR CHAMBERS: Okay. [LB847]

SENATOR PANSING BROOKS: Thank you. [LB847]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB847]

SENATOR PANSING BROOKS: Thank you. [LB847]

SENATOR SEILER: You will stick around for... [LB847]

SENATOR PANSING BROOKS: Yes, thanks. [LB847]

SENATOR SEILER: Okay. First proponent. [LB847]

ELAINE MENZEL: Chairman Seiler and members of the Judiciary Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, and I'm here on behalf of Nebraska Association of County Officials, otherwise known as NACO. And hopefully I am one of those good folks that Senator Pansing Brooks was referring to (laughter) and hopefully Senator Chambers concurs. But first, on behalf of NACO, I would like to support...express our appreciation to Senator Pansing Brooks as well as to her staff for helping us coordinate the efforts to bring this legislation to your attention. We are supportive of LB847. And for purposes of explanation and technical questions I will defer to the county clerk, Janet Wiechelman, from Cedar County that Senator Pansing Brooks referred to. Prior to concluding my testimony, I want to express our support to the amendment suggested by the Bar Association and the Court Administrator's Office...Supreme Court Administrator's Office. Thank you for your time and if there's any questions, please feel free to ask me. [LB847]

SENATOR SEILER: Questions? Senator Chambers. [LB847]

SENATOR CHAMBERS: I agree that you're one of those nice people. That's why they send you here. (Laughter) And as for that organization, I'll say this. This the nicest thing I can say about them: Even a clock that is broken is right twice a day. And that's no reference to you. Okay, thank you. [LB847]

ELAINE MENZEL: Thank you. [LB847]

SENATOR CHAMBERS: That's all that I have. [LB847]

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SENATOR SEILER: Thank you. You may step down. [LB847]

ELAINE MENZEL: Thank you. [LB847]

SENATOR SEILER: Next proponent. [LB847]

JANET WIECHELMAN: (Exhibit 2) Good afternoon, Senator Seiler and committee members. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n, and I am the clerk of district court of Cedar County and also the legislative liaison for the Clerks of the District Court Association. I am here in support of LB847 and the amendment that Senator Pansing Brooks referred to. This bill was brought on behalf of the Clerks of the District Court Association and we thank Senator Pansing Brooks for bringing this legislation. This piece of legislation has been researched, reviewed, drafted, and redrafted over the last couple of years. I would like to highlight some of the provisions and history of the legislative bill: Senator Mike Flood, who represented Legislative District 19, brought similar legislation after being approached by the former Madison County Clerk of the District Court, Marjorie Schaffer. She had been a witness in a postconviction case and was questioned about the jury process. She had told me that while she was testifying, she became aware that the judge, the two attorneys, and herself had at times differing understanding of the terms and the processes in selecting a jury. Thus, Senator Flood brought LB243 in 2007 to the Judiciary Committee; however, that legislation was not brought out of committee. I have attached a copy of that. Typically, some confusion has occurred in the selection of a jury in a one-step or two-step process that the clerks of district court conduct in selecting a jury from the master jury list. We would like to continue to allow the two processes of selecting jurors, but in this legislation it would streamline the process and add terms that define the process being used. An example of one of the terms would be the "prospective jury list," which means a list of names of persons on the master list who have not been qualified but may be summoned by use of the one-step process which is the service of the jury summons and a questionnaire at the same time. Another term would be the "revised jury list" which means that the list are jurors who have been selected through the two-step process and the juror has completed a questionnaire and has been determined to be qualified to serve as a juror. Also, the Supreme Court has made available an electronic jury process for the clerks of the district court to use in 2014. The different terms used in the e-jury process did not reflect the same intent in the statute nor was there statutory language that would allow a juror to complete a jury questionnaire electronically if a county chooses to use the e-jury process. This legislation cleans up that language of the manual and electronic process. We would like to clarify that an individual who has been convicted of a felony would not be qualified. The current statute indicates that a person convicted of a criminal offense punishable by imprisonment in a Department of Correctional Services adult correctional facility would not be qualified, which would include a misdemeanor charge. However, LB605 cleared up that issue. However, we will still continue to have that problem in future jury qualification forms. Another purpose in doing this legislation is the

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capability of training staff and the new clerks of district court in the jury trial process. As a new clerk over 25 years ago, I struggled in understanding how the statutes applied to the one- and two-step process. Training is an important part of our association and this will enable new employees to understand the differences of the processes and how to apply it to their counties. In my statement, I've also attached the other legislative bill that had been brought by the County Court Judges' Association a couple years ago regarding the felony conviction. And also I include the jury instruction rule by the Supreme Court and the questionnaire. If you have any questions, I would be willing to address them with you. Thank you for your time. [LB847]

SENATOR SEILER: Senator Krist. [LB847]

JANET WIECHELMAN: Yes. [LB847]

SENATOR KRIST: Hi. Thanks for coming. Just clarify for me. You said LB605, you mentioned LB605, and then you mentioned that this felony as opposed to just someone who is going to be put into a correctional facility. [LB847]

JANET WIECHELMAN: Right. [LB847]

SENATOR KRIST: So can you clarify that for us? [LB847]

JANET WIECHELMAN: With LB605 that passed last year,... [LB847]

SENATOR KRIST: Right. [LB847]

JANET WIECHELMAN: ...a misdemeanor alone cannot be served within a Nebraska Correctional facility and all you serve is conjunction with a felony conviction. But with the way the current statute reads, it says that a conviction punishable by one year. So if we have someone who comes in with a questionnaire now, and technically could you look at it? If it was a pre-LB605, it was a misdemeanor, they would then be excused because of that prior charge being before LB605. And this is where the confusion is. We would just like it simply to be that it's a felony so we don't have to worry about the issue, okay, was it a misdemeanor prior to LB605 or after LB605? [LB847]

SENATOR KRIST: Okay, that's good clarification. The only disappointing part for me in this is that I was looking forward to turning 65 and not have to do this, but you're extending it to 70 now so I've got to wait for another five years. Okay. [LB847]

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SENATOR SEILER: Further questions? I'm going to ask, would you want to submit the attachments to the record? [LB847]

JANET WIECHELMAN: Yes, I would like to. Thank you. [LB847]

SENATOR SEILER: Thank you. They will be received. [LB847]

JANET WIECHELMAN: Thank you. [LB847]

SENATOR SEILER: Next proponent. Opponent. People in the neutral. [LB847]

BUB WINDLE: Chairman Seiler, members of the committee, my name is Bub Windle, that's B-u-b W-i-n-d-l-e, here on behalf of the State Bar testifying in the neutral capacity but in support of the amendment that Senator Pansing Brooks described. Specifically, we're in support of two of the provisions in that amendment. First, the Bar supports keeping the age of exemption at 65. [LB847]

SENATOR KRIST: Thank you. [LB847]

BUB WINDLE: Yes. (Laughter) This, actually, it's a little counterintuitive but is actually meant to spur juror participation and comes directly from a district court judge who told us that oftentimes people 65 years or older want to serve on a jury. And so when he says, sir, or ma'am, you know, we really appreciate you coming today but you don't have to be here, you're welcome to go home unless you'd like to serve, more often than not they say, I'd like to be here. And that serves as an example that reminds the other jurors of their civic duty and it kind of pushes back on the domino effect that otherwise happens where one person is excused and another person says, oh, maybe I can get off the jury. And so it pushes back on that. So while it ultimately broadens the exemption, actually may increase juror participation. The second change that the Bar supports is maintaining summary jury trials as a form of alternative dispute resolution. This actually comes up in the outright appeal so you don't see it in the text of the bill, but this is a form of alternative dispute resolution that can be raised and I guess agreed to by all of the parties in a case where you can go, a jury is empaneled, and you present basically a summary of your case. No evidence is presented. There are no final determinations. But it ends in nonbinding verdict from the jury that the parties can then use as a form of settlement or as a basis for settlement. So the Bar supports those amendments and thanks Senator Pansing Brooks for introducing. [LB847]

SENATOR SEILER: Senator Morfeld. [LB847]

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SENATOR MORFELD: Quick question that I already know the answer to but I want on the record: Are 18-year-olds able to serve on a jury? [LB847]

BUB WINDLE: I believe it's 19 here. [LB847]

SENATOR MORFELD: It's 19, okay. Well, that's good. Jeez, I was going to say... [LB847]

SENATOR SEILER: That's (inaudible). [LB847]

SENATOR WILLIAMS: Glad you got that on the record. [LB847]

SENATOR MORFELD: ...I would hate for an 18-year-old, who can't serve in elected office, to be making decisions in the legal nature on someone's life on a jury. Thank you. [LB847]

SENATOR SEILER: Senator Chambers. [LB847]

SENATOR CHAMBERS: That's a discussion between lawyers and sometimes lawyers understand things. And so this is one of those anecdotes. A man was being quest...well, anyway, he asked one question too many, but I won't tell the anecdote. Thank you. [LB847]

BUB WINDLE: Thank you. [LB847]

SENATOR SEILER: Thank you. [LB847]

BUB WINDLE: Thank you. [LB847]

SENATOR SEILER: (Exhibit 3) Any further? No further questions. Thank you. You may step down. Any further neutral? Seeing none, you waive? You waive, okay. There is one letter in support and that's from ACLU. It was dated February 17, 2016, and Amy A. Miller was the author. It will be received. Senator Williams, you may begin with LB1010. [LB847]

SENATOR WILLIAMS: Thank you, Senator Seiler and members of the committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I represent Legislative District 36. And I'm here to introduce LB1010 which was brought to me by the County Attorneys Association. And my friend Shakil Malik will be here from the Douglas County Public...County Attorneys Association, Senator Chambers, and he is certainly your friend also. The purpose of LB1010 is to allow county attorneys to electronically file juvenile court petitions. Current law requires a

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juvenile petition to be filed by affidavit which must be notarized. To my knowledge, we do not have the ability to do electronic notarizations in Nebraska. LB1010 would require county attorneys to sign the juvenile petition instead of filing an affidavit. In 2011, the Legislature made a similar change with LB669 to eliminate notarized filings in the county and district courts. LB1010 would continue to expand the use of e-filings to juvenile court petitions. I want to make it clear we're not changing what information is filed with the court, only how that information is filed. Thank you for your attention and I will be happy to answer any questions, but the experts coming behind me will be better suited for that. [LB1010]

SENATOR SEILER: Senator Chambers. [LB1010]

SENATOR CHAMBERS: I think you can answer this question. What did you say the number of this bill is? [LB1010]

SENATOR WILLIAMS: LB1010. [LB1010]

SENATOR CHAMBERS: Was the predecessor named Rin? (Laughter) [LB1010]

SENATOR WILLIAMS: You need to check my cell phone number... [LB1010]

SENATOR CHAMBERS: I don't think he got it. That's okay. [LB1010]

SENATOR WILLIAMS: ...because that's 1010 also. [LB1010]

SENATOR CHAMBERS: Okay. [LB1010]

SENATOR SEILER: Any further questions? Seeing none. You'll stay for closing? Proponent. Go ahead. [LB1010]

SHAKIL MALIK: (Exhibits 1-3) Good afternoon, Senators. My name is Shakil Malik, S-h-a-k-i-l, last name Malik, M-a-l-i-k. I'm here to testify in support of LB1010. I want to first thank Senator Williams for offering this. It's a bill basically to mirror what the changes were in LB669 in 2011. In my discussions leading up to this bill I did get some questions from various practitioners. So I thought the easiest way to answer some of them would be to provide some visual examples of what we're talking about. So what I've provided to you besides the written documentation of my testimony is an example more current of, for example, in Douglas County--there are variations from county to county--what the juvenile petition looks like. On the

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second page I've marked out the affidavit piece. Essentially what we're trying to do is eliminate the requirement for the petition to be a verified pleading. That's a requirement that has been significantly eliminated in the United States on both the state and federal level in most courts. There's still some limited uses. We're just asking that it expand to this use so we can directly e-file an original electronic document without having to have to go to a notary or have it sworn or acknowledged by a clerk of the court. There are some provisions that would possibly allow for e-filing with the current format, but that would also then require us to retain original documents for a significant period of time, which would more or less eliminate the benefits or some of the benefits of electronic filing and going to paperless office operations. Essentially all we're trying to do is just the piece where you verify the pleading, have it notarized, which used to be very commonplace. We're just trying to eliminate that piece on the petition, not trying to change any other requirement or change any burdens on county attorneys when filing a juvenile court petition. With that, I'd certainly entertain any questions you might have on this bill. [LB1010]

SENATOR SEILER: Questions? [LB1010]

SENATOR PANSING BROOKS: I have one. [LB1010]

SENATOR SEILER: Senator Pansing Brooks. [LB1010]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Malik. I was just wondering, do you know why it didn't change when the other courts were allowed to change? [LB1010]

SHAKIL MALIK: I don't know exactly why. What I will tell you just from experience is in the earlier eras of the Legislature sometimes juvenile matters would be forgotten while criminal matters were addressed. This was kind of...this last change, 2011, was just as the Legislature was really starting to focus on juvenile issues. In 2010, they did LB800 and LB561, LB464. So my thought is I believe it was just...you know, the change is oftentimes made to criminal laws without really a thought unto, hey, what about the juvenile code? [LB1010]

SENATOR PANSING BROOKS: So I guess what I want to make sure is that it isn't a desire to slow down the process for juveniles to make sure people are really looking at the pleadings, really looking at things, and not just sending things through rapidly with...electronically. I just...I'm trying to make sure that that's not what was being avoided. Do you feel that it makes it too rapid in the...I'm leading you here. [LB1010]

SHAKIL MALIK: I can certainly understand the concern. I will tell you from a practical point of view the amount of time an attorney takes to look at and sign a petition versus also then having it

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notarized or sworn, it's not appreciable. There are a number of standards in place in the juvenile code for what prosecutors should consider when filing a case or referring to diversion or not filing at all and which court to file it in. Those should be considered regardless. I mean, yeah, it's hard to legislate good judgment, but that's why we're held accountable by a vote of the people. You know, attorneys should be following those standards when filing things. [LB1010]

SENATOR PANSING BROOKS: Okay, thank you. [LB1010]

SENATOR SEILER: You may be excused. Thank you for your testimony. [LB1010]

SHAKIL MALIK: Thank you, Senators. [LB1010]

SENATOR SEILER: Further proponent. Opponent. In the neutral. [LB1010]

TRACEY LATTURE: My name is Tracey Latture, L-a-t-t-u-r-e. And again my new experience to this system, I was very much struck by the "dehumanation" of the system and the text messages and the harassment and different things. When Mary Paine put an emergency no-visitation order in through the courts, I never...I still haven't received the document that I saw at a team meeting based...you know, that had her information what she based her finding on. When I asked her about her recommendations for my son, she says, I don't need to release that to you now because he's a ward of the state. And when that emergency order was pushed through, it was signed off on a judge that wasn't even familiar with the case. And like I said, I just...when it comes to family therapy, family care, childcare, we have got to get more of a human perspective. You know, these are families. I have not been able to address or have input to the records of my son. And it was bad enough to start and it just keeps building, building, building. I mean, if you even compare these records between the psych eval, who knows what Mary Paine has, the hospital, caseworkers, visitation services, none of them even match. And they just kind of build on what the last person had. And I just...you know, I've even asked the caseworker, how are we going to correct this? I mean this is going to follow my son the rest of his life. How are we going to...who is responsible? Who's parenting my son? You know, who is responsible? Who is going to stick with him to the end? And the answer to that is nobody, you know, if I don't. And I've had to question myself. You know, did I harm him? Have I done something? And it's just...it's...I've had pains in my life, but I cannot even begin to describe what this feels like. And I did childcare for seven years before I was affected by the district court system when they brought his dad back in his life, which I think is part of the trauma that this boy suffers from now, which...and he also, 14.5 (years old), has a right to know his father. I don't believe his father is a safe place, but now CPS is probably going to send him there. And I'm glad. I don't want the responsibility. But the way we've gone about this is horrific, I mean horrific. And the money that has been spent on what my family has endured with accomplishing nothing, like I said, he's still in a non-English

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speaking foster family and has asked the caseworker to go back to a respite place that at least speaks English and she's not letting him go. You know, it's...my son is not getting any care and he's had...been gone since the first of October. And I need to have rights as his parent that are followed and somewhere to go to be heard. This CPS system is vicious. They're not being truthful. You know, I'm tired. My kid is not a commodity. He's not. He's a child and I'm his parent and I need to have rights. And our juvenile court system needs to be held accountable and needs to be more transparent because this is not working. [LB1010]

SENATOR SEILER: Thank you for your testimony. [LB1010]

TRACEY LATTURE: Thank you. [LB1010]

SENATOR SEILER: Any further neutral? Senator Williams, you may close. Senator waives. There's no further documents to add to the testimony. That closes the hearing. Senator Kolterman...pardon? [LB1010]

OLIVER VanDERVOORT: He's on his way. [LB1010]

SENATOR SEILER: He's on his way? Okay, he's on his way so we'll wait for him. Senator Kolterman, we're ready for LB975. Senator Kolterman, did...this packet, is that what you handed out? [LB975]

SENATOR KOLTERMAN: No. What I handed out was some... [LB975]

SENATOR SEILER: Okay, these are to be... [LB975]

SENATOR KOLTERMAN: ...support. [LB975]

SENATOR SEILER: ...supplement testimony? [LB975]

SENATOR KOLTERMAN: Must be. [LB975]

SENATOR SEILER: Okay. [LB975]

SENATOR KOLTERMAN: (Exhibit 1) I handed out an amendment for the committee... [LB975]

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SENATOR SEILER: You...yeah, he's got that. [LB975]

SENATOR KOLTERMAN: ...as well as a letter of support from a foster family. [LB975]

SENATOR SEILER: Okay, we're ready to go. You may proceed, Senator. [LB975]

SENATOR KOLTERMAN: Okay, thank you. Chairman Seiler and members of the Judiciary Committee, my name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n, and I represent District 24, Seward, York, and Polk Counties. Today I bring LB975 before you. I introduced this bill because I am concerned about the many kids in our state foster care system who are awaiting a loving family. Nebraska can't afford to lose one safe and loving foster family and it can't afford to lose one child-placing agency. Since I introduced this bill, I have received some pretty hurtful comments. I hope the members of this committee know me well enough to recognize that personal attacks on my character are unwarranted and in bad taste. While I realize there may be some disagreement about some of the philosophical points of this bill, I know we can discuss it with mutual respect. In Nebraska, there are thousands of children waiting for placement in loving homes every day. Statistics from 2014-15 show there were 5,630 kids who received some sort of out-of-home care during the fiscal year. Currently there are 21 service providers for these children in the state of Nebraska. Of those, there are a handful of faith-based agencies. A few of those agencies brought this legislation to my attention because of concern that they may not be able to carry out their mission as they do today. In other areas of the country, agencies have been forced by state and local governments to choose between serving vulnerable children and the very faith that prompted them to serve in the first place. Quite simply, protections for faith-based agencies were not in place in Boston, San Francisco, Washington, D.C., and Illinois. The most unfortunate part is that the children were hurt the most in those states. Such agencies, which had been serving needy children for decades, could not adequately protect their conscience while protecting children. I want to be clear. My intention is to make sure we keep every provider we can and not lose any services for the kids that I'm talking about. This legislation does not change the current landscape. Rather, it will maintain the status quo by allowing the state to connect with a diverse array of providers. No providers will be forced out, no parents will be turned away, and no children will be denied service under this bill. This bill strikes a balance and ensures diversity. Our current foster care system works because each agency serves a unique portion of that population. The agencies are not interchangeable and neither are the families that they serve. Child placement cannot be a one-size-fits-all solution because each child, each family, and each agency has unique interests and strengths. If we truly want to embrace diversity, then we need to embrace the rights of everyone, even if we disagree with their beliefs. I'm not here to defend any one set of sincerely held religious beliefs. I don't want to wish...I don't wish to claim that religious beliefs are superior to secular beliefs. It's not my intention to argue that my beliefs are correct or superior, nor am I asking that you agree with or celebrate my beliefs. We all have our own conscience. We all operate under our sincerely held beliefs. I'm merely asking that

all beliefs be protected, those of faith-based child-placing agencies and those of secular agencies. Even though it might lead us in different directions, celebrating diversity requires tolerance for all. Following me, you'll hear from some of the organizations I have worked with over the past few months. You'll hear from a family who receives services and an attorney that will discuss the legal considerations of this bill. Before I close, I want to share with you that one of the reasons I had an interest in serving on Health and Human Services Committee, a strong interest, was because my brother and sister-in-law adopted five children out of the foster care system some 20 years ago. I understand the challenges and the positive outcomes that have resulted in these five kids being brought into and raised in a loving home. One of my goals is to make sure that every child is protected and has that opportunity to thrive, just like the opportunity my brother and sister-in-law gave to those five children. Having as many providers as possible ensures we maintain the status quo, but I don't merely want to maintain the status quo in the foster care system. I want our foster care system to be the best in the nation. I want all children to have safe and loving homes as quickly as possible. And I will continue to address this need during my time as a state senator. I appreciate your consideration and respectfully ask that you vote yes and move this to the floor of the Legislature. Thank you, and I'd be happy to answer any questions you might have. [LB975]

SENATOR SEILER: Senator Krist. [LB975]

SENATOR KRIST: Hi. Thanks for coming, Senator Kolterman. Two questions. Oftentimes when someone brings an amendment at this point, and I was just guilty of it earlier today, it's difficult to find out what significantly has changed between the green copy and what you have. And I'm trying because, as you were introducing, it appears to me that most of the changes or all the changes are in Section 5. [LB975]

SENATOR KOLTERMAN: Yes, they are, the legal aspect of the bill. [LB975]

SENATOR KRIST: Okay. Would you rather we ask the attorney that follows? [LB975]

SENATOR KOLTERMAN: Ask the attorney, but it really protects the state, gives the state broader protections, as I understand it. [LB975]

SENATOR KRIST: Who asked you to bring that change? [LB975]

SENATOR KOLTERMAN: Well, we've been talking to various committees. We talked to Health and Human Services. They were interested. And we've also had some individuals ask us to consider that. [LB975]

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SENATOR KRIST: Okay. And then can you talk me through...I mean I'm a little confused about the fiscal note. Did you want to address that now or... [LB975]

SENATOR KOLTERMAN: I'll talk briefly about the fiscal note. We got that back yesterday. [LB975]

SENATOR KRIST: Okay. [LB975]

SENATOR KOLTERMAN: And it was \$30 million. Apparently there was a misunderstanding and I believe Mr. Weinberg will address that as well. He follows me. [LB975]

SENATOR KRIST: Okay. [LB975]

SENATOR KOLTERMAN: But now it's zero, I believe. [LB975]

SENATOR KRIST: Okay. That's true. And I'm just noting the difference between what I saw before and what I'm seeing now, so. [LB975]

SENATOR KOLTERMAN: Yeah. [LB975]

SENATOR KRIST: Okay, very good. Thank you. [LB975]

SENATOR KOLTERMAN: You're welcome. Thank you. [LB975]

SENATOR SEILER: Senator Morfeld. [LB975]

SENATOR MORFELD: Senator Kolterman, you and I have discussed this at length in private and I appreciate your intent and purpose behind making sure that we have high-quality, loving families for all Nebraska children. And I don't doubt your intent to do that here. One of the things that we have to be concerned about though as lawmakers is not only what the introducer's intent is but what other people's intent may be or what the results of the legislation that we pass may be. And I read this bill and I just read the amendment and I see Section 5. As Senator Krist said, I don't think it's a huge departure from the original bill. And this is so broad in scope that if a religious organization believes as though...believes that they don't want to give a child to a black family because it's against their religious beliefs, supposedly, this legislation would cover that. There was somebody last year that came in and testified, I believe on Senator Jeremy Nordquist's bill, and stated that he didn't believe as though a single mother, which I was raised

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by, would be a fit parent for purposes of foster or adoption as well. Perhaps that's a sincerely held religious belief of some. And so my concern with this bill, Senator, is the sweeping and broad nature of it, and not only that, but also giving a false sense of security to these agencies that they're somehow covered by state law when, in fact, they're violating fairly well-established federal law and precedent. So those are my primary concerns. My secondary concern is that I think that this is being motivated by some religious organizations that have come to you. And I understand your intent with this and I respect your intent, you know, to a certain extent. But it's the unintended consequences, or maybe intended consequences by some, perhaps not you, that I am concerned about. And I think it's targeted toward the LGBT population. I mean I think that's the elephant in the room here. And I guess I want to get those concerns on the record and I'd be happy to hear your response to those concerns. [LB975]

SENATOR KOLTERMAN: Well, first and foremost, I appreciate your concerns and the fact that we have had some very straightforward and candid dialogue about this bill. My bill is not intended to prevent any one person from adopting, whether they're black, whether they're same-sex married couples, whether they're gay, lesbian. There is nothing in this bill that prevents them from adopting in the state of Nebraska. As far as your concerns about a black person, that's all protected by the constitution, as I understand it. That trumps this so...and I'll let the constitutional attorney address those issues because he's a lot broader in talking about that than I am. You have a law degree; I don't. This is not an easy bill to carry, I'm very much aware of that. But I do not...can you imagine what it would be like if we all of a sudden lost four or five providers in this state? We already have 5,600-and-some kids on an annual basis going through the system. So if you take 25, roughly, 20, 25 percent of those providers away that are serving this part of the state as well as the western part of the state, we're hurting kids. And again I go back to the fact that if there is an organization that chooses not to place in those family status that we talked about, there are potentially 15 others that will. And so while I understand your dismay, your concerns about the bill, I don't carry those same concerns. But then again, I'm not a legal scholar. That's why I have these people behind me. It was broadly written because I think it protects both ways and I think they're going to address that as well. [LB975]

SENATOR MORFELD: Okay. [LB975]

SENATOR KOLTERMAN: But thank you, Senator. I appreciate your candidness and your willingness to talk about it. [LB975]

SENATOR MORFELD: Thank you, Senator. [LB975]

SENATOR KOLTERMAN: You're welcome. [LB975]

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SENATOR SEILER: Senator Chambers. [LB975]

SENATOR CHAMBERS: Senator, this white amendment copy, this is to become the bill?  
[LB975]

SENATOR KOLTERMAN: It's an amendment to the bill that would have to be introduced by  
Judiciary. [LB975]

SENATOR CHAMBERS: It says, "Strike the original sections and insert the following new  
sections," so that would mean the green copy we can disregard and just work from this that we  
have. Are you the one who submitted this amendment? [LB975]

SENATOR KOLTERMAN: I don't...yeah, I want to submit the amendment but I don't know if  
that's the entire redraft of the bill. [LB975]

SENATOR CHAMBERS: The number is AM2177. [LB975]

SENATOR SEILER: My quick glance shows that it does replace the entire bill. [LB975]

SENATOR KOLTERMAN: Yeah. [LB975]

SENATOR CHAMBERS: Okay. [LB975]

SENATOR KOLTERMAN: Is it...yes, it does. [LB975]

SENATOR CHAMBERS: And this is your amendment? [LB975]

SENATOR KOLTERMAN: Yes, it is. [LB975]

SENATOR CHAMBERS: Then I'm going to ask you from this amendment, because you have it  
before you. It starts with legislative findings and declarations, which means that these statements  
are taken by the Legislature to be true. I want to call your attention to one. Will you look at  
starting in line 14 on page 1, and it says, "Significantly, faith-based organizations have a lengthy  
and distinguished history of providing child welfare services which predates government  
involvement." On what facts is that based? [LB975]

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SENATOR KOLTERMAN: The fact that many of these organizations have been in the business of providing adoptions and family placements before HHS got into the business. [LB975]

SENATOR CHAMBERS: Well, but it says, "distinguished." That's an assertion that they're...that you're making. It's a value judgment that somebody may disagree with, correct? [LB975]

SENATOR KOLTERMAN: Correct. [LB975]

SENATOR CHAMBERS: Now let's take the Christian Science religion. [LB975]

SENATOR KOLTERMAN: Okay. [LB975]

SENATOR CHAMBERS: And they don't believe that medical care ought to be given to children and the withholding of that care does not constitute child abuse. That's what they want but other states have refused and Nebraska has not agreed to that. Would they be...they would be covered by this though, wouldn't they, if it's their sincerely held belief that medicine should not be...you know, you don't use medicine even if a child has a treatable disease? Then the state could not do anything about that if this law is passed. Isn't that true? [LB975]

SENATOR KOLTERMAN: That could very well be true, Senator. I'd have to...it's something that needs to be discussed further. [LB975]

SENATOR CHAMBERS: Well, it states when we get to the operative language: A child-placing agency aggrieved by a violation of this section, of Section 4 of this act, may assert that violation as a defense in any administrative or judicial proceeding. So they would be given an absolute defense if the state said, you're not going to do this, when you deny children medical care. The state has a trumping requirement to stand in loco parentis for children when their own family is not doing the right thing. And that's going to be given over to a religion that might say, we don't believe in giving medicine to children. [LB975]

SENATOR KOLTERMAN: You bring an interesting point that's never been addressed to me. I appreciate that. I would ask that you ask the attorney coming behind me to address that. [LB975]

SENATOR CHAMBERS: Well, I'll tell you what, I'm not going to engage in any argument back and forth with people because this would become a religious argument. [LB975]

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SENATOR KOLTERMAN: Okay. [LB975]

SENATOR CHAMBERS: This is a religious exemption. All a person has to assert is that this is my sincerely held belief, and that takes care of everything. [LB975]

SENATOR KOLTERMAN: Okay. [LB975]

SENATOR CHAMBERS: So they can say what they want to. And I might ask a question or two if it becomes what I consider to be intolerable. [LB975]

SENATOR KOLTERMAN: Okay. [LB975]

SENATOR CHAMBERS: But I'll be honest with you, there is no form that this bill can take that I would support. [LB975]

SENATOR KOLTERMAN: I appreciate that. [LB975]

SENATOR CHAMBERS: Even if it wasn't...if it was not religion but sincerely held conviction and they substituted something else for religion, that is too broad an exemption when we're talking about the welfare of children, the state granting licenses, giving its sanction and approval to the activities, whatever they are, of these operations as long as they say it's their sincerely held belief. Is there anything in here that says if the belief violates an existing law? [LB975]

SENATOR KOLTERMAN: I'm not sure. [LB975]

SENATOR CHAMBERS: Okay. And that's to give notice to those who are coming after you... [LB975]

SENATOR KOLTERMAN: Correct. [LB975]

SENATOR CHAMBERS: ...because you and I had talked and you said I could kind of,... [LB975]

SENATOR KOLTERMAN: Yeah, we... [LB975]

SENATOR CHAMBERS: ...this isn't your term,... [LB975]

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SENATOR KOLTERMAN: Yeah. [LB975]

SENATOR CHAMBERS: ...use you as a sounding board for certain things. And I'm doing that now to get some things out there, not all of them. [LB975]

SENATOR KOLTERMAN: I appreciate that. [LB975]

SENATOR CHAMBERS: But I'm not going to ask you a lot of questions because you and I can talk, as we do anyway. But if I said nothing at all, it might create the impression that I have no objections to anything that is in this amendment. And I have a boatload of them. [LB975]

SENATOR KOLTERMAN: I'm sure you do, Senator. [LB975]

SENATOR CHAMBERS: Okay. [LB975]

SENATOR KOLTERMAN: Thank you. [LB975]

SENATOR CHAMBERS: That's all I would have at this point. [LB975]

SENATOR SEILER: Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. And I, too, have met with you, Senator Kolterman. [LB975]

SENATOR KOLTERMAN: Yes, you have. [LB975]

SENATOR PANSING BROOKS: And I appreciate your coming to speak with me. As you know, I have quite fervently held personal concerns with this bill. Furthermore, you know, it's interesting because, when we met and then again today in your testimony, I thought you made the arguments for why this is not necessary. And those statements included that you were concerned about how many kids are wanting and waiting for families. That, to me, is a complete argument for why this bill is not necessary, and the fact that there are thousands waiting for placement. So to deny one because of the person whom they love, that just doesn't balance out to me in favor of the religious-based test versus the test of the needs for the kids. And I agree with you that celebrating diversity requires tolerance for all, totally agree with you on that. So I would hope that your group would also take that to heart and that all children should have safe and loving homes. And again, just piggybacking on some of what Senator Morfeld and Senator

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Chambers said, again, I talked to...when we talked about if we had a Muslim agency, whether or not they could discriminate and say only Islamic families could...they would only place children in Islamic families. And both you and the person with whom we were speaking said, oh, no, that's not what we intend at all. So again, therein lies the problem with fervently held religious beliefs because it's just a matter of whose beliefs garner the most power and whose beliefs we want to follow. So again, I'll be...I don't want people to be disrespectful and rude to you. I do feel that it's hurtful, some of this. I had a friend that I saw today that was crying because of this bill. So while you have people attacking you because you have decided to advocate for something, you're doing something that is affecting people's lives that is very hurtful. To say to me that my son could not have...would not be sufficient or a good enough parent to place one of the children who is in need in this state into his home is just wrong, it's thoughtless, it's not dealing with the best interests of the child, because I tell you that my son would be one of the best parents should he so decide to adopt or have a foster child. So thank you and we'll continue on with all the things about the fiscal note and everything and all the confusion there. [LB975]

SENATOR KOLTERMAN: I appreciate your comments, Senator. And I appreciate the fact that we have talked. I don't necessarily agree with your thoughts and you don't necessarily agree with mine, but we'll continue on. [LB975]

SENATOR PANSING BROOKS: Thank you. [LB975]

SENATOR KOLTERMAN: (Inaudible). [LB975]

SENATOR SEILER: Senator Ebke. [LB975]

SENATOR EBKE: Thank you, Senator Seiler. Thank you for bringing this, Senator Kolterman. I have just a couple questions because I feel like the message may be twisting a little bit here. Tell me, and I think I heard a number, but about what percentage of placements are made by groups that might be covered by this bill. Do you have any rough idea? [LB975]

SENATOR KOLTERMAN: I've got, yeah, I've...you know, out of 5,600...well, first of all, the 5,600 is an ongoing, it's kind of a moving target. [LB975]

SENATOR EBKE: They keep flowing in. [LB975]

SENATOR KOLTERMAN: And to be honest with you, we've had very much, a lot of difficulty getting accurate figures out of HHS as to exactly how many kids. We're under the impression that there's probably somewhere in the neighborhood of 600 kids a year who would fall into this

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category for the four or five organizations I'm working with. And they're going to be addressing you in a few minutes so they could address that specifically more than I can but... [LB975]

SENATOR EBKE: So about 600 kids a year are placed by these organizations. And so is...are... [LB975]

SENATOR KOLTERMAN: That's with the lead two that I'm talking about. There's others there but they're not as prevalent as the two. [LB975]

SENATOR EBKE: Okay. And so is your argument then that these religious, faith-based, whatever the terminology, organizations or agencies are important to filling...you know, that if they go away because they feel like they can't fill the...make the placements based on their deeply held beliefs, that then there could be...you know, there's going to be a gap there someplace, that there will be more kids? Does that... [LB975]

SENATOR KOLTERMAN: Yes, that's what I'm trying to point out is there could be a huge backlog of our...we already have 5,600, kind of an ongoing basis. So if you were to take 20 to 25 percent of the providers away, it's going to have a negative effect on those 5,600 kids. [LB975]

SENATOR EBKE: Okay. [LB975]

SENATOR KOLTERMAN: And I just don't...there is an easier way to do it, in my opinion. Obviously, there is other opinions to that but... [LB975]

SENATOR EBKE: Sure. So if there are 25 percent of the providers that are covered by this particular legislation, give or take, then there's a lot that wouldn't fall into that category, right, of current providers? [LB975]

SENATOR KOLTERMAN: Right. [LB975]

SENATOR EBKE: Is there a way that we could address some of the concerns about, you know, people piling on and, you know, if...are there...there are established providers who have been in the system for a long time? [LB975]

SENATOR KOLTERMAN: I think most of them have been around for a long time even prior to the time we started adoptions in the state through HHS and placements. I know for a fact several of the faith-based organizations are not going to participate in this. They've talked to me about

that. They choose that they're not going to differentiate. But those that do want to differentiate have some sincerely held beliefs that that's what they want to do. [LB975]

SENATOR EBKE: Sure, and...but, I mean, I suppose one of the concerns would be that all of a sudden you get new groups that decide they're going to come in and differentiate based on religion. Maybe you...maybe there's a, I guess, a reverse grandfather clause almost that those who have been around for a long time or are in the system as of the date that this is...you know, are exempted, but maybe those in the future...I'm just kind of brainstorming here, so my... [LB975]

SENATOR KOLTERMAN: Yeah, I don't think we want to limit that to anybody because we might have some organizations that come in and say, we want to specialize in a certain area. Maybe that area is for people that we're talking about that Adam was referring to. I don't know. [LB975]

SENATOR EBKE: Okay. Gotcha. Thank you. [LB975]

SENATOR SEILER: Further questions? Senator Chambers. [LB975]

SENATOR CHAMBERS: Senator Kolterman, when a bill is brought, it's brought for a reason. I will ask some of these other people what they mean by faith based, what does faith mean. [LB975]

SENATOR KOLTERMAN: Okay. [LB975]

SENATOR CHAMBERS: What are they doing that they feel the state will stop them from doing and, therefore, they need this legislation to give them an exemption? [LB975]

SENATOR KOLTERMAN: You know, Senator, that's a good question. I'll attempt to answer that for you. It might not be as accurate as it should, but I'll attempt. [LB975]

SENATOR CHAMBERS: Yeah, just try. [LB975]

SENATOR KOLTERMAN: In some of the states, for example, in Massachusetts, one of the faith-based organizations was asked to make a placement. They didn't feel comfortable about doing it. [LB975]

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SENATOR CHAMBERS: Do what? [LB975]

SENATOR KOLTERMAN: They were asked to make a placement or asked to make placements that they didn't feel comfortable with. So by reason of their religious beliefs, they had to discontinue operating in that state. [LB975]

SENATOR CHAMBERS: So it was a situation where they are in a position to make a placement. Is there a child that they are dealing with who is to be placed? Just what is the context in which this placement was to occur? [LB975]

SENATOR KOLTERMAN: So, and Director Weinberg can probably explain that aspect a little differently. [LB975]

SENATOR CHAMBERS: Okay. [LB975]

SENATOR KOLTERMAN: But it's my understanding that when the agency has a child or children that have come up for placement, at that point in time they might call in one of these organizations--and, I don't know, there's 21 of them--and say, we've got these children that need to be placed, are you willing to place them? And then they take a look at the file and do their research and decide, yeah, we can do that or, no, we can't do that. That's how I understand it to happen. [LB975]

SENATOR CHAMBERS: It's hard for me to understand you. You said you that...first of all, who contacts the agency about a placement? [LB975]

SENATOR KOLTERMAN: The agency...HHS. [LB975]

SENATOR CHAMBERS: Okay, HHS contacts one of these agencies... [LB975]

SENATOR KOLTERMAN: Correct. [LB975]

SENATOR CHAMBERS: ...and will tell this agency we have children available for placement. [LB975]

SENATOR KOLTERMAN: Correct. [LB975]

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SENATOR CHAMBERS: And then they tell this agency, we would like you to make a placement. [LB975]

SENATOR KOLTERMAN: Correct. [LB975]

SENATOR CHAMBERS: And the agency says, for religious purposes or based on our faith, we cannot make such a placement. [LB975]

SENATOR KOLTERMAN: That could be one of the reasons. Another reason might be the fact that they interview different families and know who is looking for children and maybe it doesn't fit that family based on the family demographics. [LB975]

SENATOR CHAMBERS: Can they... [LB975]

SENATOR KOLTERMAN: Again, that's questions that go a lot deeper than I understand how the process works. [LB975]

SENATOR CHAMBERS: But then when they asked you to bring this bill, they didn't give you anything specific that's happening to them in Nebraska right now that leads them to want this legislation? They just told you, we've got problems, we're not going to tell you what they are, trust us and bring this bill. [LB975]

SENATOR KOLTERMAN: No, they're concerned that they're going to be asked and forced out of the business. [LB975]

SENATOR CHAMBERS: So I want to know what they told you is a concern to them. What kind of placement do they not want to make? [LB975]

SENATOR KOLTERMAN: Well, it depends on their religious beliefs. So as an example, if there's a...I'll use the example of a same-sex couple. They might not...their religions might not allow for that so... [LB975]

SENATOR CHAMBERS: Then why should they be in the business that the state licenses if they're going to deny to a placement where the U.S. Constitution, the state constitution, the state courts have sanctioned? And these organizations want to work with the state but they don't want to comply with the rules. [LB975]

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SENATOR KOLTERMAN: Well, and that's a question you're going to have to ask them. But at the same time, religion is also a protected class under the constitution, freedom of religion. [LB975]

SENATOR CHAMBERS: If they believed in corporal punishment and they said that we want to do this and we want to be exempt from any requirement that would prevent some of these kind of punishments, they want this to allow them to do that, don't they? [LB975]

SENATOR KOLTERMAN: No, I don't believe so. Corporal punishment is illegal. It's child abuse. [LB975]

SENATOR CHAMBERS: Yeah, but if they sincerely hold that belief, then this covers them. It's a sincerely...there is no restriction in here. There is nothing in here that even says if you believe in sexual contact with a child, if that's your sincerely held religious belief. This is blanket. This is absolute. It allows for no exceptions. It doesn't say anything that violates the law; it doesn't say that. This gives them something that nobody else would have. They'll answer that. I just wanted you to be the sounding board and they can be aware of my area of concern. And I want you to listen carefully to their answers. [LB975]

SENATOR KOLTERMAN: I will, Senator. Thank you. [LB975]

SENATOR CHAMBERS: Okay. That's all I have. [LB975]

SENATOR SEILER: Any further questions? Seeing none, thank you. You wanted Doctor...or Director Weinberg to appear next? [LB975]

SENATOR KOLTERMAN: Yeah, I want him to go next... [LB975]

SENATOR SEILER: Okay, that's fine. [LB975]

SENATOR KOLTERMAN: ...so he can talk about the fiscal note and their position on the bill. Thank you. [LB975]

SENATOR SEILER: Okay. [LB975]

DOUG WEINBERG: (Exhibit 2) Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Doug Weinberg, D-o-u-g W-e-i-n-b-e-r-g. I'm the director of the

Division of Children and Family Services in the Department of Health and Human Services. I am here today to testify in support of LB975. Thank you, Senator Kolterman, for introducing this bill and working to ensure that children and families in Nebraska continue to receive child-placing services from faith-based organizations. The Department of Health and Human Services has a longstanding public-private partnership with a diverse group of faith-based and non-faith-based organizations that we currently work with to find and retain safe, loving, and supportive homes for our children. Currently the department contracts with 36 licensed placing agencies, 10 of which are faith based which are currently serving 504 children, or 17 percent, of the current out-of-home population in our division. There are approximately 3,000 children currently in out-of-home placements with all of our agencies today. As you can see by the numbers, Nebraska has a critical need to find and retain safe, loving, and supportive homes for these children, and faith-based organizations play a large part in this effort. The state cannot afford to lose any providers as we work collectively with various agencies to find a safe and loving home for these children. The department values the relationship we have with these service providers and recognizes the work they do for the children and families in Nebraska. LB975 allows Nebraska's faith-based organizations to support the work of the department and maintain practices which are in alignment with their sincerely held religious beliefs. Even with accommodations provided by LB975, my agency has access to other child-placing agencies that can assume responsibility and safely place children of any need. This bill will not affect the department and our policy will continue to license all prospective foster parents. That will remain in force. Additionally, the department will continue to place with families according to the child's best interests. On a final note, I want to briefly explain the fiscal note initially filed by the department. A quick review of the bill was thought to potentially place our Title IV-E funding in jeopardy. After more careful legal review, since our placement agencies are not state actors, I am comfortable with the final fiscal note showing no impact of the bill. Thank you for the opportunity to testify before you today. We believe LB975 will help DHHS continue our mission of helping people live better lives. I am happy to answer any questions. [LB975]

SENATOR COASH: Thank you, Director Weinberg. I'm going to go ahead and ask a couple of questions. In your testimony you said that child-placement agencies are not state actors. What do you mean? What does that mean? [LB975]

DOUG WEINBERG: They are subrecipients. They are contractors with the state. [LB975]

SENATOR COASH: Okay. [LB975]

DOUG WEINBERG: So the state has responsibility for licensing foster homes and has responsibility for placement decisions. [LB975]

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SENATOR COASH: Okay. Since the bill just references child-placing agency has the same meaning in Section 71-1926, which is not referenced in the bill, can you just briefly describe what a child-placing agency is responsible for doing? [LB975]

DOUG WEINBERG: The numbers that I have are kind of a broader pool. It includes not only foster care placing agencies, which is about 20 to 25, but also group homes and small shelters... [LB975]

SENATOR COASH: Okay. [LB975]

DOUG WEINBERG: ...as well as larger residential facilities. [LB975]

SENATOR COASH: So the line goes from the state, who has responsibility for the children, to the child-placing agency to a further subcontractor which could be, you know, a family who is providing foster care. Is that right? [LB975]

DOUG WEINBERG: That would be correct. For the foster care placing agencies, their primary role is to recruit, train, and provide foster homes that we eventually will license through the state as a state agency. [LB975]

SENATOR COASH: Okay. [LB975]

DOUG WEINBERG: And then they will provide wraparound services to help case manage those children in those homes. [LB975]

SENATOR COASH: Okay. My understanding of this bill is that this bill primarily deals between the relationship between those top two tiers. So this bill addresses the relationship between the state and the child-placing agency, correct? [LB975]

DOUG WEINBERG: Correct. [LB975]

SENATOR COASH: And does the state have responsibility to license...do these child-placing agencies have licenses that are given by the state? [LB975]

DOUG WEINBERG: I know the residential facilities do. I don't know if the placing agencies, the foster home placing agencies, are technically licensed. [LB975]

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SENATOR COASH: Okay. [LB975]

DOUG WEINBERG: We license the homes, the individual homes. [LB975]

SENATOR COASH: But there's a least a...but I'm just talking about that top kind of three levels of service, right? State, child-placing agency, and then child-placing agency will go out and find the foster families, right? [LB975]

DOUG WEINBERG: Um-hum. [LB975]

SENATOR COASH: So I'm just talking about the relationship between the state and the child-placing... [LB975]

DOUG WEINBERG: Okay. [LB975]

SENATOR COASH: ...that relationship. Is that a licensure relationship? Contractual? [LB975]

DOUG WEINBERG: Contractual. [LB975]

SENATOR COASH: It's a contractual relationship. [LB975]

DOUG WEINBERG: Yes. [LB975]

SENATOR COASH: Okay. [LB975]

DOUG WEINBERG: And they currently do not have a "no eject, no reject" provision. [LB975]

SENATOR COASH: They do or do not? [LB975]

DOUG WEINBERG: They do not. [LB975]

SENATOR COASH: They do not, so... [LB975]

DOUG WEINBERG: So we make referrals for any one of a number of reasons. They could have...they don't have capacity, don't have the right family that's in a child's best interest. They routinely do not take referrals. [LB975]

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SENATOR COASH: So in those contracts that the state has with the child-placing agency, are they required to place any child that is referred to them? [LB975]

DOUG WEINBERG: If it's in the child's best interest. That's the overriding...that is the general rule. That drives any placement decision. It has to be in the child's best interest. So when our case manager calls and contacts some of these placing agencies, they will share, you know, the case specifics, the needs of the child and the family, to make sure that agency has a foster home that can meet that child's needs. [LB975]

SENATOR COASH: And under the current law, that child-placing agency is required through that contract to make that placement? [LB975]

DOUG WEINBERG: They can say, we don't have the appropriate foster home, so they are not required to accept a referral. [LB975]

SENATOR COASH: Okay. [LB975]

DOUG WEINBERG: And we'll find another agency that will that does have that capacity or we actually have some foster homes that we manage ourselves at the state. [LB975]

SENATOR COASH: Okay. The bill, even the amended bill, puts a wall between...I mean Section 4 is kind of the meat of this bill where it says the state shall not take any adverse action because the agency declines to do it. Under the current law, what would be an example of that adverse action that the department would have to take? [LB975]

DOUG WEINBERG: Again, I'm not an attorney, nor do I pretend to be one. But I would...I can envision a situation where if a provider consistently refused to take referrals, I guess we could cancel their contract. To my knowledge, we've never done that, at least not in any recent time. [LB975]

SENATOR COASH: So under the current law, if a provider says, no, I don't want to place that child, for whatever reason, under the current law you as the director would say, well, you keep turning down children so we're going to cancel your contract. [LB975]

DOUG WEINBERG: Well, what will happen at some point, we'll stop making referrals. [LB975]

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SENATOR COASH: Okay. And if this bill became law, if the reason that the child-placing agency said, you know, I'm not going to take that or provide for that placement, that would not be grounds for the department to take any action? [LB975]

DOUG WEINBERG: That would...any adverse action such as... [LB975]

SENATOR COASH: Any... [LB975]

DOUG WEINBERG: ...contract... [LB975]

SENATOR COASH: ...such as canceling the contract. [LB975]

DOUG WEINBERG: Yeah, but we could just stop making referrals. I don't think that would be deemed an adverse action. [LB975]

SENATOR COASH: But so not making a referral would not be an adverse... [LB975]

DOUG WEINBERG: I wouldn't consider it. Again, I'm not an attorney. [LB975]

SENATOR COASH: Okay. [LB975]

DOUG WEINBERG: But, you know, what's paramount is that a licensed placing agency has appropriate families that can meet the needs of the child... [LB975]

SENATOR COASH: Okay. [LB975]

DOUG WEINBERG: ...that's in the child's best interest. [LB975]

SENATOR COASH: Does the state regulate the relationship...I'm going to go between the second and third tier here. So does the state regulate or have an interest in what a child-placing agency does and how they, in case of foster care, for example, the relationship that they have with their foster care families? [LB975]

DOUG WEINBERG: I don't think they have a contractual relationship. If there's any contractual relationship, it's between the foster family and the state. And we issue the license. We maintain

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files. We do the background checks. So we have the fiduciary responsibility to make sure they meet foster care regulations. [LB975]

SENATOR COASH: But a child-placing agency can pick whatever foster care...I mean they get to recruit, choose, train whatever foster families they want. Is that... [LB975]

DOUG WEINBERG: That's correct. [LB975]

SENATOR COASH: And so can a child-placing agency pick and choose whatever foster families they want to have under their umbrella to work with the department on? [LB975]

DOUG WEINBERG: I suppose that's the case. I haven't really thought about it that way. But they do the foster parent recruiting. [LB975]

SENATOR COASH: Right. And they can recruit the kind of families that they want to have under their umbrella, correct? [LB975]

DOUG WEINBERG: I would assume so. [LB975]

SENATOR COASH: And then licensing of a foster family, for example, that comes back, I mean that's the bottom level, but that comes back to the top. I mean the state has to approve any family that the child-placing agency says, yeah, we'd like to have this family be under our banner, right, and we'd like them to be able to be one of the families we could place foster children with. The department has to approve that. [LB975]

DOUG WEINBERG: Right. They will present us a foster home, a foster family, and we will do the home inspection; we'll do background checks; we'll make sure the training was completed. And we will, if everything is appropriate, we will issue the license. [LB975]

SENATOR COASH: But the state under the current law has no...other than the licensing requirement, the state doesn't get into the business of the choosing of the...which families fall under their banner. [LB975]

DOUG WEINBERG: Other than in certain rural parts of Nebraska, especially out west, we do our own recruiting and we do manage our own foster homes. [LB975]

SENATOR COASH: Okay. [LB975]

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DOUG WEINBERG: And we can do that anywhere if we so choose. [LB975]

SENATOR COASH: Right, okay, but...okay, thank you. Senator Morfeld. [LB975]

SENATOR MORFELD: Well, thank you for coming today, Director Weinberg. This is kind of strike two of three for me, isn't it? We're not starting out very well. You know, I think one of my concerns with you guys testifying on this is that I think a lot of this is...what we should really be talking about is the best interest of the child and the children that we should be placing in adoption and foster care. And instead I think that we're letting the religious and political interests of the adults get in the way of the calculus with the best interests of the child. Two different questions based on your testimony just now: I guess I don't understand how delegating the state's role to a private entity does not make it an actor of the state. And are you aware that a federal court has found in Pennsylvania that they are, in fact, actors of the state? [LB975]

DOUG WEINBERG: I am not. [LB975]

SENATOR MORFELD: Okay. Well, I'd like that to be noted for the record. Also, how is stopping referrals not an adverse action? [LB975]

DOUG WEINBERG: I don't know other than I'm sure it happens all the time, you know, as providers, you know, come and go, as they scale up or scale down. [LB975]

SENATOR MORFELD: Okay. [LB975]

DOUG WEINBERG: I mean it's not a premeditated, common practice by any means. [LB975]

SENATOR MORFELD: So you note that you license these providers. Do you not contract with these providers as well? [LB975]

DOUG WEINBERG: We contract with the providers; we license the homes. [LB975]

SENATOR MORFELD: Okay, so you contract, so you license the provider, you contract with the homes. Does the... [LB975]

DOUG WEINBERG: Other way around,... [LB975]

SENATOR MORFELD: Excuse me? [LB975]

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DOUG WEINBERG: ...contract with the providers,... [LB975]

SENATOR MORFELD: Contract with the provider. [LB975]

DOUG WEINBERG: ...license the homes. [LB975]

SENATOR MORFELD: So you have a contractual, the state has a contractual relationship with the provider. [LB975]

DOUG WEINBERG: Correct. [LB975]

SENATOR MORFELD: Okay. And you license the... [LB975]

DOUG WEINBERG: The individual homes. [LB975]

SENATOR MORFELD: ...the individual homes. [LB975]

DOUG WEINBERG: Yes. [LB975]

SENATOR MORFELD: Okay. So if you're contracting with the provider and the provider...let's step back for a minute. What kind of function is the provider providing? [LB975]

DOUG WEINBERG: Primarily foster parent recruitment and training and then wraparound services once a child is placed. [LB975]

SENATOR MORFELD: Is that a function that the state also provides from time to time? [LB975]

DOUG WEINBERG: We do in the western part of the state. [LB975]

SENATOR MORFELD: Okay. And so in those instances the provider is acting as an actor of the state because they're providing services that the state also provides, correct? [LB975]

DOUG WEINBERG: Again, I can't address the semantics. I mean I'm not an attorney. [LB975]

SENATOR MORFELD: You don't have to be an attorney to admit that this is basic logic. And I mean it's only logical to make the connection that if you as a state actor, because you are...excuse me, you as a state are providing services and then you contract with a provider to provide the same services as the state, they are acting as a state actor because they are providing the same services that the state also provides. You just happen to be contracting with them. [LB975]

DOUG WEINBERG: I guess you could be... [LB975]

SENATOR MORFELD: So I don't understand how you can with a straight face make that argument. I guess... [LB975]

DOUG WEINBERG: I think where that argument comes from is that it's the state that has the sole responsibility for licensing, as well as placing, so. And the state will clearly license all capable and willing foster parents. There's no question about that. The case will always place children with any willing and able family that's in the best interest of the child, that can meet the child's needs. [LB975]

SENATOR MORFELD: But the problem is that you're supporting a bill that puts the best interests of the child behind whatever the religious interests are of the agencies that you're contracting with. [LB975]

DOUG WEINBERG: I would disagree, Senator, because... [LB975]

SENATOR MORFELD: Okay. [LB975]

DOUG WEINBERG: ...we have other non-faith-based providers--they don't handle "same religious beliefs"--that will take any child or recruit any family. You know, we're trying to find a reasonable way to accommodate everybody's rights as well as their religious beliefs. It's a delicate balance. [LB975]

SENATOR MORFELD: Well, or you just simply don't allow people to discriminate at all. I mean, that way, you don't have to balance it at all. That's an option, too, correct? [LB975]

DOUG WEINBERG: I guess that is an option. I guess, you know, the heart of my testimony is that operationally whatever consequences, intended or unintended, prevail, we can manage those. We can meet the needs and satisfy the rights and the beliefs, we believe, of all families and adults and children in the state. [LB975]

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SENATOR MORFELD: Well, I think the first and foremost thing that the agency and the department should be concerned about is the best interests of the child. [LB975]

DOUG WEINBERG: Absolutely. [LB975]

SENATOR MORFELD: And I've got to be honest with you, I actually kind of understand Senator Kolterman coming here and introducing this today and some of the religious concerns, even though I fervently disagree with them. But I'm a little startled that Department of Health and Human Services is here today to support a bill that would allow certain religious organizations to be able to discriminate against particularly LGBT people, but this bill is so broad it could really be anybody, even if that's not the intent of it, but... [LB975]

DOUG WEINBERG: And my concern is, you know, I don't want to risk losing those faith-based organizations. They are some of the largest and most experienced here in Nebraska. [LB975]

SENATOR MORFELD: Well, and I've talked to a bunch of other organizations that will not avail themselves of this type of legislation that have told me that that's not a problem at all; that these children and these services would be able to be absorbed, they'd be able to expand their services, they would receive more federal funding through contractual relationships that already exist with the department. Thank you. [LB975]

DOUG WEINBERG: Okay. [LB975]

SENATOR SEILER: Any further questions? Senator Chambers. [LB975]

SENATOR CHAMBERS: Did I hear you, Mr. Director, referred to as "Doctor" by the title? Or do you have a Ph.D.? [LB975]

DOUG WEINBERG: No, I do not. I am not a doctor. [LB975]

SENATOR CHAMBERS: Do you have an academic degree beyond a bachelor's? [LB975]

DOUG WEINBERG: I have a master's. [LB975]

SENATOR CHAMBERS: You have a master's? [LB975]

DOUG WEINBERG: Yes. [LB975]

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SENATOR CHAMBERS: In what? [LB975]

DOUG WEINBERG: An MBA, master's of business administration. [LB975]

SENATOR CHAMBERS: What qualifies you...then you're not qualified by education to be in the position that you're in. And when you took your MBA training, did they give you training in children and family services? [LB975]

DOUG WEINBERG: No, I received that training through my work experience. [LB975]

SENATOR CHAMBERS: Experience? [LB975]

DOUG WEINBERG: Yes. [LB975]

SENATOR CHAMBERS: So that's...that might be why you can't answer some of the questions that Senator Morfeld asked you. You don't consider yourself an expert in this area, do you? [LB975]

DOUG WEINBERG: Well, we're getting involved in some legal semantics that I'm not totally familiar and comfortable with. [LB975]

SENATOR CHAMBERS: I'm not dealing with semantics, nor was he. Who appointed you to the position you hold now? [LB975]

DOUG WEINBERG: The Governor. [LB975]

SENATOR CHAMBERS: So it's a political appointment. [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR CHAMBERS: Does the Department of Health and Human Services have its own legal counsel or do they receive that consultation from the Attorney General's Office? [LB975]

DOUG WEINBERG: We have our own legal department. [LB975]

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SENATOR CHAMBERS: Did you discuss this with your legal...who...how many people are in your legal department? [LB975]

DOUG WEINBERG: I don't know the exact number. [LB975]

SENATOR CHAMBERS: Have you ever talked to anybody from the legal department? [LB975]

DOUG WEINBERG: Oh, yes, absolutely. [LB975]

SENATOR CHAMBERS: How many different people have you talked to who are in that department? [LB975]

DOUG WEINBERG: Probably a half dozen. [LB975]

SENATOR CHAMBERS: So there are at least a half dozen people in this department. [LB975]

DOUG WEINBERG: Yes, yes. [LB975]

SENATOR CHAMBERS: Are any of them here to testify today? [LB975]

DOUG WEINBERG: I don't believe so. [LB975]

SENATOR CHAMBERS: Well, you should know. You're the director of the department, aren't you? [LB975]

DOUG WEINBERG: I'm the director of the division. [LB975]

SENATOR CHAMBERS: Of the division? Well,... [LB975]

DOUG WEINBERG: And the legal department is a separate function at the department level. [LB975]

SENATOR CHAMBERS: Well, do you...but if somebody from the legal department were going to be here, you would have coordinated your testimony, wouldn't you? [LB975]

DOUG WEINBERG: Most likely. [LB975]

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SENATOR CHAMBERS: Did you coordinate the testimony you gave today with the legal department or anybody in it? [LB975]

DOUG WEINBERG: Yes, yes. We had extensive discussions over the past several days. [LB975]

SENATOR CHAMBERS: Did they write this statement or did you prepare it? [LB975]

DOUG WEINBERG: I prepared it. [LB975]

SENATOR CHAMBERS: Did they...did you consult with them on what you ought to put in it? [LB975]

DOUG WEINBERG: Absolutely, they were all...it was reviewed. [LB975]

SENATOR CHAMBERS: And they don't see any problems whatsoever with this legislation? [LB975]

DOUG WEINBERG: Not to my knowledge. [LB975]

SENATOR CHAMBERS: Are you...I'm not going to ask you did you hear what I asked the others. I'm going to ask you, do you have a copy of this amendment that was given to us? [LB975]

DOUG WEINBERG: I do not have it with me. [LB975]

SENATOR CHAMBERS: You've seen it? [LB975]

DOUG WEINBERG: I have seen it. I have briefly seen it. I'm aware of it. [LB975]

SENATOR CHAMBERS: And your legal department saw it? [LB975]

DOUG WEINBERG: I can't answer that. [LB975]

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SENATOR CHAMBERS: This indicates to me that you cannot cancel a contract with these people if anything they did that you didn't like they did or refrained from doing because of their religion; you can't cancel their contract. [LB975]

DOUG WEINBERG: I believe that's correct. [LB975]

SENATOR CHAMBERS: Then what sense does that make? Why do you have a contract if they don't have to comply with it? [LB975]

DOUG WEINBERG: But our contracts are all what I would call zero based that are not fixed price, they're not...they don't specify a particular number of referrals or placements. So we, you know, under our contractual terms we can refer hundreds, dozens, or zero children. [LB975]

SENATOR CHAMBERS: Are you aware though that based on the language of this, anything that conflicts with what they call a sincerely held religious belief they don't have to do? [LB975]

DOUG WEINBERG: That's my understanding. [LB975]

SENATOR CHAMBERS: That's what it says. [LB975]

DOUG WEINBERG: That's my understanding. [LB975]

SENATOR CHAMBERS: And you cannot take any action against them no matter what it is they refuse to do. You're aware of that, too, aren't you? [LB975]

DOUG WEINBERG: Yes. [LB975]

SENATOR CHAMBERS: And if you should try to do anything, they can assert that sincerely held religious belief as a defense against any action you would take administratively or in court. And you want this in the law? [LB975]

DOUG WEINBERG: But again, you know, if they don't have the appropriate foster homes and foster parents to meet the needs of the child, we'll refer those children to other agencies. [LB975]

SENATOR CHAMBERS: But you won't take any action against them because you can't. You give them absolute immunity from anything you would do to them based on what they refuse to

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do or choose to do, however they choose to do it. All they have to do is say it's based on their sincerely held religious belief. That's what this says. Are you aware that that's what it says? [LB975]

DOUG WEINBERG: That's my understanding. [LB975]

SENATOR CHAMBERS: And you're aware that that's what it does, that you cannot take any administrative action or legal action. [LB975]

DOUG WEINBERG: That's my understanding. [LB975]

SENATOR CHAMBERS: And you want me...see, I'm not as dumb as you seem to be. I would never put something like this in the law and tie the hands of the state so that an agency that is supposed to look out for the welfare and best interests of the children will contract with groups using taxpayer money and give them carte blanche to do anything they want to, or not, and simply say as a defense, it's my sincerely held religious belief, and the state cannot do anything about it. That is so incompetent that if a lawyer advised you to do this, I want to know who that lawyer is. What lawyer looked at this with you or discussed it with you? [LB975]

DOUG WEINBERG: Our legal counsel as well as folks in the... [LB975]

SENATOR CHAMBERS: Does your legal counsel have a name? [LB975]

DOUG WEINBERG: Brad Gianakos. [LB975]

SENATOR CHAMBERS: And that's the one you talked to about this. [LB975]

DOUG WEINBERG: Among others. [LB975]

SENATOR CHAMBERS: And that one that you talked to knew what this said. [LB975]

DOUG WEINBERG: That is correct. That's my understanding, yes. [LB975]

SENATOR CHAMBERS: Okay, and he would be...is it a he or a she? [LB975]

DOUG WEINBERG: A he. [LB975]

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SENATOR CHAMBERS: Okay. He would be totally incompetent if he gave you legal advice on a matter on which he was not informed, because he could not make sure that the interests of the client were properly represented. So I'm going to tell you what I'm going to do. I'm going to fight this when it...if it gets on the floor. This is one of the most preposterous pieces of legislation I have seen. Who wrote this? [LB975]

DOUG WEINBERG: I do not know. [LB975]

SENATOR CHAMBERS: You're the director. You're here testifying. [LB975]

DOUG WEINBERG: But I did not present that bill. [LB975]

SENATOR CHAMBERS: Did your lawyer tell you who wrote it? [LB975]

DOUG WEINBERG: I assume somebody in legislative staff. [LB975]

SENATOR CHAMBERS: Did you read it? [LB975]

DOUG WEINBERG: I have read it briefly. [LB975]

SENATOR CHAMBERS: Did you read... [LB975]

DOUG WEINBERG: I've read the entire bill, but I have not studied the amendment that affects that Section 5. [LB975]

SENATOR CHAMBERS: But that's what you're testifying on and you're giving the full support of HHS by you the... [LB975]

DOUG WEINBERG: I'm aware of the change in Section 5 and I have read the entire bill as originally drafted. [LB975]

SENATOR CHAMBERS: And so you are also representing the Governor when you come here as a department, an agent. You are the head of a division. [LB975]

DOUG WEINBERG: That is correct. [LB975]

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SENATOR CHAMBERS: You were politically appointed by the Governor. You are speaking for the Governor. [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR CHAMBERS: So the Governor is in favor of something as preposterous as this? And I'm putting the word "preposterous" on it. Whatever term you'd use to define it, the Governor knows...does the Governor know you're here? [LB975]

DOUG WEINBERG: I believe so. [LB975]

SENATOR CHAMBERS: And he probably had somebody to look at this, we would presume. [LB975]

DOUG WEINBERG: Yes. [LB975]

SENATOR CHAMBERS: Did he tell you, you could testify on it today? [LB975]

DOUG WEINBERG: I got direction to testify, yes. [LB975]

SENATOR CHAMBERS: So I'm going to assume this is the Governor and I think he is utterly incompetent. And if he is so incompetent in what he does then that's a basis for impeachment. Anything that an elect...all civil officers in this state are subject to impeachment. The Governor is a civil officer. And the Governor, even in carrying out his or her duties, can do it in a way that is so incompetent or disregarding or careless that the court, an impeachment court, said that equates to the kind of negligence that constitutes an impeachable offense. I don't know if he knows the kind of ground he's treading on. But rather than me go through all of this, because I'm very troubled by this,... [LB975]

DOUG WEINBERG: I understand. [LB975]

SENATOR CHAMBERS: ...I'm going to go ahead and give you my opinion because you could...how much is your salary? [LB975]

DOUG WEINBERG: One hundred and forty thousand dollars a year. [LB975]

SENATOR CHAMBERS: Okay, so you get paid enough to listen to what I'm saying. [LB975]

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DOUG WEINBERG: Absolutely. [LB975]

SENATOR CHAMBERS: And you represent the Governor. [LB975]

DOUG WEINBERG: Yes. [LB975]

SENATOR CHAMBERS: You're the Governor's point man. For him to send somebody over here to speak on something about which he, meaning the one testifying, is not well informed, something about which the Governor obviously knows nothing...the director of HHS, does she know you're here? [LB975]

DOUG WEINBERG: Yes. [LB975]

SENATOR CHAMBERS: She knows nothing about it but she's a political appointee also. So the religious people have got the Governor, the director of HHS, and you as the director of the Division of Children and Family Services telling every other agency that does this they're going to be held accountable if they don't do what they're supposed to do but the religious people are not. And you're going to tell me that's equality before the law where these religious groups can get away with any and every thing that a nonreligious agency cannot? And that's equality before the law in your opinion? [LB975]

DOUG WEINBERG: I guess in my opinion it's trying to balance the protection of freedom of religion with protection of civil rights. [LB975]

SENATOR CHAMBERS: It's not your job to protect freedom of religion. Your job is to protect the welfare of children. [LB975]

DOUG WEINBERG: That's correct. [LB975]

SENATOR CHAMBERS: You're becoming political when you say that. And I might be making my colleagues somewhat nervous so I'm not going to go any further. But I wanted the record to be crystal-clear because I intend to pursue this and I'm going to pursue it in a forum other than just here. In fact, I might start drafting articles of impeachment, not just on the basis of this but other things too. This might be one of them. This I think is an insult to the Legislature. We are lawmakers. We pass laws that punish people when people violate those laws. We have rules and regulations that we put in place that agencies are to carry out in licensing and credentialing and all these other things. And if anybody violates those provisions, they can lose their license, they can lose their credentials. But all these religious people have to do is hold up the cross and say,

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but that's my religion, and they're exempt. And I as a lawmaker am supposed to put in law language that discriminates on its face against everybody who is not religious? This is not a church. Are you a reverend? [LB975]

DOUG WEINBERG: I am not. [LB975]

SENATOR CHAMBERS: Well, I'm a minister. I bought my credentials and they're recognized by the state so I can perform weddings. But as a minister, I'm offended by this. And I'm going to have some serious conversations with Senator Kolterman, not here, because this is not at all what he and I talked about. And now I'm going to try to restrain myself, not say anything else on this. I think my position is clear and I'll just ride with the tide and go with the flow. [LB975]

SENATOR SEILER: I want to make the record clear. When I introduced...or asked Senator Kolterman if he wanted "Doctor" Weinberg next, that's where the "Doctor" came from. And then when I asked you to come forward, I called you "Director," just to clear to record. That's been...now over here. Senator Ebke. [LB975]

SENATOR EBKE: Thank you, Chairman Seiler. Good news is I'm not a lawyer, okay? Here is...let me just ask you a couple of questions here. First of all, would it be safe to say that your division's goal is to maintain as large a universe of providers as possible? [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR EBKE: Okay. And can you walk us through a little bit how you decide in any given situation what provider to go to. Is there a rotation? Is there...do we have in place, you know...we know that this provider has, you know, 20 foster families available and this one has 10 or...I mean, is there any sort of rationale for, okay, this is the next one on the list or this is the first, you know? [LB975]

DOUG WEINBERG: You know, that decision is made by our field caseworkers and they have experience with each of these providers. They probably have some sense for, you know, types of foster parents that are given agency recruits and whether or not that family or one of their families would meet the needs of the child. So they are the ones who initially contact the placing agencies and present the facts of the case, the needs of the child, to determine if there is an appropriate family for placement. [LB975]

SENATOR EBKE: Okay, placing agencies--I'd used provider. [LB975]

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DOUG WEINBERG: Provider. [LB975]

SENATOR EBKE: Placing agency is probably better. Okay. Okay, so let me ask another question. Is there any limit to the number of placing agencies that can be out there available for you? [LB975]

DOUG WEINBERG: Any limit? [LB975]

SENATOR EBKE: Yeah, any limit to the number. I mean we've got 21, or how many do we have available right now? [LB975]

DOUG WEINBERG: We have about 21 foster home placing agencies. [LB975]

SENATOR EBKE: Okay, so but there's really no limit, is there? I mean... [LB975]

DOUG WEINBERG: No. [LB975]

SENATOR EBKE: Okay. And can all of these foster care placing agencies, can they recruit and train? Do they recruit and train their own foster families? Is that the way... [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR EBKE: Okay. And is there anything that would stop, for instance, a new placing agency from popping up and saying, you know, we see a real problem in the Hispanic community, we see a need for children to have foster care placements with Hispanic parents so we're only going to train Hispanic couples? Is there any reason why that one agency couldn't do that as long as they're...and I know that we may be getting into legal issues here. [LB975]

DOUG WEINBERG: I don't think there's anything that would preclude that situation from arising. [LB975]

SENATOR EBKE: Okay. And then the same would be true if, you know, if they, you know, if there was a placing agency that thought that there needs to be a pool of single-parent foster homes available? [LB975]

DOUG WEINBERG: Again, nothing that would preclude that from happening. [LB975]

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SENATOR EBKE: And so then the determination for where the...where if there was a placement available, if there was a needed placement, that happens at a different point in time? [LB975]

DOUG WEINBERG: Right, so the... [LB975]

SENATOR EBKE: Okay. Okay. Thank you. [LB975]

SENATOR SEILER: Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Thank you for coming, Mr. Weinberg. There have been a number of occasions I've enjoyed working with you and I respect much of what you think and do. In this instance, I guess just generally as a new senator it's just amazing to me when an agency can come and support a bill and when they can't and when they're to be neutral and when they're to be a proponent and when they're to be an opponent. And I keep hearing, oh, well, we couldn't possibly come forward on this because this is about a policy issue or, oh, we couldn't come forward on this because our department--and this isn't just to you, this is many departments within the state, but it is your department as well recently--and we have to remain neutral because this isn't something that we can really take a stand on. And here we have something where the department has decided to come forward and take a stand on something that clearly--and everyone here knows--is to discriminate against one group of people. One group of people is not sufficient to be foster parents. Do you believe that there are valid and good LGBT people who could be foster parents? [LB975]

DOUG WEINBERG: Absolutely, I do. [LB975]

SENATOR PANSING BROOKS: Okay. So it's my understanding that you believe that we need as large a pool as placing agencies as possible. Is that right? [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR PANSING BROOKS: But isn't it also true that we need as large a pool of parents, foster parents that are good and valid and would provide loving homes as possible? And really, isn't that our largest and most primary goal, because our goal is the children? We have many waiting in the wings to be placed. It isn't the agency that's the issue. It's the fact that we don't have parents. We don't have enough people waiting in the wings to be foster parents. Isn't that true? [LB975]

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DOUG WEINBERG: I wouldn't...you know, we do not have, like, waiting lists. You know, we are able to place children when they need to be removed in a timely fashion. We have adequate capacity today. [LB975]

SENATOR PANSING BROOKS: That's not what the previous testimony was, but so you think we do have...all the children are placed adequately? [LB975]

DOUG WEINBERG: There are some situations where we may have to place a child in congregate care for a short period of time until a foster home opens up, but that would be the exception rather than the rule. [LB975]

SENATOR PANSING BROOKS: Okay. [LB975]

DOUG WEINBERG: Now I'd hate to lose any of that capacity because then we...that could present problems with timely placement. [LB975]

SENATOR PANSING BROOKS: Certainly losing any potential foster parent would be detrimental to the children of the state of Nebraska. [LB975]

DOUG WEINBERG: I agree. [LB975]

SENATOR PANSING BROOKS: And further, on the fiscal note, I'd just like to go to that. The first fiscal note talked about TANF, it talked about Title IV-E funds. And could you talk about that? What made your department decide all of a sudden, oh, TANF funds are not at risk, which are tens of millions of dollars? [LB975]

DOUG WEINBERG: Yes, and I will take responsibility for that. That initial fiscal note left my division, went to the department without my review. And when we began talking about this bill we got into some extensive discussion about the legalities and was there or was there not federal funding at risk, and we believe that there is not federal funding at risk. [LB975]

SENATOR PANSING BROOKS: So in light of the President's executive order, in light of the federal laws that do not allow discrimination of any specific groups, specifically LGBT people, why is it that we don't feel that our federal dollars are at risk if we allow... [LB975]

DOUG WEINBERG: And I think our opinion was that the state is not discriminating. The state does license and place with all types of families. [LB975]

SENATOR PANSING BROOKS: So the fact...so the state can just turn their head, pass the dollars out to whomever they want, and is not responsible. Is that what you think really? [LB975]

DOUG WEINBERG: I wouldn't go that far. [LB975]

SENATOR PANSING BROOKS: I wouldn't either. I guess what I'm concerned about is on the fiscal note on, I don't know, it's the second page or on the revised fiscal note. It talks about there's no impact to the Department of Health and Human Services Division of Children and Family Services. And it says: It is assumed that if a providers...if a provider or providers elect not to provide a child welfare service based on a sincerely held religious belief, DCFS would procure this service from a different provider at the same cost. So the...so you're just saying the...I'm confused by that. So if they assume...it's assumed that if someone decides that they wouldn't do it, you'd just get it for the same cost from somebody else. [LB975]

DOUG WEINBERG: We have standardized foster care rates that apply to all providers. [LB975]

SENATOR PANSING BROOKS: So really you don't care whether or not they discriminate or not. All you want to do is just place the kids and if they discriminate against people, then they discriminate against people. [LB975]

DOUG WEINBERG: Well, what we want to do is make sure that we meet the needs of the children, that we place them in appropriate foster care settings. [LB975]

SENATOR PANSING BROOKS: Do you...what if there are other...do you know if there are other religious tests that the agencies have that will also impede the ability of children to be placed in loving foster homes? This is a religious test. I'm wondering if there are other religious tests as well. [LB975]

DOUG WEINBERG: I do not know. [LB975]

SENATOR PANSING BROOKS: And would you be okay with whatever religious test that they might come up with that would require the child not to be placed? [LB975]

DOUG WEINBERG: No, I mean, I would believe it has to be reasonable and not in violation of the law. [LB975]

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SENATOR PANSING BROOKS: Okay, but is discriminating because of LGBT opinions reasonable? [LB975]

DOUG WEINBERG: Again, I don't...to my knowledge, it's not a protected class. I don't know how a court would decide in this situation under these circumstances. [LB975]

SENATOR PANSING BROOKS: And therein lies the reason it needs to be a protected class. Again, just going on about the bill itself, you, in your conversations with Senator Coash, you said if...that there would be an instance where you would finally just quit asking that provider to place the child, so. And I just want to clarify that it says here that adverse actions include--this is on page 2, line 8--"treating an agency less favorably than similarly situated agencies in regard to participation in a government program, or taking any other action that materially alters the terms or conditions of an agency's funding, contract, or license." That's just beyond belief, that statement. So I, you know, I don't know if that got through and they just added it and your lawyers did not see that. But that's such a blatantly, I believe, illegal line to add to a contract and I just...or to a statute. I just find the whole thing pretty shocking. I'm trying to see if I have other thoughts. Do you know how much money is...I presume that the money comes from the federal government to HHS and you divvy it out to the agencies. Is that how that works? Could you explain that to me? [LB975]

DOUG WEINBERG: Well, we fund all foster care placements initially with state dollars, General Fund dollars. If the children are IV-E eligible and the foster home is licensed and IV-E eligible, then we can claim a federal match on those expenditures. [LB975]

SENATOR PANSING BROOKS: That's right. And how much is that match? [LB975]

DOUG WEINBERG: That match currently is 50 percent, roughly 50 percent. [LB975]

SENATOR PANSING BROOKS: Okay. So those state dollars are directly tied to the IV-E funds, so there is a complete chance that we would lose those funds. [LB975]

DOUG WEINBERG: It's possible;... [LB975]

SENATOR PANSING BROOKS: Yes, I think quite probable. [LB975]

DOUG WEINBERG: ...I think unlikely. [LB975]

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SENATOR PANSING BROOKS: So could you explain that one more time so we can be clear on that. The state gives money to these agencies and then there's additional matching funds from the IV-E funds. Is that correct? [LB975]

DOUG WEINBERG: That is correct for eligible placements and children. [LB975]

SENATOR PANSING BROOKS: And was that correct? Senator Kolterman talked about 5,600 kids altogether in the foster care system and about 100 annually added to the system. Is that correct? [LB975]

DOUG WEINBERG: Well, our caseloads have been fairly steady. With entries and exits we're probably touching roughly 5,000 children in any given year, but on a typical day our out-of-home placements are around 3,000. [LB975]

SENATOR PANSING BROOKS: Okay, and where does the money come from that you pay to the agencies? [LB975]

DOUG WEINBERG: Again, it's funded initially with General Fund dollars. [LB975]

SENATOR PANSING BROOKS: So those monies come from, what, the people of the state? [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR PANSING BROOKS: Okay, all the people of the state,... [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR PANSING BROOKS: ...including LGBT people in the state. [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR PANSING BROOKS: Okay, thank you. [LB975]

SENATOR SEILER: Senator Morfeld. [LB975]

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SENATOR MORFELD: Mr. Weinberg, have you consulted with the federal agencies to ensure that you will not lose federal funding if you allow this type of discrimination? [LB975]

DOUG WEINBERG: We have consulted with other jurisdictions who have similar statutes. We have not at this point reached out to our federal partners to my knowledge. [LB975]

SENATOR MORFELD: Okay. And do you believe that you have the responsibility to ensure that the people you contract with are following federal, state law? [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR MORFELD: But not in this case. [LB975]

DOUG WEINBERG: We believe we're following federal law. [LB975]

SENATOR MORFELD: Okay. And are you aware of the LJS--Lincoln Journal Star--article that discussed this bill just a few days ago? [LB975]

DOUG WEINBERG: I'm familiar with it. [LB975]

SENATOR MORFELD: Okay. In there, there was a religious-based agency that stated...I'll just read it. "The agency has, however, declined to work with families who are not active members of their local church." And under federal law, discriminating based off of religion is actually a violation of the equal protection clause and several other different federal protections. Is there currently an investigation into this agency that is currently discriminating based on religion? [LB975]

DOUG WEINBERG: I'm not aware of one. [LB975]

SENATOR MORFELD: Okay. Well, I'll send you the article... [LB975]

DOUG WEINBERG: Okay. [LB975]

SENATOR MORFELD: ...and a letter and I'll look forward to your investigation to ensure that all federal laws and state laws and protections are carried out. [LB975]

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SENATOR SEILER: Senator Williams. [LB975]

SENATOR WILLIAMS: Thank you, Senator Seiler. And thank you, Director Weinberg, for being here today. A couple of questions that I would appreciate if you could help me walk through with the climate and the state of the need that we have out there. We can sit here and philosophically disagree on a great deal of items that have been discussed thus far in this hearing. But one universal theme that we have heard and that I think is universally agreed upon is attempting to do what is in the best interest of children, children that desperately need foster care, children that desperately need homes for adoption. And I'm specifically asking these questions more about adoption than the foster care side. Under what you know about all of the agencies, the 21 or however many agencies are out there right now, if a normal person wants to adopt, is there an opportunity for them to adopt? [LB975]

DOUG WEINBERG: Yes. [LB975]

SENATOR WILLIAMS: If a gay couple wants to adopt, is there an opportunity for them to adopt? [LB975]

DOUG WEINBERG: Yes. [LB975]

SENATOR WILLIAMS: If a Hispanic person, single, wants to adopt, is there an opportunity for them to adopt? [LB975]

DOUG WEINBERG: Yes. [LB975]

SENATOR WILLIAMS: So right now the LGBT community, other married, unmarried, all sources are...there is a source available. [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR WILLIAMS: Okay. The question then to me becomes, if we begin, for whatever reason, eliminating services or a source of supply of an agency, in your judgment, if we were to eliminate the faith-based agencies from the adoption process, would we still be able to meet the needs of the children and be doing what is in the best interest of children? [LB975]

DOUG WEINBERG: They are currently serving about 500 placements. I would believe, based on our existing capacity, it would be difficult to immediately absorb 500 placements. [LB975]

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SENATOR WILLIAMS: In the longer term than immediate, would other...in your judgment, would other agencies step in and fill that void? [LB975]

DOUG WEINBERG: It's possible. [LB975]

SENATOR WILLIAMS: Do you have any feeling on how long that would take? [LB975]

DOUG WEINBERG: It would be pure speculation. [LB975]

SENATOR WILLIAMS: Okay, thank you. [LB975]

SENATOR SEILER: Any other questions? Oh, Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: Yes, thank you. Thank you, Chairman. Just a follow-up on that, is there equal access across the state for LGBT or for all sorts of people? Isn't it true that some of the faith-based agencies are in more remote parts of the state, so if they choose not to help an LGBT couple become foster parents, that those people might have to travel clear to Lincoln or to Omaha to be able to go through the process? [LB975]

DOUG WEINBERG: That's not necessary because we do license and manage our own foster homes in the western part of the state. [LB975]

SENATOR PANSING BROOKS: So by having these groups not provide access to a swath of people that are able and willing to become parents, it's not detrimentally affecting that group. [LB975]

DOUG WEINBERG: We don't believe so. We believe there are ample opportunities. [LB975]

SENATOR PANSING BROOKS: Because that's not what I've heard from other people, so that it is more difficult, that they do have to travel greater distances, and that it's not as easily accessible. So I don't know. I'll hope somebody else can speak to that that's coming. Thank you. [LB975]

SENATOR SEILER: Senator Morfeld. [LB975]

SENATOR MORFELD: I was speaking to somebody through the Fiscal Office and I guess my question refers to Title IV-E funding. My understanding, and correct me if I'm wrong, is that

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Title IV-E funding follows the child but both the child and the placement must be eligible for the funding. [LB975]

DOUG WEINBERG: That is correct. [LB975]

SENATOR MORFELD: So if the placement is not eligible for the funding because it's not following federal law or something like that, where would the funding come from to put the placement? [LB975]

DOUG WEINBERG: In that case it would come most likely from other...from state General Fund or possibly from other federal sources. [LB975]

SENATOR MORFELD: So that would create a fiscal impact too? [LB975]

DOUG WEINBERG: It possibly could. [LB975]

SENATOR MORFELD: But again, you haven't talked to any federal authorities about whether or not this violate executive orders? [LB975]

DOUG WEINBERG: I have not personally. I can't speak for the rest of the team. [LB975]

SENATOR MORFELD: Okay, thank you. [LB975]

SENATOR SEILER: Seeing no further questions, thank you for your testimony. Next proponent. [LB975]

BRAD BROWN: (Exhibit 3) Good afternoon, Senator Seiler and other committee members. Hello. My name is Brad Brown, B-r-a-d B-r-o-w-n. I am the CEO of Christian Heritage and have committed the past 25 years of my life working with at-risk children and their families. I am here today to convey my support for LB975. Thank you for the opportunity to share my position. The vision of Christian Heritage is, "Families Restored, Children Filled with Hope and Prepared for Life." As a religious organization, Christian Heritage exists to extend the love of God to orphans, at-risk children and their families. Our work is intended to be a testimonial to the Christian faith and is a way of life for each staff member and foster parent we license and support. In order to propel our mission, we recruit foster parents who agree with and sign our statement of faith. In addition to meeting all of our requirements for state licensure, they must be personally involved in a local church that teaches biblical Orthodox Christianity. Choosing to foster is a personal

choice, similar to the personal decision some people make to live a life of faith. The reason so many foster parents choose to align themselves with agencies like Christian Heritage is because they desire faith-based support. On the other hand, there are numerous foster parents in our state who are not interested in receiving faith-based support. Christian Heritage certainly isn't upset at families who do not wish to align with us or who disagree with our sincerely held religious views. This proposed bill has been misunderstood. In a pluralistic society, individual beliefs, values, and standards should be mutually respected even when there are disagreements. Some would actually like to see Christian Heritage be forced to close our doors simply because of our faith-based policies. I read a letter to the editor in the Lincoln Journal Star recently that inferred faith-based agencies like Christian Heritage are such a problem for our communities that, and I quote, "perhaps they need to close or adopt more enlightened policies regarding what constitutes a qualified home." The Child Welfare Services Preservation Act doesn't prevent anyone from fostering in our state. The intent of the bill is to protect and preserve the rights of faith-based agencies to conduct their work with children and families in the same fashion they always have. With over 210 licensed foster parents who meet our eligibility requirements, Christian Heritage is one of the largest foster care providers in the state. We cared for 405 children in 2015. We may not agree on everything, but we are all committed to caring for children and families with the highest standards of quality based on our own sincerely held beliefs and values. Thank you. [LB975]

SENATOR SEILER: Questions? Senator Morfeld. [LB975]

SENATOR MORFELD: Thank you for coming today. Do you currently deny placements based on religion? [LB975]

BRAD BROWN: We absolutely do not defer children based on religion, sexual orientation, or any other presenting problem that they may come to us when they are referred to us. [LB975]

SENATOR MORFELD: Do you deny licensure of foster parents or, I guess, adoptions, however that would be phrased, based off of religion? [LB975]

BRAD BROWN: No, we do not. [LB975]

SENATOR MORFELD: Okay. [LB975]

BRAD BROWN: I'm sorry, I'm sorry. Yes, we do. [LB975]

SENATOR MORFELD: You do. [LB975]

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BRAD BROWN: Yes. [LB975]

SENATOR MORFELD: Okay, so you do deny licensure of foster parents based on religion. [LB975]

BRAD BROWN: So Christian Heritage is a religious organization and in order to propel our mission, which is to share the love of God with orphans, at-risk children and their families, if a non-Christian person or someone from another faith came to us to be licensed, we would not support them because they would not meet our eligibility requirements. [LB975]

SENATOR MORFELD: Okay. Do you receive federal and state funding? [LB975]

BRAD BROWN: Yes. [LB975]

SENATOR MORFELD: Okay. So you're an actor of the state then. [LB975]

BRAD BROWN: No. [LB975]

SENATOR MORFELD: You're not an actor of the state even... [LB975]

BRAD BROWN: No, we're a private agency. [LB975]

SENATOR MORFELD: ...even though a federal court in Pennsylvania has found that agencies like yours are actors of the state. [LB975]

BRAD BROWN: I can't speak for Pennsylvania, Senator. But in the state of Nebraska it's my understanding as an agency, just like any other foster care agency, we are a private agency subcontracting with the department. [LB975]

SENATOR MORFELD: So are you providing services that sometimes the state provides as well? [LB975]

BRAD BROWN: We provide at Christian Heritage placement,... [LB975]

SENATOR MORFELD: Okay. [LB975]

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BRAD BROWN: ...not services. We would not refer anyone for support services. [LB975]

SENATOR MORFELD: So you provide placement services... [LB975]

BRAD BROWN: Correct. [LB975]

SENATOR MORFELD: ...which the state also can provide and does provide. [LB975]

BRAD BROWN: That is correct. [LB975]

SENATOR MORFELD: So you do provide services that the state also provides. [LB975]

BRAD BROWN: We provide placement. [LB975]

SENATOR MORFELD: Okay. And the state provides that as well. [LB975]

BRAD BROWN: That's correct. [LB975]

SENATOR MORFELD: Okay, sounds like a state actor to me. Thank you. [LB975]

BRAD BROWN: Yeah, I just...I respectfully disagree with you as being a state actor. [LB975]

SENATOR MORFELD: So would the federal court. [LB975]

SENATOR SEILER: We done over here? [LB975]

SENATOR MORFELD: I'm finished now. Thank you. [LB975]

SENATOR SEILER: Okay. Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: Thank you, Chairman. Thank you for coming today. I guess I'm interested in how much government funding you get. [LB975]

BRAD BROWN: Sure. So Christian Heritage, since we are one of the largest foster care providers in the state, our foster care budget is \$4.6 million. But I would like to clarify that that's

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contingent on our size. All agency-supported contractors, basically you receive funds based on placement history. And so out-of-home maintenance payments that go directly to the foster parents are standardized across the state and the administrative and support rates that go to private agencies to provide support are also based on the direct number of placements and the level of care for children. [LB975]

SENATOR PANSING BROOKS: Okay. [LB975]

BRAD BROWN: So that's why it's \$4.6 million. [LB975]

SENATOR PANSING BROOKS: So how much money then stays with your agency? [LB975]

BRAD BROWN: For the foster parents that receive their stipend, it's a direct pass-through, so we don't touch one dollar of that. It's standardized across the state. And the rest of the money goes toward support services, which means hiring staff, training staff. [LB975]

SENATOR PANSING BROOKS: Right. So how much of that do you keep for hiring staff and training staff? [LB975]

BRAD BROWN: Honestly, we have to raise private funds in order to provide the type of resources that we need for our staff. In fact, we are constantly limited. [LB975]

SENATOR PANSING BROOKS: So you don't keep any of the state money. It all goes to the families. Is that correct? [LB975]

BRAD BROWN: That's not correct because some of the state funds come to us as an agency for administrative and support, just like every other private agency in the state of Nebraska, to conduct the work. [LB975]

SENATOR PANSING BROOKS: Right, so that's what I'm asking you. How much is that, that comes towards you? [LB975]

BRAD BROWN: I don't have that number in front of me, but I could split that out. It all is contingent on placement. [LB975]

SENATOR PANSING BROOKS: Okay. [LB975]

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BRAD BROWN: So a support payment only comes at the time of placement, so it's a direct correlation. [LB975]

SENATOR PANSING BROOKS: Okay, and how many people do you employ? [LB975]

BRAD BROWN: We have 46 employed right now. [LB975]

SENATOR PANSING BROOKS: Okay. And do you have any other religious...do you have a litmus test for your employees, a religious test? [LB975]

BRAD BROWN: Yes, we do, as a religious organization. They must be personally involved in a local Christian church that teaches biblical Orthodox Christianity and they must read our statement of faith and agree with it. [LB975]

SENATOR PANSING BROOKS: Wow, okay. You know that state dollars are not really supposed to go to religious institutions, so that's what's a hard part for me to understand. [LB975]

BRAD BROWN: Sure, so let me see if this can help you understand. So as a person of faith, every... [LB975]

SENATOR PANSING BROOKS: And I am a person of faith too, so. [LB975]

BRAD BROWN: Okay, sure, and I respect that. So as a person of faith, everything that we do, along with our staff, it's integrated into our day-to-day life. And we have a contract with the Department of Health and Human Services and we provide placement support services based on the contract, just like any other private agency would be responsible for. The types of religious activities that our staff are involved in is it's not mandatory but they are able to engage in a one-hour Bible study each week. And we obviously pray for one another, for families, for children, because that's our sincerely held religious belief and that's how we spread the love of God to others. That, if you did the math, that would be less than 3 percent of their time and our charitable donations are about 6 percent of our budget or just over that. And so we don't see those dollars being mixed. And I would also say that the federal government and state governments often reach out to faith-based agencies because they help spread the common good to communities and nations as a whole. [LB975]

SENATOR PANSING BROOKS: Absolutely,... [LB975]

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BRAD BROWN: And that's why there's been partnerships. [LB975]

SENATOR PANSING BROOKS: ...as long as you're not discriminating against people as a whole. So that's the problem. [LB975]

BRAD BROWN: Yeah, but religion... [LB975]

SENATOR PANSING BROOKS: The government is happy to work with and spend dollars, spend public dollars, as long as certain groups are not being discriminated against and just taken... [LB975]

BRAD BROWN: Sure. [LB975]

SENATOR PANSING BROOKS: ...pushed aside and not given similar rights to others. [LB975]

BRAD BROWN: So let me speak to that. So in our state we have kinship, relative homes that the department places children in their homes. We would never discriminate against any family structure if they came to us for support services. Whether that was an unmarried heterosexual family or a same-sex couple, if they came to Christian Heritage and they wanted our support services, we would in no way decline them of receiving those services. Where we differentiate is when we go out to the churches and recruit our own families and we actually make placement. That's because they have to align with our sincerely held religious beliefs. That's the distinction that really needs to be made. We're not discriminating against anyone. If there's any discrimination, you would have to say it's religious discrimination because under the Civil Rights Act of 1964 we have a religious exemption as a religious organization and we meet the test for that. So we're protected by law to conduct our work the way that we do. The two other exemptions are ministerial exemptions. There's something called a bona fide occupational qualification defense. And we fall under a religious exemption at Christian Heritage. [LB975]

SENATOR PANSING BROOKS: I know, because there's all sorts of protections for the church. That's what our laws have done is protected the church. And now we're trying to make sure that other people have protections, too, and rights. So how many come to you and ask for that placement rather than you going to your specific church and finding whatever the parent is? [LB975]

BRAD BROWN: Prospective foster parents do not come to us... [LB975]

SENATOR PANSING BROOKS: That's what I thought. [LB975]

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BRAD BROWN: ...to ask for a placement. Now they could reach out to us. They can inquire and we'll reach out to them. But I want to be clear. I have zero tolerance against discrimination of any sort. And if I thought this bill was discriminating against anyone, I would not be up here as a proponent of this bill. Again, I have zero tolerance. One of my best friends is a homosexual. We have a staff member at Christian Heritage whose son is a homosexual. And she has been in my office with tears, talking to me about how difficult it is for her to attend a Christian church when her own son, who she loves like any other parent on the planet, accuses her of attending a church that hates homosexuals, which is absolutely not true. So does she violate her sincerely held religious beliefs? She can't; that's who she is, and she doesn't love her son any less than anybody else on the planet. And we don't discriminate toward anyone. There is a difference. And just because there's a protected class over here, I don't think it makes it right to devalue, marginalize, or discriminate against those of us who have sincerely held religious beliefs, because that is what it feels like. [LB975]

SENATOR PANSING BROOKS: It feels like discrimination because you're forced to place a child in a loving... [LB975]

BRAD BROWN: We do place... [LB975]

SENATOR PANSING BROOKS: ...LGBT family? [LB975]

BRAD BROWN: We do place children in the homes that we recruit. [LB975]

SENATOR PANSING BROOKS: Wait. No, no. I want you to answer my question, please. [LB975]

BRAD BROWN: Okay. [LB975]

SENATOR PANSING BROOKS: You just said that it feels like discrimination. [LB975]

BRAD BROWN: Um-hum. [LB975]

SENATOR PANSING BROOKS: So what feels like discrimination, being forced to what? [LB975]

BRAD BROWN: When our sincerely held religious beliefs are being talked about the way that they're being talked about in this room, it feels very discriminatory. And every prospective foster

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parent in Nebraska has equal access to the foster care system. So we're not discriminating against anyone. And with all due respect, in the last nine years that I've been at Christian Heritage and the families that we're being accused of discriminating against, those are not the families that are coming to us and asking for our support. Christian Heritage doesn't have any hidden agendas. This is not an attack on the LGBT community. That is a false narrative. And so I think it's very important for that message... [LB975]

SENATOR PANSING BROOKS: So why are you here today? Why do you care about this bill? [LB975]

BRAD BROWN: I care about the bill because the board has hired me to protect the ministry of Christian Heritage and I see some... [LB975]

SENATOR PANSING BROOKS: Because you think you'll lose funding if you discriminate? [LB975]

BRAD BROWN: It has nothing to...no, it has nothing to do with funding. [LB975]

SENATOR PANSING BROOKS: Then what is the point of this? [LB975]

BRAD BROWN: I'm going to answer your question if you'll allow me to, please. [LB975]

SENATOR PANSING BROOKS: Okay. [LB975]

BRAD BROWN: The point of it is I see a trend in some other states that appear to threaten our...the work that we do. And at Christian Heritage we always say we wish foster care didn't exist. And honestly, if we're doing our job right, there's a day as a state that foster care won't exist and that's what we're working toward. But in the meantime, when there is children in our state that end up in an abuse or neglect situation, they need all of the potential resource families available to...for them. [LB975]

SENATOR PANSING BROOKS: Exactly. [LB975]

BRAD BROWN: And Christian Heritage recruits those families that... [LB975]

SENATOR PANSING BROOKS: If those... [LB975]

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BRAD BROWN: ...match our beliefs. And that's not discriminatory. That's just because that's who we are. We have rights within the law to do that. And that's my response. [LB975]

SENATOR PANSING BROOKS: You have rights within the law to do it, but you also receive state dollars which LGBT and other people that you do discriminate against pay for. [LB975]

BRAD BROWN: We're not discriminating against them. [LB975]

SENATOR PANSING BROOKS: Okay, you're choosing them and purposefully not choosing a whole swath of other people. So you can call it not discriminating but it is. You are choosing one certain group of people that meets one religious test. The rest of us...I mean I'm putting myself in that because I presume I don't meet your test. I might but I don't know, I mean. And you know, if it weren't for the fact that the Civil Rights Movement changed the law so that African-Americans were...I mean I presume we'd be talking about African-Americans, too, but they're a protected class. [LB975]

BRAD BROWN: Okay. But, see, Christians helped lead the cause of abolishing slavery. I don't...that is a horrible point from my perspective, with all due respect. [LB975]

SENATOR PANSING BROOKS: Well, they justified it for...we all justified it for years. So anyway, I don't have any further questions right now. Thank you. [LB975]

SENATOR MORFELD: I have one more question. [LB975]

SENATOR SEILER: Senator Morfeld. [LB975]

SENATOR MORFELD: And then I'll be done asking my questions here. And I guess it's a little bit more of a statement. I was just looking up in the federal code here and it states specifically under section (d) here: All organizations that receive federal financial assistance under social services programs should be prohibited from discriminating against beneficiaries or potential beneficiaries of social services programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or part of the federal financial assistance, in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to actively participate in a religious practice. I would just like to note for the record that you have admitted in this committee hearing that you are violating federal code. Thank you. [LB975]

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BRAD BROWN: Because of the 1964 Civil Rights Act we have a religious exemption and we are able to hire people and so for... [LB975]

SENATOR MORFELD: That's for hiring practices. That is not for discriminating on the basis of religion for these...for whether or not somebody is licensed to be a foster parent. You are confusing two different issues and I think you're doing it on purpose. [LB975]

BRAD BROWN: I'm not doing anything on purpose. There could be a misunderstanding. But foster parents are not... [LB975]

SENATOR MORFELD: There's no misunderstanding. You're violating federal law. [LB975]

BRAD BROWN: ...employees. They're independent contractors. They choose... [LB975]

SENATOR MORFELD: Which means they're not exempt under the statute that you're citing. [LB975]

BRAD BROWN: They come to us because they choose to align with us because their sincerely held beliefs are very personal to them and they want people to understand, agencies to understand where they're coming from. And we walk with them through this process because it's very difficult and it's some very personal work and we're very passionate about what we do. In fact, we have... [LB975]

SENATOR MORFELD: That's fine and that's great, but I'm just noting that you're violating federal law. [LB975]

SENATOR SEILER: Let's leave... [LB975]

BRAD BROWN: I'll refer that to an attorney that can respond to those. [LB975]

SENATOR MORFELD: I think you should. [LB975]

BRAD BROWN: Yeah. [LB975]

SENATOR SEILER: What's the cite on that, the U.S. Code? [LB975]

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SENATOR MORFELD: I'll send it to the committee, but it's... [LB975]

SENATOR SEILER: No, make it for the record. [LB975]

SENATOR MORFELD: Make it for the record? It is... [LB975]

SENATOR SEILER: You should have it right there. [LB975]

SENATOR MORFELD: Yep, section (d) of the executive order, and I could send that executive order to you. [LB975]

SENATOR SEILER: This executive order doesn't cut the law. You said you were quoting from the U.S. Code. [LB975]

SENATOR MORFELD: Yeah, it's the executive...I apologize, it's the executive order, yep. [LB975]

SENATOR SEILER: Oh, okay. Thank you. Any further questions? Senator Chambers. [LB975]

SENATOR CHAMBERS: What, if this law were not passed, what could you not do that you currently are doing? [LB975]

BRAD BROWN: Today, nothing, Senator. We could... [LB975]

SENATOR CHAMBERS: So it has no impact on you whatsoever. [LB975]

BRAD BROWN: Today it doesn't. [LB975]

SENATOR CHAMBERS: All right. And you're here because of what you said is happening in other states. [LB975]

BRAD BROWN: That's correct. [LB975]

SENATOR CHAMBERS: When Senator Morfeld was having a discussion with a person, and that person was not you, and mentioned what a court in Philadelphia had said, that person said, well, I'm not interested in what a court in that other state said. So when we deal with religious

people--and I'm not lumping you anywhere, I'm taking you on the basis of what you said--they are very prone to pick and choose and say, yea, when it benefits me; then the very same thing, nay, if it doesn't. And I'm not going to put you through what I went through with the director. He is a state employee. He is a government...a Governor's appointee so he gets no slack at all. He's paid \$140,000 in taxpayer money. When it comes to ordinary people--and by that I meant those who are not lobbyists, they're not employees of the state or heads of agencies--my approach is somewhat different. But this is what I will say. Based on what the division director acknowledged, these religious groups who are contracting with the state can refuse to do any and every thing and their contract, based on this if we pass it, cannot be canceled if they assert the defense that it's for my sincerely held religious belief. This carefully lists...and for the record I'm going to read it because you probably haven't had a chance to see this because it was just given to us. For purposes of the Child Welfare Service Preservation Act: Adverse actions includes, but is not limited to, denying a child-placing agency's application for funding, refusing to renew an agency's funding, canceling an agency's funding, declining to enter into a contract with an agency, refusing to renew a contract with an agency, canceling a contract with an agency, declining to issue a license to an agency, refusing to renew an agency's license, canceling an agency's license, taking an enforcement action against an agency, treating an agency less favorably than similarly situated agencies in regard to participation in a government program, or taking any other action that materially alters the terms or conditions of an agency's funding, contract, or license. It lists all of those things. Then here's what it lists as child welfare services: Child welfare services means any social service provided to or on behalf of children, including assisting abused, neglected, or troubled children, counseling children or parents, promoting foster parenting, providing foster homes or temporary group shelters for children, recruiting foster parents, placing children in foster homes, licensing foster homes, promoting adoption, recruiting adoptive parents, assisting adoptions, supporting adoptive parents (sic--families), assisting guardianships, assisting kinship caregivers, providing family preservation services, providing family support services, and providing time-limited family reunification services; Child-placing agency or agency has the same meaning as, and then it gives a citation to section. Now this is the kicker: The state shall not take any (sic--an) adverse action--all these things or any of them--against a child-placing agency because the agency declines to provide, facilities (sic--facilitate), or provide a direct referral for a child welfare service that conflicts with the agency's sincerely held religious beliefs. "A child-placing agency aggrieved by a violation of section 4 of this act may assert that violation as a defense in any administrative or judicial proceeding." So if this agency, which has a contract, is paid by...paid with state money, the agency can decline to provide, facilitate, or provide a direct referral for a child welfare service, and that's all those services they listed. They can deny all of that. And if HHS tries to do anything to them because of that, they can't cancel the contract; they can't deny funding. And you heard the director admit when I was questioning him, and he knew what I was talking about, they can't do anything if these agencies refuse to do all of this if they assert the defense it violates a sincerely held religious belief. And that's why I would never put something like this in the law.

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And if you are as sincere as you say you are, and I'm not going to challenge it, you shouldn't want something like that in the law because it raises questions about what you're doing. If you're here supporting this because it protects these other agencies, you don't need it--from what you said, you're doing everything right, and I'm taking your word for it--to protect all these other agencies who are not doing these things against any action from the state and they can continue to get state money. I'm not going to interrogate you. I want you to know why I am not supporting any form of this. And I think people who have integrity, whether they're religious or not, would not want a lawmaker to put something into the law itself that ties the hands of the state so that it cannot take corrective action against agencies supposedly acting in the best interest of children, hold a contract with the state, receive public money but are not doing any of this, and nothing can be done about it. It doesn't belong as a law. Now if it gets out of committee, then it's going to have rough sledding on the floor. And remember this, I didn't ask you one single question about what you do and how you do it. But since you discussed so thoroughly and completely what it is you're doing, what you will not do in the way of discrimination, you should better understand what I am concerned about when these other agencies can behave exactly opposite to what you're doing and the state can't do anything about it, not even cancel a contract. [LB975]

SENATOR MORFELD: Mr. Chair. [LB975]

SENATOR SEILER: Yes. [LB975]

SENATOR MORFELD: Per your request, it's Executive Order 13279 signed by President Bush I believe in 2002. [LB975]

SENATOR SEILER: Did it cite a federal code? [LB975]

SENATOR MORFELD: I only have one page of it. [LB975]

SENATOR SEILER: Okay. [LB975]

SENATOR MORFELD: But I'm sure it does cite federal code based on the authority granted the President. [LB975]

SENATOR SEILER: Thank you. [LB975]

SENATOR PANSING BROOKS: 13279? [LB975]

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SENATOR MORFELD: Correct. [LB975]

SENATOR SEILER: Any further questions? Senator Williams. [LB975]

SENATOR WILLIAMS: Thank you, Chairman Seiler. And thank you, Mr. Brown, for being here. In your testimony you mention that Christian Heritage is one of the largest providers in the state. I have just a very practical question. If Christian Heritage was required to make placements that did not meet your qualifications, would you quit making placements? [LB975]

BRAD BROWN: We have never declined making a placement based on religion, based on orientation, based on any type of presenting problem that a child would come to us. Our mission is to protect children, help children, help them get better, make appropriate matches. We would never...and if I had a staff that was doing that, I would bless and release them very quickly. [LB975]

SENATOR WILLIAMS: If you were required to make a placement with an LGBT couple, would you make that placement? [LB975]

BRAD BROWN: Because of our sincerely held religious beliefs, and one of the items in our doctrinal statement is that we believe that God's design for marriage is a lifelong commitment between one man and one woman, so for the families that we do a home study on for the department to license, they would not meet our criteria. But I want to clarify what I said earlier. Relative, kinship homes, any family structure, if they came to us looking for our support services, we would not defer them. It does not violate our sincerely... [LB975]

SENATOR WILLIAMS: My question is very practical. [LB975]

BRAD BROWN: Okay. Yeah. [LB975]

SENATOR WILLIAMS: If you were required to make placements that were out... [LB975]

BRAD BROWN: Oh, you mean like the department required me? Okay. [LB975]

SENATOR WILLIAMS: ...outside your qualifications, would you continue in the business of making placements? [LB975]

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BRAD BROWN: I couldn't personally do that because it would honestly, it would violate my freedom of conscience. [LB975]

SENATOR WILLIAMS: In your judgment, would that be in the best interest of children? [LB975]

BRAD BROWN: I believe that the idea that traditional family, between one man and one woman, that when we talk about it today it's almost like you have to feel bad or guilty that you're advocating for that. One of the things that every person on the planet shares in common is we have a mother and a father. I'm not saying that gays or lesbians can't be great parents. I'm certain there are many. [LB975]

SENATOR WILLIAMS: You're not understanding my question. [LB975]

BRAD BROWN: Okay. [LB975]

SENATOR WILLIAMS: Let me rephrase this. You are one of the largest providers of these services in the state. [LB975]

BRAD BROWN: Right. [LB975]

SENATOR WILLIAMS: And my question is very practical. If you would be required to work outside of the scope of the qualifications that you have right now... [LB975]

BRAD BROWN: Right. [LB975]

SENATOR WILLIAMS: ...and your agency stopped your services in adoption and foster care, would that be in the best interest of the children that are trying to find parents, a place to live? [LB975]

BRAD BROWN: No. [LB975]

SENATOR WILLIAMS: Thank you. [LB975]

BRAD BROWN: But I would hope I wouldn't be put in that situation. [LB975]

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SENATOR WILLIAMS: Thank you. [LB975]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB975]

BRAD BROWN: Thank you. [LB975]

SENATOR SEILER: Further proponents. [LB975]

BRIAN BRADLEY: (Exhibit 4) Senators, thank you for being here today. My name is Brian Bradley, B-r-i-a-n B-r-a-d-l-e-y. And until recently, my wife Maralee and I were foster parents in the state of Nebraska. I'm the father of six children through birth, international adoption, adoption through foster care, and have cared for 17 additional children through group home work and school-age boys. My wife and I continue to be passionate about the needs of Nebraska's foster children and their families, so I've come today to speak in support of LB975. During our six years as foster parents, we were trained and supported by an agency that understood and shared our religious beliefs. We had a common vision and motivation. They prayed for us, prayed for us and our kids and the families we served, and they understood when we needed to adjust meetings to accommodate church involvement. That level of support allowed us to serve passionately while avoiding the exhaustion and discouragement that causes many foster parents to give up. In fact, we'd still be fostering with them if we'd not adopted our foster children and had to give up our license because of the recently enacted foster family size limits. On a personal level, I support this bill because I know the difference it's made for us to be affiliated with an organization that shares our faith. While I have no doubt we would have pursued foster care even if there wasn't a religious agency to support us, it was the compassionate understanding of an organization that shared our beliefs that kept us involved in foster care even when we felt like giving up. Because of their deeply held religious beliefs, they cared for our spiritual needs, encouraged us to pray about potential placements, helped us find support in our church congregation, and we also have seen many foster parents who initially thought it unimportant to have an agency that shared their beliefs come to a realization of the difference it makes and switch to a religious agency. Because Nebraska has so many children in out-of-home care, we need many passionate, loving, well-trained and well-supported foster families to get involved in caring for our most vulnerable children. That means we need a variety of agencies to come alongside foster families with an understanding of their unique strengths, needs, and motivations. Just as we have a great diversity of children from a variety of ethnic and religious backgrounds coming into care, we need a diversity of agencies to meet their needs. No one should be forced to work with an agency they don't philosophically agree with, so it is of benefit to all of us when there are multiple views and visions represented. As many other states are seeing this kind of diversity disappear, we should be proactive to protect the rights of our

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faith-based child-placing agencies because they are essential in the effort to support, educate, and serve foster families and the children they work with. Religious organizations have long been providing care for Nebraska's most vulnerable children because they believe this is an essential part of their mission and calling. For these organizations and for those of us who have partnered with them, this is about more than just vocation or good deed but about acting out a fundamental part of our religious belief system: to care for the needy with compassion and protect the vulnerable. I believe it will be a great loss to our state if we fail to protect these organizations as they provide services in a way that is consistent with their sincerely held religious beliefs in a time when we so desperately need them. Thank you for your consideration of my testimony. I encourage you to vote yes on the Child Welfare Services Preservation Act. Thank you. [LB975]

SENATOR SEILER: Questions? [LB975]

SENATOR CHAMBERS: I just have one. [LB975]

SENATOR SEILER: Senator Chambers. [LB975]

BRIAN BRADLEY: Yes, sir. [LB975]

SENATOR CHAMBERS: What does faith mean as you use it? When you say faith based, what does the word "faith" refer to? [LB975]

BRIAN BRADLEY: Well, for me, personally it's Christian faith that is rooted in the scriptures and belief in God. I don't believe that is necessarily the only thing it should protect, like I... [LB975]

SENATOR CHAMBERS: But it...so any organization or person who believes in Christianity and God is...and you would be faith...faith would apply to both of you the same way. In other words, whether you're a Baptist, Methodist, Episcopalian, Seventh-day Adventist, a Mormon, Catholic, they're all faith in the same way that you're a man of faith. [LB975]

BRIAN BRADLEY: I think there are differences to parse out between those different philosophical beliefs, but I do believe they should be protected in the same way. [LB975]

SENATOR CHAMBERS: So you mean any religion that is based on Christianity is probably what's being discussed here. [LB975]

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BRIAN BRADLEY: I don't think it has to be. I mean I might disagree with the other people that are here, too, but I think it could... [LB975]

SENATOR CHAMBERS: Let me ask you this then. Would a Muslim be considered a man of faith? [LB975]

BRIAN BRADLEY: I believe so. I believe that under the way this should be enacted, that would be...now that may not be everybody's view, but it would be mine. [LB975]

SENATOR CHAMBERS: Here's what I'm trying...are you saying that the only entity or notion that can qualify under this term "faith" would have to be based on Christianity? Is that what you're saying or not? [LB975]

BRIAN BRADLEY: Absolutely not. I think political winds have blown for 200 years back and forth in our republic and that this may be the way it is now and a decade or two from now it may be a different way and those interests need to be protected the same way ours is. [LB975]

SENATOR CHAMBERS: Okay, I think I understand what you're saying now. That's all I have. [LB975]

SENATOR SEILER: Seeing no further questions, you may step down. [LB975]

BRIAN BRADLEY: Thank you. [LB975]

SENATOR SEILER: Thank you for your testimony. Next proponent. You may go ahead. [LB975]

BILL WILLIAMS: (Exhibit 5) Good afternoon. My name is Bill Williams, B-i-l-l W-i-l-l-i-a-m-s. I'm the chief operating officer for Compass--I'm the cofounder--a faith-based family services agency. Thank you for your time and consideration of LB975. For the past 26 years I've worked with vulnerable children. For 17, I've saw how children were underserved because of a lack of available foster homes. As a result, my wife and I, along with another couple, founded Compass with the goal of finding families to serve Nebraska's children. We served our first foster child in 2007. Today Compass is serving 76 children and over 125 children and families every single day. We've been recognized in our community for volunteerism, by HHS for our success, by the Chamber of Commerce for our diversity, and by the University of Nebraska for our commitment to education. Our motivation to serve children in need came from our faith and we were convinced that others within the church would feel likewise. We didn't put up billboards or run

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radio or newspaper ads for our foster parents. We went to our local churches to share the message that Nebraska needs foster parents, and our message resonated and people answered the call. I spoke with one of those foster parents this week and he and his wife have fostered multiple children, adopted two from foster care. And he said, I know that I wouldn't have become a foster parent if I couldn't have partnered with a faith-based agency. This comment is not unique. We've heard this from other foster parents. Compass understands that it is faith that compels them because it's faith that compels us. I don't expect you to understand it. I don't expect everyone to agree with it, but it's very apparent. The decision to be a foster parent is a very personal one. Choosing an agency that can identify with a foster family and relate to them on the deepest level of faith is important, and LB975 will allow us to serve families while not compromising a faith that's foundational to who we are. It's not...it's about maintaining a diversity of agencies to serve children and families. By providing protection for sincerely held religious beliefs, child-placing agencies like Compass continue to specialize by working within the faith community as we provide foster care and family services. It allows us to better serve children and families. In medicine we don't just have doctors. We have neurologists who specialize in the brain, cardiologists who specialize in the heart. Likewise, promoting this specialization in family services provides the most opportunities for children and family. LB975 protects our ability to serve guided by the same principles that prompted our founding almost ten years ago. It enhances diversity because it allows a multitude of diverse and varied faith- and non-faith-based agencies to meet the needs of each of the families they partner with. I thank you and I hope that you will support LB975. [LB975]

SENATOR SEILER: Questions? Senator Chambers. [LB975]

SENATOR CHAMBERS: Just one. [LB975]

BILL WILLIAMS: Yes. [LB975]

SENATOR CHAMBERS: What would you have to stop doing that you're doing now if this bill is not passed? [LB975]

BILL WILLIAMS: That's a great question and I...today, nothing. [LB975]

SENATOR CHAMBERS: Okay, that's it. [LB975]

BILL WILLIAMS: But can I respond a little longer, Senator Chambers? [LB975]

SENATOR CHAMBERS: Oh, sure. [LB975]

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BILL WILLIAMS: But just listening to the dialogue today, listening to the amount of hostility, listening to the...it's...there is an affront to religious liberties and it's coming. And I've heard it and I hear it and sometimes it sounds almost like a mockery. And it's frustrating to me and I believe that we are at risk of losing the ability to serve children and families like we have currently because of what we've seen in other states. And I want to protect the partnership that we have between the state and faith-based agencies. We need both in order to be successful. [LB975]

SENATOR CHAMBERS: Well, what bothers me is that I hear people, even on the floor of the Legislature, quote Romans about those in authority being placed there by God and you're supposed to obey them and such as that, but then they want a provision in the law which makes it possible for them to disregard contracts they may have, services that they agreed to perform, then they decide they don't want to perform. So you know what I think this whole bill is about? That so-called defense, so if any action is to be taken by the state because they are derelict, all they have to do is say... [LB975]

BILL WILLIAMS: Right. [LB975]

SENATOR CHAMBERS: ...it's based on my religion. And that's why I think religion is a bunch of hokum, it is hypocrisy. I have no religion but I don't do like this. I say, if I give my word, that's it, and you can bank on it. And if I violate my word, you can take any action available and get me, and you ought to, because if I'm a man of my word, that's what counts. Religious people don't feel that way. They want to be able to violate and then be able to raise this defense: It's my sincerely held defense. You know, it's my religion. I don't like Jews so I'm not going to serve them. I don't like black people. I don't like Native Americans. I don't like any of these people because my faith tells me that God created Adam and Adam was an American and anybody who is not a white American I don't believe that I have to deal with them and I sincerely believe it. They're protected. That's what they want me to put in the law and I refuse to do it. They ought to be showing me the way because you all are to be the city set upon a hill... [LB975]

BILL WILLIAMS: Absolutely. [LB975]

SENATOR CHAMBERS: ...so that your light will so shine that I will see your good works and I'll glorify your father in Heaven and I'll say, let me look into this and see how I can get some of it. But they want something that I don't even want and I'm not a man of any faith. Well, let me correct that. I believe in algebra. But I'm not disparaging anything you said. I want to just keep emphasizing what I see this bill being about. Not one person has spoken today, including that director, that employee of the state who said that if this law is not passed they cannot continue doing everything they're doing, not one. [LB975]

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BILL WILLIAMS: Right, right. [LB975]

SENATOR CHAMBERS: But they're looking at something way off in the distance the size of a man's hand and they say, that's what it looks like now, but tomorrow and tomorrow and tomorrow...I'm a lawmaker and I'm not going to deal on the basis of speculation, abstraction, and theoretical fears that people have. [LB975]

BILL WILLIAMS: Absolutely, and I wouldn't expect the committee to consider that. I am just concerned that I don't think it's off in the distance. And I think as lawmakers I know that you want to be proactive. You want to meet and address issues before they're problematic in the state of Nebraska. And that's what concerns me because we've seen this in other states and I do think that it's coming this way. [LB975]

SENATOR CHAMBERS: My friend, someday elephants may come in herds and run over everybody's child, but I'm not going to pass a law to allow the shooting of elephants in the city. And it might sound preposterous, but that's what I'm being asked to do. If you are a church, if you're in a debating society, you can debate anything that you like. You all can set rules and regulations to govern your conduct. But what we're asked to do is to put laws on the books that not only carry consequences but are backed by the coercive power of the state. And all of the fears that religious people might have, the fears that nonreligious people might have are for them to work out. When it comes to the law, it either is or it isn't. We cannot have something that neither is nor isn't but it's somewhere in between. Now that's my philosophy of law making. Maybe it's not others'. But I want it clear to everybody who is here that I will fight against this for the reasons that I gave. You should want to be held accountable for what you do and I will not let people do wrongful things and then hide behind "it's my sincerely held belief so I get away with it and there's nothing you can do to touch me." They ought not want to do the kind of things where they'd need a defense like that. [LB975]

BILL WILLIAMS: And I would agree with you, Senator, that we should not be...we should be held accountable. We also should be permitted to encourage, recruit, promote the serving of children throughout our communities and I should be able to continue to do that. If I can make the most impact by reaching the church community, I should be encouraged to do so, not stifled or take action against because that's how I want to promote serving children. [LB975]

SENATOR CHAMBERS: This doesn't affect what you're doing--you admitted that--even without this, because you're doing it anyway and you don't have this as the law. You're doing everything you mentioned... [LB975]

BILL WILLIAMS: But...yes. [LB975]

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SENATOR CHAMBERS: ... without this. [LB975]

BILL WILLIAMS: But as Senator Morfeld has attempted to point out, he thinks it may be in violation of the law and he's cited some statute, he cited an executive order that, and correctly, and I just...and those are the kind of things that concern me because those things will continue to happen and it affects what we do. [LB975]

SENATOR CHAMBERS: And as the song says, that's what courts are for. But that's all I have. Thank you. [LB975]

BILL WILLIAMS: Thank you. [LB975]

SENATOR SEILER: Morfeld. [LB975]

SENATOR MORFELD: Thanks, Senator. I would just note that the executive order...the power to give executive orders is derived from federal statute and code... [LB975]

BILL WILLIAMS: Absolutely. [LB975]

SENATOR MORFELD: ...and that this state statute, even if it is enacted, does not have supremacy over lawful executive orders derived from federal statute because of the supremacy clause. [LB975]

BILL WILLIAMS: I...no... [LB975]

SENATOR MORFELD: So regardless of this law, I mean,... [LB975]

BILL WILLIAMS: But the executive order you quoted was the services to children and families and we never deny...none of this, none of the things that we do now, none of the services that Christian Heritage do or that we do discriminates the services provided for children, as you read the executive order, in any way. It merely talks about what we do to provide and encourage and recruit families, which we have no contract that provides any dollars or any funding from the state to do. The only funding that we receive is for the placement of children and there is absolutely no discrimination. We deny no service of any kind to any child for any reason, or any family based upon their religious belief or based on any other behavior. [LB975]

SENATOR MORFELD: But, sir, you've admitted in the Journal Star article, and the other gentleman came up here and admitted that they/you do discriminate based off of religious reasons for the people that you license to put those children in their homes. And so those children are being impacted because they're not being put in homes by people that you're discriminating based off of they're religious or nonreligious or whatever the case may be. [LB975]

BILL WILLIAMS: We have a specific focus of our market and the focus is the faith community and we do that because the faith community identifies with us. So we make inroads. Do you realize Compass came into existence...we came into existence because there were no homes. And so I went to the churches to say, please, help these kids. My wife and I, we've fostered over 40 children in our home. And as a result of that and as a result of the inroads, the access we have had within the faith community, we've encouraged more people to become foster parents. We want to continue to do that. We don't want anyone to challenge that or to say that we can't do that or to say that it's discriminatory because we're focusing on that area. There's other folks who are focusing in urban areas, who are focusing in rural areas, are targeting...there's a new Jewish Social Services that's opened in Omaha. And I want to encourage agencies and individuals to focus in those areas where they can connect and identify and make inroads because that's what's going to make the greatest impact in the lives of children. I don't want to deny anyone of any community, any letter behind their name, or anything. If you want to serve kids, great, I want you to. Our area, our target market, our focus is the faith community and we just want to engage them and encourage them to partner with us. And I do want to be held accountable, Senator Chambers, when they do that. Sorry. [LB975]

SENATOR CHAMBERS: May I be recognized to respond to him? [LB975]

SENATOR SEILER: Senator. [LB975]

SENATOR CHAMBERS: You're mentioning what you don't do. Suppose there are others who do discriminate in the way you say you don't. Should they be given carte blanche to get away with it and say, it's based on my sincerely held religious belief? See, the ones who come up here keep saying, I don't do this, I don't do that, I don't do the other. So I will ask you this question. Are you intending to suggest to me that none of these so-called faith-based groups discriminate in the way that some of us feel they should not be allowed to? You're saying that. And if you are saying none of these faith-based groups do that, you don't have anything to fear. They don't have anything to fear. It's only those who are not going to do the right thing. Daylight was made for righteous people; darkness was made for thieves. So if everything can be in the light, they have nothing to fear. But you know as well as I do that there are those who are not right. There are wolves in sheep's clothing and you know it and I know it. And there are agencies that have

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abused children sexually, they have engaged in human trafficking, and they do it under the guise of religion. There are ministers of every faith. The Catholics got a lot of publicity because there were so many of them doing it the hierarchy covered for them. But there were preachers in every known faith doing the same types of things, and they all should have been held accountable. [LB975]

BILL WILLIAMS: Absolutely. [LB975]

SENATOR CHAMBERS: So this is the question I want to ask you again. Is it...and I'm not going to challenge you no matter what you say. Are you saying that none of these faith-based groups in your opinion are engaging in any of this kind of discrimination which you say you don't engage in? [LB975]

BILL WILLIAMS: I do not believe any of the agencies are engaging in any sort of discrimination related to the service of children. [LB975]

SENATOR CHAMBERS: Then they don't need this bill, do they, because the bill only affects them if they're made to do something that violates their sincerely held belief. And if their sincerely held belief does not lead them to discriminate, they have nothing to fear. [LB975]

BILL WILLIAMS: But that does...but they may have things within their statement of faith that causes them to focus on a market that may or may...of faith, families of faith. They may determine certain families are outside of the criteria. [LB975]

SENATOR CHAMBERS: Okay, I understand. But because I don't want to take it any further, I just wanted that question answered. [LB975]

BILL WILLIAMS: Okay. [LB975]

SENATOR CHAMBERS: And you answered it the best you could I think. [LB975]

BILL WILLIAMS: Great. [LB975]

SENATOR SEILER: Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. I was just wondering...again, I'm going to ask each of the agencies how much government funding you receive. [LB975]

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BILL WILLIAMS: Yes. The amount of government funding, I'm not exactly sure for the last fiscal year. We get about half of our funding through the placement of foster...through foster placements. It would be less than \$1 million but more than \$500,000. [LB975]

SENATOR PANSING BROOKS: Okay, and how many employees do you have? [LB975]

BILL WILLIAMS: We have 33 employees. [LB975]

SENATOR PANSING BROOKS: Okay. So that's interesting. The other one had 40-some employees and they had \$4 million, so that's... [LB975]

BILL WILLIAMS: Well, we have other services that we provide as well. Foster care only represents a portion of the services that we provide to children and families in Nebraska. [LB975]

SENATOR PANSING BROOKS: Okay. And I'm just wondering if you...do you...so you have a religious litmus test that you apply with your employees. Is that correct? Do you have some sort of requirement? [LB975]

BILL WILLIAMS: A formal litmus test for our employees, no. [LB975]

SENATOR PANSING BROOKS: Well, do they have to complete some sort of religious test or meet some sort of standard to work with you? [LB975]

BILL WILLIAMS: There isn't a formal standard, no. [LB975]

SENATOR PANSING BROOKS: Okay, unlike the gentleman before. [LB975]

BILL WILLIAMS: It's a little bit different than what they have at Christian Heritage. [LB975]

SENATOR PANSING BROOKS: So you do have something similar to what the gentleman before does. [LB975]

BILL WILLIAMS: We operate similarly but we don't have a formal litmus test, no. [LB975]

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SENATOR PANSING BROOKS: Okay, then let's not call it a litmus test. Do you have a formal standard that is required by your employees that is faith based? [LB975]

BILL WILLIAMS: No. [LB975]

SENATOR PANSING BROOKS: Okay. What is similar to whatever he was talking about before? [LB975]

BILL WILLIAMS: We're similar agencies because we have...we promote within the church. We recruit and license foster families within the church. Our agencies have some similar goals. We partner in the work that we do in many areas and we have just...we kind of...we consider ourselves sister, you know, agencies. [LB975]

SENATOR PANSING BROOKS: Do you believe that LGBT parents could provide a good and loving foster care placement? [LB975]

BILL WILLIAMS: I'm sure they can. [LB975]

SENATOR PANSING BROOKS: Okay. And how many children do you place annually? [LB975]

BILL WILLIAMS: Last year we had 105 children that we cared for in foster care. [LB975]

SENATOR PANSING BROOKS: Okay. Okay. So isn't this just really about a worry about loss of funding? Because what you're saying is basically you will quit providing foster care if you're forced to do things like place...have open access to placement. Is that correct? [LB975]

BILL WILLIAMS: We're concerned about restrictions that...and that would affect our religious liberties that would cause us to close, yes. [LB975]

SENATOR PANSING BROOKS: Okay. So but it wouldn't cause you to close. You would choose to close... [LB975]

BILL WILLIAMS: Rather than violate those... [LB975]

SENATOR PANSING BROOKS: ...rather than place somebody with an LGBT family. [LB975]

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BILL WILLIAMS: Well, there's...I mean every agency is going to have different criteria and that is... [LB975]

SENATOR PANSING BROOKS: I'm asking about yours though. [LB975]

BILL WILLIAMS: But it's not an LGBT issue. [LB975]

SENATOR PANSING BROOKS: Well,... [LB975]

BILL WILLIAMS: I mean it may be...that may be one component but there's...we want to work within the faith community for those folks who would agree and concur with our statement of faith. [LB975]

SENATOR PANSING BROOKS: Okay, so if you're...but if you're required and your funding is at risk, you will close down your business... [LB975]

BILL WILLIAMS: Potentially, yes. [LB975]

SENATOR PANSING BROOKS: ...just to be able to discriminate against LGBT families to be able to place a child. So this that in the best interest of the child that you would close down your agency because of that firmly held belief? [LB975]

BILL WILLIAMS: Is it in the best interest of children to force agencies to work with everyone and lose out on the hundreds of children that we're able to place today? [LB975]

SENATOR PANSING BROOKS: No, you're welcome to do it but without state dollars. You're welcome to go ahead and place children if you don't use state dollars... [LB975]

BILL WILLIAMS: And I think that's what... [LB975]

SENATOR PANSING BROOKS: ...and federal dollars. [LB975]

BILL WILLIAMS: I think that's what the director was referring to when he talked about the importance of that partnership between faith-based agencies and the state of Nebraska. [LB975]

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SENATOR PANSING BROOKS: I agree it's so important. I totally agree we need to have as many groups and as many agencies and as many organizations within our community working together to help these children. [LB975]

BILL WILLIAMS: Good. [LB975]

SENATOR PANSING BROOKS: But to automatically discriminate against one group of people and use their tax dollars, that's the problem. [LB975]

BILL WILLIAMS: But are we automatically discriminating against... [LB975]

SENATOR PANSING BROOKS: Anyway, I don't have anything more. Thank you. [LB975]

BILL WILLIAMS: Okay. [LB975]

SENATOR SEILER: Senator Chambers. [LB975]

SENATOR CHAMBERS: I may have a compromise. [LB975]

BILL WILLIAMS: Yes, sir. [LB975]

SENATOR CHAMBERS: This language says, "The state shall not take an adverse action against a child-placing agency because the agency declines to provide, facilitate, or provide a direct referral for a child welfare service that conflicts with the agency's sincerely held religious beliefs," and then we would add, "provided such belief does not result in discrimination based on race, religion, sexual orientation, or marital status. Would you be willing to accept that language, add it to this proviso that the sincerely held religious belief does not result in discrimination against any person based on such person's race, religion, sexual orientation, or marital status?" [LB975]

BILL WILLIAMS: We wouldn't place...we wouldn't license a foster home of an unmarried couple. [LB975]

SENATOR CHAMBERS: So then you wouldn't like that language added. [LB975]

BILL WILLIAMS: No. [LB975]

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SENATOR CHAMBERS: Okay. [LB975]

BILL WILLIAMS: And I have a... [LB975]

SENATOR CHAMBERS: Just a compromise, it didn't work. [LB975]

BILL WILLIAMS: No, I understand, and there's a reason for it. [LB975]

SENATOR CHAMBERS: Oh, I don't...I'm not... [LB975]

BILL WILLIAMS: Okay. [LB975]

SENATOR CHAMBERS: ...questioning you. I just offered. Okay, that's all that I have. [LB975]

SENATOR PANSING BROOKS: Thank you. [LB975]

SENATOR SEILER: Anything further? Nothing? You may step down. [LB975]

BILL WILLIAMS: Thank you very much. [LB975]

SENATOR SEILER: Next proponent. [LB975]

SCOTT MURRISH: (Exhibit 6) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Scott Murrish. Although I don't represent a placing agency, I have served for the past ten years as a national ambassador for Royal Family KIDS. We're the nation's leading network of camps, clubs, and mentoring programs for children of abuse. My organization is one of the many diverse organizations and agencies, including faith-based agencies, in our state whose primary purpose is to engage families from all races, nationalities, faiths, or no faith at all in the process of finding forever families for children from hard places. Today I'd like to thank you for considering the positive outcomes of representing...that are represented by the passing of LB975 for Nebraska's children of abuse and the families, volunteers, and agencies that serve them. I'm a native of Kearney and grew up in a family that never experienced the devastation of abuse. But when my wife and I became foster parents, we were exposed to the minefield of fear that these children learn to navigate daily, not knowing if the next step they take, word they say, or even look that they give to an adult will unleash the next violent explosion of pain in their young lives. Let me take you on a journey into the life of a foster child. Nine-year-old Zoe was one of our Royal Family campers in Nebraska whose long,

red hair flowed beautifully in the cedar-scented breeze as she sailed through the air off of a three-story zip line tower. As Zoe reached the ground, she was received by showers of applause. And as she unbuckled her safety harness, I got on one knee and asked Zoe what her favorite thing about camp was. I expected her to say things like the canoeing or the crafts or even the birthday party that we throw to all the children on what we call "Everybody's Birthday" at camp. Instead of saying these things, she looked up at me with her huge, green eyes and said, Mr. Scott, my favorite thing is that I have a safe bed to sleep in; I'm in foster care now, so this doesn't happen anymore, but my step-dad used to come into my room at night and do things to me and I had to pretend to be asleep; at camp, I can sleep the whole night through and it feels so good. Without skipping a beat, Zoe grabbed the hand of her counselor and her buddy camper and they ran off to the waterfront to go swimming. My organization resides among the many faith-based foster and adoption organizations in Nebraska and around the country who are compelled by their faith to serve children like Zoe who are in desperate need of safety, hope, and love. It's my honor today to represent the thousands of dedicated volunteers and advocates who would like to share with this committee that the faith community has something of incredible value to offer. Again, the strength of Nebraska's people thrives in their diversity, their lifestyle choices, options, and in our state there are many agencies that are doing amazing work of confronting abuse and changing lives. We hold that no agency or organization should be required to choose to abandon the principles of faith that they were founded on in order to serve children of abuse or the families that serve them. All agencies are wanted and needed because every child matters. Thank you very much for hearing my testimony today. [LB975]

SENATOR SEILER: Questions? [LB975]

SENATOR CHAMBERS: Just one, one comment. If I am the king and I invite you to fare sumptuously with me and you sit at my table, if you're going to eat at the king's table, you must use the king's silverware. The king in this sense is the state. If you're going to get state money and have the state's approval, then there are things you're not going to be allowed to do, such as discriminating against anybody based on race, religion, national origin, sexual orientation, or marital status. And if you can't accept that, then don't sit down at the table. That's my position as a lawmaker, putting it in a nutshell. And I was reading this that you gave us and read from, and you are not really what would be called a faith-based agency yourself. You are something like the holder of an umbrella under which everybody can come no matter what. All they want to do is come from out of the rain and you're there to help them. And you don't look for anything in terms of a pass or an identification card or anything else. So I think you're in a position different from that of all these others who are here today, so I don't have any other questions that I would ask of you. [LB975]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB975]

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SCOTT MURRISH: Thank you. [LB975]

SENATOR SEILER: Next proponent. [LB975]

KATHY ALONS: (Exhibit 7) My name is Kathy Alons, K-a-t-h-y A-l-o-n-s, and I'm the branch director at Bethany Christian Services of the Heartland located in Orange City, Iowa. We have a satellite office in Omaha. Our national office is located in Grand Rapids, Michigan. Bethany Christian Services is a global nonprofit organization that brings families together and keeps families together. Our work is completed in 36 states and 19 countries. We are faith based and have served children and families for over 70 years. We've been licensed and working in Nebraska for more than 12 years. The Omaha office provides four main services: domestic adoption; international adoption; postplacement visits; and we work with men and women who find themselves with an unexpected pregnancy. Our adoption specialist works with couples through the home study paperwork process and screening process. If they're approved and the child is placed in their home, we conduct postplacement visits. Bethany parent advocates walk beside a woman or a couple who find themselves in an unexpected pregnancy and are wrestling with the difficult decision of parenting or placing their child. Bethany supports LB975. Bethany was involved in a similar legislation that was proposed and passed in Michigan. As a faith-based organization with 70 years of experience, Bethany's practice has been to serve children and families through the placement of children with Christian married couples. Expectant parents who come to Bethany do so because they have a choice and they want their child raised in a Christian home. Bethany recognizes that we aren't always the best provider for every person who expresses interest in our services. For example, we've referred to other agencies couples who have been married less than two years, couples who are in a committed relationship but are not married, or married couples who do not have an active presence in a Christian church and, therefore, could not provide a pastoral reference. Referrals are made for clients who have alcohol, drug, or pornography addictions, for clients who are dealing with severe grief and loss or a childhood trauma. I need to stop here. Is that correct? [LB975]

SENATOR SEILER: No, you go to the red light. [LB975]

KATHY ALONS: Oh, I'm sorry. Some couples have returned to us after they have successfully dealt with challenges or overcome addictions. At Bethany we are compelled to serve by our faith. We adhere to the values and beliefs of our faith when serving. We support LB975. We want to continue to work to recruit adoptive families committed to the Christian faith. We want to continue to serve expectant parents who come to Bethany because they have a choice and want their child raised in a Christian home. Our desire at Bethany is to continue to exist in a country where agencies of any faith or no faith at all can serve children and families in ways consistent with the commitments that inspire their service. There are far too many children who have no

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home or family. When every agency is allowed to recruit families consistent with their various missions, together we would be able to find more loving homes for children. Thank you. [LB975]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB975]

KATHY ALONS: Thank you. [LB975]

SENATOR SEILER: Don't worry, folks, the record is 11:30. We've got six hours to go. (Laughter) You may begin. [LB975]

ANNE HOBBS: Okay. Hi. I'm Dr. Anne Hobbs. It's A-n-n-e H-o-b-b-s. And I'm here to express my strong support for LB975. In the past I've come before this committee in a variety of different capacities, both as the director of the Juvenile Justice Institute and in the past as the director of the NEOC. In that latter capacity I fought daily for individuals' rights. I fought against discrimination. I fought against religious discrimination, race and ethnicity, and so I feel very strongly and would not support legislation that I thought ran the risk of discriminating. I'm also a licensed foster parent through a faith-based agency. In this capacity I feel very strongly that faith-based child welfare agencies should not be forced to choose between abandoning their faith or abandoning the children that they work with. My husband and I specifically sought out a faith-based agency and we've fostered about 15 youth through Christian Heritage. Although the agency is faith based and we concur with its doctrinal statements, our faiths don't exactly line up perfectly. Despite this, we've found common ground and generosity and charity towards neighbor. The fact that I've aligned with a Christian-based organization does not mean that I would reject a youth who has beliefs and practices different than my own; in fact, this comes up almost daily with the teenagers in my home. So the fact that we don't see eye to eye on faith is a very common occurrence in a foster home, I would say. The last thing I would advocate is for legislation that would limit the number of qualified agencies placing children in their home. I currently sit on five different boards that focus on the needs of children and the very consistent theme is the need for stable, loving placements for children, homes that will love children unconditionally. Over the years, I've worked directly with a number of child-serving nonprofit agencies and profit agencies and government agencies. And in my opinion, it's often the faith-based agencies that have been the most open to serving all youth. I believe that there's been a great deal of misinformation promulgated about this proposed legislation. From my reading, it does not prohibit anyone from participating in foster care or adoption in Nebraska. It simply states that faith-based agencies should not be required to make a referral to a service directly opposed to their religious creed. Honestly, tomorrow, if I'm asked as a foster parent to make a referral or to take a child to something that opposes my religious beliefs, I would give notice to the agency that I no longer intend to foster, I would postpone that appointment, and then I would

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research whether I had standing to sue that agency for violating my religiously held beliefs. Without this type of protection, I believe mine is the type of home you will lose, and I also believe that mine are the rights that will be violated. So I strongly support this bill and I would welcome any questions that you have. [LB975]

SENATOR SEILER: I don't see any. Thank you very much for your testimony. Next proponent. [LB975]

TERESA KING: (Exhibit 8) Good afternoon. We are Rick and Teresa King from Omaha. Rick is R-i-c-k K-i-n-g, and I am Teresa, T-e-r-e-s-a K-i-n-g. We're here today to share our adoption story and to offer our strong support for faith-based adoption agencies such as Bethany Christian Services. Our family is made up of two biological children, young men now 25 and 21, and our daughter, now almost 15 years old, whom we adopted through Bethany Christian Services. We can honestly testify today that working with a Christian-based organization was a significant factor in not only the initiation of the process, but in the process itself from beginning to right now. I don't believe we would have had the courage to take the risk into the unknown if not for the knowledge that Christ was with us throughout the whole process. Our journey started about 15 years ago with a feeling, a feeling that there was a child out there in the world that we could bring into our family and love. Since we were in our 40s, we had two middle-school boys, we were happy, we don't like change, we had never traveled to Europe, and we were not wealthy, why did we feel the urge to look into foreign adoption? We'd wrestled with the idea for adoption for some time, but we were kind of stuck in neutral. Then one day I saw an ad for Bethany Christian Services on my computer and I went to the Web site and I read the mission statement and I knew in our hearts that...my heart, and I talked to Rick, that if we were to adopt it would be through them. We made an appointment to meet with an adoption counselor and made our decision to pursue a foreign adoption shortly thereafter. The mission statement I'm referring to reads as follows, "Our mission is to demonstrate the love and compassion of Jesus Christ by protecting and enhancing the lives of children and families through quality social services. In the hope that we will bring glory to God in everything we do, we focus on three core values: integrity--make decisions that are consistent with biblical principles; impact--go above and beyond; innovation--be dedicated to improvement." We're happy to report that nearly 11 years ago we adopted a four-year-old girl from St. Petersburg, Russia. She has been a joy to our family. We felt our adoption journey was a journey led by Jesus Christ. We felt his hand on our shoulders from the start and throughout the entire process. It has been a journey that strengthened our family and strengthened our religious foundation. Today we are still volunteers with Bethany. We don't believe we would have adopted without Bethany's mission statement and practices that glorify God. We ask you to consider that there are many other loving families in Nebraska today that are considering adoption and, like us, need to know that the agency they work with is not just a business but a Christian outreach with the welfare of the children as the primary concern. Thank you for your time. [LB975]

SENATOR SEILER: Questions? Seeing none, thank you for your testimony. [LB975]

TERESA KING: Thank you. [LB975]

SENATOR SEILER: Further proponent. [LB975]

SUE MALLOY: (Exhibit 9) Good afternoon, Senator Seiler, members of the Judiciary Committee. My name is Sue Malloy, spelled S-u-e M-a-l-l-o-y, and I am speaking today as a representative of Catholic Charities of the Archdiocese of Omaha. My position at Catholic Charities is program director of family services, which encompasses pregnancy support services, adoption, and postadoption services. And it has been my privilege to work with children and families in the field of adoption and foster care for 26 years. Catholic Charities of the Archdiocese of Omaha has provided adoption services since 1926. And in addition to pregnancy support and adoption services, we provide parenting preparation classes, a one-on-one mentoring program for young moms, and monthly educational in-services for young parents. Catholic Charities and the Archdiocese of Omaha support the Child Welfare Services Preservation Act. The Catholic Church in Omaha has a long history of serving Nebraska's most vulnerable children and families dating back to the days of St. James Orphanage founded in 1870. The St. James Orphanage was the first home established in Nebraska to care for orphan children and for more than 100 years St. James provided care for thousands of vulnerable children in Nebraska. Catholic Charities assumed responsibility for St. James in 1926. Since then, the Catholic Church has maintained an adoption services program. We made the transition to fully open adoption more than 20 years ago and its philosophy guides every aspect of our practice. At its core, open adoption is about a lifelong, committed relationship linking birth and adoptive families with the child at its center. Family services at Catholic Charities is entirely funded by private fees, donations, and the Archdiocese of Omaha. We receive no state or federal funding. Birth parents that have chosen to work with Catholic Charities identify practice of the Catholic faith as a central component of what they are looking for in an adoptive family and, likewise, adoptive families point to shared faith as part of the bond they have with their children's family of origin. We see it play out every day that when faith practice is an essential part of a person's life it also plays a significant role in the open adoption relationship. Catholic Charities is able to bring families together for the sheer journey ahead. I have had the privilege of seeing birth and adoptive families come together to enjoy soccer games, dance recitals, picnics, birthdays, holidays, but also to celebrate their faith at baptisms, first communions, confirmations, and weddings. For us it is about client self-determination. Catholic Charities and the Archdiocese of Omaha have a history of service providing for children and families that dates back 146 years. Catholic Charities is uniquely situated to see other Catholic child-placing agencies across the country eliminated due to poor public policy decisions. [LB975]

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SENATOR SEILER: Ma'am, we'll take your testimony and make it part of the record, your second page of your written documents. [LB975]

SUE MALLOY: Thank you. Thank you, Senator. [LB975]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB975]

SUE MALLOY: I did have written testimony from three clients of the agency, two adoptive families, one birth parent that I submitted electronically to the members of the committee earlier today. I also have those available in hard copy if you'd like those. [LB975]

SENATOR SEILER: Yes,... [LB975]

SUE MALLOY: Okay, thank you. [LB975]

SENATOR SEILER: ...if you'd submit those to the page. [LB975]

SUE MALLOY: I will. Thank you very much. [LB975]

SENATOR SEILER: And they'll be made part of the record. [LB975]

SUE MALLOY: Thank you, Senator. Thank you. [LB975]

SENATOR SEILER: Further proponent. You may go ahead. [LB975]

JEFF DOWNING: (Exhibit 10) Senator Seiler, my name is Jeff Downing, J-e-f-f D-o-w-n-i-n-g, and I am a private practice attorney to speak in support of LB975. I am an attorney who's practiced for about 25 years in the area of constitutional law, including First Amendment. I've represented individuals and organizations when they have had their free exercise burdened by the hand of government, but I've also litigated on behalf of clients in establishment clause cases. Of course, being a Nebraska lawyer, I've primarily represented Christians, but also those of other discrete faiths. My first federal case was successfully representing the Indian inmates of the Nebraska State Penitentiary when they were forbidden from worshiping while incarcerated. The issue in that case was one of accommodation, whether inmates who practiced a minority religion could be accommodated so they could freely exercise their faith. LB975 is quite simply accommodation legislation. LB975 seeks to place into Nebraska law an accommodation for faith-based child-placing agencies, securing that they will not suffer adverse consequences if

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they follow the dictates of their faith or their sincerely held religious beliefs. From a legal and constitutional standpoint, there's no question that when the government imposes a burden on religious faith it can then take action to remove the burden with legislation like LB975. On many occasions our federal Congress has recognized that the religious faith of individuals and organizations can be incidentally, if not directly, burdened by generally applicable laws and policies. In response to those government burdens, Congress has repeatedly taken action to lift the burden through accommodation legislation like LB975. Examples of this are Section 702 of the Civil Rights Act, the Religious Freedom Restoration Act, or RFRA, the Religious Land Use and Institutionalized Persons Act, otherwise known as RLUIPA. Time and again, these congressional actions have been reviewed by the Supreme Court and even our most liberal justices on the Supreme Court have agreed that legislative action lifting a governmental burden on religious exercise does not violate the establishment clause. Notably, Justice Ruth Bader Ginsburg, former lead counsel for the ACLU, when she announced the decision of the court in Cutter v. Wilkinson, laid out the history of how RLUIPA and RFRA were specifically designed by Congress to accord religious exercise heightened protection from government-imposed burdens. The First Amendment, of course, provides Congress shall make no law respecting an establishment of religion nor prohibiting the free exercise thereof. Justice Ginsburg noted in Cutter that while there is a tension between the two religion clauses, there's also room for "play in the joints," as she described it. The first of the two clauses, commonly called the establishment clause, requires a separation of church and state. And I would add parenthetically that it does not require a separation, however, of Christian citizens from their government. The second clause, the free exercise clause, however, requires that government respect and not interfere with the religious beliefs and practices of our nation's people. That, by the way, is Justice Ginsburg's verbiage. And while the two clauses express complementary values, they often exert conflicting pressures. And so when the court has had to examine these pressures and make decisions, they have repeatedly found that accommodation legislation has been constitutional. [LB975]

SENATOR SEILER: Mr. Downing, will you wrap up? [LB975]

JEFF DOWNING: Yes, and I will conclude my remarks with that and ask that my testimony, the balance of my written testimony, be submitted for the record. [LB975]

SENATOR SEILER: It will be received. [LB975]

JEFF DOWNING: Thank you. [LB975]

SENATOR SEILER: Any questions? Thank you very much for your testimony. Next proponent. Next proponent. Next opponent. [LB975]

GWENDOLEN HINES: (Exhibit 11) Good evening, Senator Seiler and members of the Judiciary Committee. My name is Gwendolen Hines; it's G-w-e-n-d-o-l-e-n H-i-n-e-s. I represent the Unitarian Church of Lincoln and I oppose this bill. Since most child-placement agencies in the state have religious beliefs that would allow them to discriminate against gay and transgendered people, passing this bill just makes it almost impossible for gay or transgendered people to adopt or become foster parents. If you don't believe that, there is a lesbian couple talking after me who will talk about the fact that there was only one agency in Nebraska with whom they could work to adopt a child. And I believe that this is the point of the bill, whether or not gay and transgendered people can adopt or be foster parents. You might think, yeah, that's just what I want. But it used to be that religions were against biracial marriages and even mixed-faith marriages. When my mother married my father in the 1950s, he had to convert to Catholicism. Would we be allowing people to discriminate against parents who are of different race or parents who are of different faiths? Of course not, because society now feels that those things are okay. Now they do. Society didn't used to think so but society has grown up a little. It's time for society to grow up some more and realize that gay or transgendered people can make just as good of parents as straight people. Of course you can find study after study saying either that gay parents are worse parents than straight parents or gay parents are just as good of parents as gay parents. But I found a report by Benjamin Siegel, a (BU) School of Medicine professor of pediatrics who coauthored a report published by the American Academy of Pediatrics, arguing that three decades of research concur that kids of gay parents are doing just fine. There are many studies out there and none of them has done randomized, controlled trial--the holy grail of scientific investigation--and all studies of gay parenting are necessarily small since there aren't many gay parents. The best study so far, says Siegel, is the National Longitudinal Lesbian Family Study, begun in 1986. The study has followed 154 lesbian mothers and recently checked in on 78 adolescent children, comparing the mothers' and kids' self-reported status against national standardized samples. The lesbian mothers' reports of their children indicated that they had high levels of social, academic, and total competence and fewer social problems, rule breaking, and aggressive and externalizing behavior compared with their age-matched counterparts. If you might say, well, of course the parents will say that, you might want to hear testimony of the kids. And I don't have time to say that, so let me just... [LB975]

SENATOR SEILER: Ms. Hines, we'll make your written report part of the record. [LB975]

GWENDOLEN HINES: Okay, can I... [LB975]

SENATOR SEILER: So we've all got it before us. [LB975]

GWENDOLEN HINES: Can I say one more thing? [LB975]

SENATOR SEILER: Yes. [LB975]

GWENDOLEN HINES: Okay. My son is transgendered. He's only 20 now, but he desperately wants to become a father someday, so he may find himself in the position of wanting to adopt someday. He started babysitting when he was 12 and he transitioned when he was 15. Not only did the people he was babysitting for not mind his transition, he was in high demand as a babysitter. He's very good with children. When one of his teachers in college had to bring her daughter in with her, she saw how Dominic, my son, interacted with her daughter and said to him, wow, you're good with kids, do you babysit? He said he loved to babysit and now he is her babysitter. He will make a great father someday. We already cannot place all of our children. Why would we want to decrease the number of suitable families? Why would we let our prejudices override placing a child with a loving couple regardless of gender, especially when that couple's marriage is legally recognized by the United States? Thank you for hearing my testimony. [LB975]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. Next opponent. [LB975]

MARVIN BINNICK: Sorry, I'm a bit nervous. My name is Marvin Binnick and I'm here to provide the perspective of a foster child, and I think that's what we forget time and time again is the perspective of a foster child. I have spent nearly a third of my life floating from foster home to foster home, group home to group home, trying to find a loving family. I'm now 27 and luckily I did end up finding that lovely family, loving family at 16 years old. But I spent nearly eight years searching for that family. And I went through abusive homes with straight families in multiple agencies, including Omni and Christian Heritage, who supposedly met their litmus tests and standards of Christian values. Yet in one home I was in for a year and I woke up one night to being urinated on by one of their children, and I remained in that foster home for nearly a year. I was in another home for two years where I was told by the foster father that I would end up being a failure, that I would end up being nothing, along with vulgar names and curse words multiple times, and I was in that home for nearly two years. And those were both in Omni and Christian Heritage. So that litmus test of being a Christian home and family isn't enough and doesn't do enough and it shouldn't even be a standard. The standard should be...excuse me. The standard should be, are you loving parents, are you caring parents, can you provide a safe and loving home for these kids, not whether you believe in a certain god or a certain savior or what church you go to. That shouldn't be the standard. And if you really care about helping foster children in need, you would just help those kids and not care about religious values and beliefs. Another issue I have with these religious agencies is they say that they search for Christian families to be foster parents, yet they don't care about what the religious views are of the children themselves. I grew up Catholic and I like to say me growing up Catholic made me Atheist today, yet when I was a child I was Catholic and forced to go into a Christian home and practice a

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different set of beliefs than what were my beliefs. And so I think all these things need to be remembered and the perspective of the foster child. And I'll just say we don't care, like I said. We just want a loving and caring home and we don't care what your values are; we don't care, as a child, what you believe in. We just want loving parents and that's all we care about. [LB975]

SENATOR SEILER: Thank you. Any questions? Senator Morfeld. [LB975]

SENATOR MORFELD: Thank you for coming and testifying today. I think your perspective has been and likely will be probably the most important perspective to take into consideration as we look at this bill. Thank you. [LB975]

SENATOR SEILER: Anything further? Seeing nothing, thank you. Next opponent. You may go ahead. [LB975]

ROBERT McEWEN: (Exhibit 12) Senator Seiler, members of the Judiciary Committee, my name is Robert McEwen; that's R-o-b-e-r-t M-c-E-w-e-n, and I'm a staff attorney in the child welfare program at Nebraska Appleseed. And first I want to recognize that we do understand Senator Kolterman and Senator Coash's intent in trying to ensure that we retain the number of quality providers for child welfare services in our state. Many of the providers that testified here today that LB975 does seek to protect do outstanding work in our communities. In fact, as LB975 correctly notes, this type of public-private partnership has existed since the beginning of organized child welfare services across the nation. However, we're testifying in opposition to this bill today because we're concerned that these providers would rely incorrectly on the protections contained in this bill to their legal and financial detriment. And as noted by the original fiscal note to the bill, LB975 could put Nebraska in a position to lose a significant amount of federal funding. So my testimony will focus briefly on how LB975 could create these legal and financial liabilities for the state. So in addition to the executive order previously cited by Senator Morfeld, there are a number of federal statutes and regulations that are cited in my written testimony which prohibit many types of discrimination in the administration of the foster care system. In particular, Department of Health and Human Services, as a recipient of federal funds, is legally prohibited from, quote, utilizing criteria, whether that's directly or through contractual arrangements, which have the effect of subjecting individuals to discrimination because of their race, color, or national origin. To the extent that this bill allows providers to refuse services or referrals to an individual because of their religious beliefs, race, color, or national origin, LB975 may be preempted by Executive Order 13279 and various federal regulations and statutes. Finally, the providers of these services should note, even though the amendment attempts to provide them with protection from individual liability, that is not something the Nebraska Legislature has the authority to do. The Nebraska Legislature does not have the authority to grant absolute immunity from Section 1983 cases asserting civil rights actions. And so providers that

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do discriminate on any of the bases that we've talked about here today should note they may face private legal liability. And as Senator Morfeld correctly noted, there have been federal courts in Pennsylvania that have recognized these folks as state actors. And so when state actors make classifications as to constitutionally protected classes, that equals potential liability. And that is not good for the Nebraska taxpayer and that's not good for the state as a whole. So we would just add this is a little bit different than the other attorney mentioned, RFRA, or religious freedom. So this is a little bit different than the Hobby Lobby case. And in that case, the federal government was coming in and affirmatively telling people how to do things in their private entities. Here we have private contractors that are reaching out to do government jobs, to potentially be state actors. And so it's a different sort of situation. When you would reach out to the government to do the job for them, you might have to play by the same constitutional rules that the government does. And so that forms the basis of our testimony and we would ask that this committee not vote to advance LB975 because of the potential legal and financial liabilities for the state. [LB975]

SENATOR SEILER: Thank you very much for your legal research. Yes, Senator. [LB975]

SENATOR MORFELD: Thank you for coming today, Mr. McEwen. I guess I have a few questions surrounding DHHS and one question in particular surrounding the executive order. Executive orders derive their power and authority from lawfully created congressional acts, correct, or...? [LB975]

ROBERT McEWEN: That's correct. [LB975]

SENATOR MORFELD: Okay. I just wanted that noted for the record. My first question is, is DHHS allowed to contract with somebody that they know that will discriminate against persons that are constitutionally protected? [LB975]

ROBERT McEWEN: Not pursuant to federal child welfare regulations 45 C.F.R. 80, et seq. [LB975]

SENATOR MORFELD: Okay. And do you think, I mean in your opinion, will DHHS lose federal funds if they contract with someone who they know is discriminating against a constitutionally protected class of individuals? [LB975]

ROBERT McEWEN: It's my opinion that, yes, they will. [LB975]

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SENATOR MORFELD: Okay. And are any of these Title...I think we were talking about Title IV-E earlier. Are any of these Title IV-E requirements new for providers of the state? Is this something that... [LB975]

ROBERT McEWEN: No. [LB975]

SENATOR MORFELD: ...these requirements are new requirements that, you know, surprised everyone or...? [LB975]

ROBERT McEWEN: No, no, no. And as many of the proponent testifiers recognized, this executive order and these regulations have been in place for...since at least 2002 these have been the rules of the game that we're playing by. So it's interesting that this is coming about now because federal IV-E regulations and this executive order are pretty old. [LB975]

SENATOR MORFELD: Okay, thank you. [LB975]

SENATOR SEILER: Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Are you familiar with TANF at all? Have you looked at whether or not any of the TANF funds would be... [LB975]

ROBERT McEWEN: That is not my area of expertise, but I know a little bit. I don't have the...I bet you somebody in our office would be willing to get you their opinion about how TANF would be affected by this. Today I can only...I only have the expertise to speak to the Title IV-E funds. [LB975]

SENATOR PANSING BROOKS: Okay, thank you. [LB975]

SENATOR SEILER: Further questions? Yes, Senator Williams. [LB975]

SENATOR WILLIAMS: Thank you, Chairman Seiler. I just want to clarify one thing then. So if your analysis is correct and the faith-based agencies would in the future lose their federal funding and they then chose to not change their core values that's the basis of what they do, do you believe they would close? [LB975]

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ROBERT McEWEN: Honest...well, I'll answer in two parts. And so it would not be...they would not lose the funding directly through the federal government. It would be DHHS that's required to... [LB975]

SENATOR WILLIAMS: Right. [LB975]

ROBERT McEWEN: ...act against them per federal regulation. [LB975]

SENATOR WILLIAMS: Or lose their funding. [LB975]

ROBERT McEWEN: Or lose their funding. [LB975]

SENATOR WILLIAMS: Right. [LB975]

SENATOR PANSING BROOKS: Yeah. [LB975]

ROBERT McEWEN: I don't have the expertise as to how these providers would operate. I know they do an awesome job in the community. I would hate to see them go. But I can speak to, and I think Senator Morfeld made this point earlier, that our existing service array could probably absorb the missing providers. I don't want to see them go though. [LB975]

SENATOR WILLIAMS: Okay, thank you. [LB975]

SENATOR SEILER: Thank you very much for your testimony. [LB975]

ROBERT McEWEN: Thank you. [LB975]

SENATOR SEILER: We'll make your brief part of the record. [LB975]

ROBERT McEWEN: Thank you very much. [LB975]

SENATOR SEILER: Further opponent. [LB975]

NICKOLAS KRAMER: (Exhibit 13) Hi. My name is Nickolas Kramer, N-i-c-k-o-l-a-s K-r-a-m-e-r, and I am here to represent other same-sex parents. I'm not going to read my brief. You can read it there. I am the proud parent, and husband of a gentleman back there, and we have a four-

year-old child. And I wanted to tell you a little bit about our story in adopting. And I can go through the whole flowery part about how she came to be with us, but I'm more interested in telling you about how the agencies in Nebraska treated us. So about four or five years ago when we started this search, I called about a dozen agencies throughout Nebraska. I wish I kept the list, but I don't, but I do know some of the names that actually testified here today. And they promptly, nicely, I should say, turned me away on the phone for a couple grounds. Some blatantly said, we don't deal with homosexual or same-sex parents. Some hid behind the disguise that we were not legally married. And so we were forced to move out of state, not move out of state, find an agency out of state. We found two agencies to work with, one in Iowa and one in Texas. When we returned home, we discovered that the laws in Nebraska didn't exactly help us out when it came to adoption, so we were forced then to join the Waters v. Ricketts lawsuit that forced Nebraska to recognize our marriage. In that time we traveled all over the country with plaintiffs from the other 50 state lawsuits and the national case and we met hundreds and hundreds of parents just like us that said the same exact story, that they were forced out of the state that they were in or had to move to private adoption agencies or run through private adoptions. They were all interested in the same outcome and that was to support children. That's all the same-sex couples wanted. The marriage recognition was actually a very small part of the national case. Most of it had to do with needing our marriages recognized so that our families would be recognized so that we would be protected under the law. Now this particular law harkens back to the same excuses that we heard four or five years ago when we wanted to adopt a child. But now, instead of saying we can't have anything to do with you because you're a same-sex couple or because you're single or those things, now we're moving on to religious freedom. I thought we were past this but now it seems like we're just moving to another excuse to discriminate against my family and my ability to expand my family. I strongly urge this committee to think about children, to think about all the other couples, the same-sex couples in Nebraska that would like to adopt. And I urge you to put those children first, to allow them to find the homes that they deserve and to have the forever families that they need. These children are depending on this group and this committee and this legislative body to put them first, not necessarily the religious beliefs of the agencies, the children first. Thank you. [LB975]

SENATOR SEILER: Any questions? Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Thank you for coming to speak today, Mr. Kramer. I've been fortunate enough to meet your precious little girl Alice and see both of you in the care and the loving care and support of her. And I just want to thank you for your example and your fine and outstanding example of love and compassion and an ability to provide care for a child who needed such love. So thank you. [LB975]

NICKOLAS KRAMER: Thank you. [LB975]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. Next opponent. [LB975]

BARBARA BAIER: (Exhibit 14) Thank you, Senator Seiler and Judiciary Committee. My name is Barbara A. Baier. And first of all, I am not testifying on behalf of my employer, the city of Lincoln, nor in my role as an elected member of the Lincoln Board of Education. I live at 727 South 18th, Lincoln, Nebraska. My partner of 28 years, Lin Quenzer, and I were able to legally marry on July 4, 2015, thanks to the Supreme Court decision in June of that year. We have a 16-year-old son. I adopted our son as a single parent when he was four months and six days old. Prior to this, he lived in a series of horrible circumstances, surrounded by illegal drugs and violence, because his birth mother was addicted, homeless, and unable to receive treatment, even though she sought such treatment. Our son was underfed and had only a diaper and a T-shirt when he arrived at our home in the middle of an impending blizzard during the month of January. There were many extenuating circumstances that led the state of Nebraska to not care about this child. Since then, our son has thrived. He is six-foot-four, plays the flute and piano, and is active in marching band and plays piano in our church, serves as a mentor to others, and earns good grades. He plans to become a firefighter and music instructor. This is what results when homeless, neglected, and abused children are lucky enough to be placed in a forever home. LB975 is a disingenuous attempt to further the religious opinions of some religious-based private child welfare placement agencies operating on the false premise that more placement agencies equals more adoptions. Increasing the pool of eligible applicants who undergo the rigorous background checks in order to adopt is what actually increases the chances of needy children being adopted. LB975 seeks to limit and actually in some parts of Nebraska eliminate the opportunity for qualified lesbian, gay, bisexual, and transgendered people from providing foster care or adopting under the shield of religious belief. LB975 creates a possible financial obligation by state and local governmental agencies to compensate religious-based child welfare agencies if they are either sanctioned or barred from providing child welfare placement services. For what activities that a religious-based child welfare placement agency could sue the government is not specified in the bill, thus opening a Pandora's box of possibilities and effectively eliminating state oversight of such entities. And I'll let the rest of my testimony be entered in the written record. Thank you. [LB975]

SENATOR SEILER: Thank you very much. Senator Morfeld. [LB975]

SENATOR MORFELD: Thank you for coming today. There's been a lot of statements made, particularly by the proponents, that if this bill passes no person who is LGBT, if they were denied by a certain organization based on their sincerely held religious beliefs, no LGBT Nebraskan would be turned away from being able to be a foster parent or an adoptive parent, that they would be referred to another agency. As a person that's been involved in this process, what

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do you think about that? Do you have any comments on that? Do you have any concerns about that? [LB975]

BARBARA BAIER: Yeah, I have a lot of concerns about that. First of all, this legislation allows them to not refer LGBT potential parents anywhere. So it's entirely possible that an LGBT couple or single person could come to their agency in good faith and not realize they have other options. So that in itself could happen and very easily because people are easily scared away. Another possibility is that in many parts of our state--our state is very rural--the only actual placement agency and licensing agency is going to probably be that religious-based entity. If that entity isn't going to serve you, then you're going to have to invest time and effort and money into coming here to Lincoln and Omaha if you know that you have the right to do so, which you probably don't. But if you did, you would go and have all that extra expense and time and that could preclude you from going and adopting. I think it's also very problematic in cases of kinship when families decide within their own family who should be raising a child in need and they do not know all their options and, thus, they are left to the mercy of people who are not telling them their rights. And they can get away with it. This legislation allows them to do anything they want. All they have to say is, it's because of my religious convictions. [LB975]

SENATOR MORFELD: Thank you. [LB975]

BARBARA BAIER: Thank you. [LB975]

SENATOR SEILER: Any further questions? Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: I don't know if your wife Ms. Quenzer is going to be speaking to this. But I was wondering, I mean it made it sound like, well, you were able to adopt, so can you speak to that? I mean it isn't that... [LB975]

BARBARA BAIER: I would love to speak to that. Well, my wife Lin Quenzer was not able to go and adopt her own child until, what was it, September or October of... [LB975]

LINDA QUENZER: September 22. [LB975]

BARBARA BAIER: ...of 2015 and that was only because of the Supreme Court ruling. And what did that mean to our family? Well, I went and took a little time to find out what double copays on all our insurance, all the time off that I had to take because Lin could never be the parent that was there or to sign, all the extra expense that we have experienced, and over the lifetime of his life it's come to \$80,000. Now we're blessed that we have middle-class careers.

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But there are a lot of loving families out there who don't have the financial means to go and pick up on that. And going, allowing some agencies, under the shield of religious belief--and it isn't the religious belief of a lot of mainline denominations; it's the religious belief of a few religious denominations--that they can go and not refer lesbian, gay, bisexual, or transgendered people, single or couples, to another agency even for help or to essentially lock them out of services in their area of the state is taking away my constitutional rights, their constitutional rights. And I really do think that, if this passes, that there is a very strong chance there's going to be a lot of litigation. Thank you. [LB975]

SENATOR PANSING BROOKS: Thank you for coming, Ms. Baier. [LB975]

BARBARA BAIER: Thank you. [LB975]

SENATOR PANSING BROOKS: And also I'd like to say that I know your son Robbie (phonetic) and he's a fine example of your love and your compassion as wonderful parents for him. Thank you. [LB975]

BARBARA BAIER: Thank you so much, Senator Pansing Brooks. Thank you. [LB975]

SENATOR SEILER: Any further questions? Seeing none, thank you. Next opponent. [LB975]

LINDA QUENZER: (Exhibit 14) Good evening. My name is Lin Quenzer and I am Barb's wife of less than a year, L-i-n-d-a Q-u-e-n-z-e-r. I live at 727 South 18th Street, Lincoln, Nebraska. And I'm also here testifying on my own behalf and not that of my employer, the city of Lincoln, Nebraska. My wife and I have been together for 28 years and it has not been since...the only way we were able to both become parents was through our marriage and a step-parent adoption for which the state of Nebraska still has me listed as a father, which in and of itself is an affront. Now it appears the intention of some to further take a path of state-sponsored religion with this piece of legislation, LB975. It says, in order to serve the best interests of the children of this state, the government should not take adverse action against child-placing agencies based on their sincerely held religious beliefs. And it has been made abundantly clear which sincerely held religious beliefs this bill will support and endorse should it be adopted. On its face this odious piece of legislation is blatantly discriminatory. With it, some of these adoption agencies will, with state approval and funds, not only deny qualified LGBT persons from adopting on the basis of their sex but also disqualify legally married couples on the basis of our marital status. Simply because an applicant is married to a person of the same sex, Nebraska will be granting these agencies the license to violate federal law. Violations of this type can result in federal debarment should the state follow through with this legislation. Debarment would follow as quickly as the federal government verifies the violations and ascertains that the state of Nebraska will stand

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behind this legislation and continue to discriminate. In case you're not familiar with the term, debarment by the federal government on the basis of discriminatory acts will result in the removal of all federal funding to the state, not just to DHHS but every department and division of the state of Nebraska is my understanding of this federal law. So we're talking roads, we're talking streets, we're talking aid to schools, everything you run the risk of losing. It's pure folly to institutionalize this denial to allow children to be placed in loving homes and with it the denial of wishes of biological families to place children with people they believe will best serve the children they are unable to care for in accordance with their sincerely held religious beliefs, as was the case with my child's biological family. They wanted our child to be with us and these agencies would deny them that right. As if that isn't bad enough, this bill authorizes these child welfare services to deny assistance to the children, be it foster placement or counseling, without so much as a referral to another agency should these so-called helping agencies determine that the child might be other than heterosexual. This will harm children, exactly who the state of Nebraska is sworn to protect. Grownups can make do, but to withhold services from children is an abomination. Many of us have sincerely held religious beliefs. To allow these agencies to perform religious litmus tests--make no mistake--on behalf of the state of Nebraska with state of Nebraska funds to deny services to families and children is an affront to my sincerely held religious beliefs and my understanding that the U.S. Constitution mandates a separation of church and state. [LB975]

SENATOR COASH: Ms. Quenzer, the red light is on. Do you have a final comment? [LB975]

LINDA QUENZER: This is supposed to be "Nebraska Nice." What you're doing with the passage of this bill will result in untold suffering, abuse, and possibly death of helpless children while refusing to allow qualified, caring adults to give them homes, decidedly not nice. This is a moral issue. It is not a religious freedom issue. The state of Nebraska does not have the right to discriminate against people on these grounds and, if they do, it's going to cost all of us taxpayers a lot of money. [LB975]

SENATOR COASH: Okay. Thank you for your testimony. Let's see if the committee has any questions. I don't see any. Thank you for your testimony. [LB975]

LINDA QUENZER: Thank you. [LB975]

SENATOR COASH: Take the next testifier in opposition. [LB975]

JOEL BUSCH: My name is Joel Busch, J-o-e-l B-u-s-c-h. My husband Todd had to leave to pick up the foster kids that we're fighting about here today. It's been a little over a year since we were here last to testify. A lot has changed since then. Our eight-year battle that denied gays the right

to foster was overturned in August. Since then, we again took the foster parenting classes, went through all the home studies and the background checks only to confirm we were fit humans to be able to foster, which we knew. This wasn't based on our sexuality but who we are as humans. In January we received a phone call that asked if we would do emergency placement for three boys, ages 1, 2, and 13, and without hesitation we said yes. We knew nothing about these boys and yet we didn't hesitate to take them into our home. It's been a wonderful growing experience not only for the boys but also for us. The parents, like some of the people here, who were pretty upset that two gay men were taking care of their children, unlike people who oppose gay fostering the kids, the parents of our foster kids have changed their minds now. I would like to read some of the things that the parents have said about us in the last few weeks. We keep a communication notebook that goes back and forth between the parents and the foster parents to use at visitation which is right here. One of the comments was: I have noticed that--I'm going to use the initials for the kids--I have noticed that B has a much wider vocabulary. He's been using his manners well. The first few days that B was with us, he would just mumble and wasn't forming any words at all. C, which is another boy, is getting around good, referring to he's now walking, which he did not do at all in the month and a half he was with us. I am pleased with improvements they have continued to show. They also quote, I quote them saying, I haven't been always been this accepting--talking about sexuality--but over the past year, seeing how people treat the situation, I have changed my mind, too much hate in this world, I am no better than anyone else. They also said, thank you for taking good care of our boys. Once you are able to remove labels, you'll see that Todd and I are two loving humans. We have a home that is able to provide a safe and loving place. A few weeks ago, the oldest boy told us he loves us and thanked us for taking care of him and his brothers. I guess you can say that is why we are fighting to allow anyone who is capable to provide what foster kids need to make them feel safe and loved have the right to do so. We don't know how long the boys will be with us and we don't care. We are just glad we are able to provide for them. [LB975]

SENATOR COASH: Thank you, Mr....Mr. Busch, right? [LB975]

JOEL BUSCH: Yes. [LB975]

SENATOR COASH: Just wanted to clarify something for the record. Are you representing the ACLU in your testimony? [LB975]

JOEL BUSCH: I'm with ACLU, yeah. They asked me to testify with them. [LB975]

SENATOR COASH: Okay, just wanted to make sure that was clear. Any questions from the committee? Seeing none, thank you for your testimony. [LB975]

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JOEL BUSCH: Thank you. [LB975]

SENATOR COASH: Take the next testifier. [LB975]

AMY MILLER: (Exhibits 16 and 17) Good evening, Senators. My name is Amy Miller; it's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska and you've just had the pleasure of meeting two of my clients. Joel Busch, Nickolas Kramer, who testified earlier, have both been involved in two separate litigation...successful litigations we've had in the last year vindicating the rights of LGBT Nebraskans to be treated equally. In the context of child welfare, Nebraska has over 100 years of case law and statutory authority that say there is one test and one test only by which these issues must be decided: the best interests of the child. We've given you in the first footnote some of the legal citations, as well as the statutory citations. This bill wants to put that classic hundred-year-old test on its head and instead put the best interests of private religious organizations ahead of the needs of children. That's not what the Nebraska Supreme Court has said is the test in these cases. If the private agency chooses to contract with the state and receive tax dollars, then they should not be allowed to trump the best interests of children. There is a free-market solution. There was a question earlier about what has happened in other states where similar questions have arisen and private agencies being told they could not discriminate chose to leave the market. It's worked out just fine. The free market will absorb these additional cases. We've given you in footnote four some of the news examples that showed, and you've heard previous testifiers say, the other agencies will step up to the plate and absorb the additional work. Rather than having another lawsuit involving litigation, we think that we should simply postpone this bill indefinitely and allow these agencies to continue to make decisions that are in the best interests of children. In the most recent case, where Mr. Joel Busch referred to suing the state for refusing to place children, foster children, with gay and lesbian parents, the attorney fees cost was over \$100,000 that the state has to pay to the ACLU and the firms that brought the lawsuit because we were successful in that litigation. We don't need more taxpayer money going to support discriminatory principles. We urge you to indefinitely postpone this bill. [LB975]

SENATOR COASH: Thank you, Ms. Miller. I don't see any questions from the committee. Thanks for your testimony. [LB975]

AMY MILLER: Thank you. [LB975]

SENATOR COASH: The next testifier. [LB975]

JULIA TSE: (Exhibit 18) Good evening, Senators. My name is Julia Tse, J-u-l-i-a T-s-e, and I'm here to testify in opposition to LB975 on behalf of Voices for Children in Nebraska. And while we're supportive of Senator Kolterman's attempt to increase permanency and stability in the

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system, we believe that the bill would ultimately undermine the most important aspect of our system: keeping a child's best interest at the forefront. As has been referenced before, historically there has been a shortage of foster and adoptive homes for kids in our foster care system. And as we learn more and more about just how terrible it is to be in long-term foster care, we made intentional policy decisions to find more homes to connect kids with forever families. And we've seen a lot of progress here in Nebraska, which you can see in the first chart that I have attached to my testimony outlining how children being adopted is gradually approaching the number of those waiting for adoption in our state in the last decade or so. And with that we want to emphasize that although agencies are responsible for making the important connection that a kid needs to be in a family, the religious beliefs have no bearing on this decision or the ability of a prospective parent to provide for a child. Denying children the right to a family that has proper knowledge, skill, capacity, and the desire, most importantly, to provide a permanent loving home is counterproductive to our system. Research and conventional knowledge tells us that family placements are the best for children. And if we take a look at the second chart that I've attached, we run the risk of reversing the positive trends that we've observed in Nebraska where the share of family placements has increased over time, alongside an inverse trend for congregate placements. Something else that I want to raise here is the timeliness of placements for kids in our care. It's important that our system is swift with its actions and allowing for agencies to refer and re-refer and re-refer is not ideal when we're talking about a kid who needs to be removed from their home. We're especially concerned with the broad language of LB975. The language gives private agencies unprecedented power to exclude many people from a system that has always relied on our sense of community. That's an incredible amount of power with no measure of accountability. Youth in care often feel powerless and it should be a point of pride for all of us in Nebraska that we have made great strides to bring those youth voices forward. We believe that offering this level of discretion to agencies over the needs of children and families may do a disservice to our families. We instead submit that our system should aspire to unconditional inclusiveness. Children in care come from diverse backgrounds and experiences, so it's important that we seek foster and adoptive parents that are similarly diverse. The final point that I want to raise is that losing potential adoptive parents is not only bad for kids but it's bad for our state budget. Long-term foster care is expensive and some of you may already know that in Nebraska we pay mostly out-of-state dollars, unlike the rest of the states in the country. It's about 77 percent. And we also could stand to lose some federal adoption awards. So states get awards for increasing adoptions and guardianships and, like previous testifiers have already mentioned, they had to go elsewhere instead of staying in Nebraska. So we want to urge the committee to indefinitely postpone this bill. We believe that continuing to invest in agencies that maximize all available opportunities to find permanency for children is not only in the best interest of kids but also for our state budget. And with that, I'll... [LB975]

SENATOR COASH: Did you want to finish your... [LB975]

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JULIA TSE: Oh, yeah. I think we just want to thank this committee for your time and effort and Senator Kolterman certainly for his interest in pursuing permanency and stability for all families. [LB975]

SENATOR COASH: All right, thank you. Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: Thank you, Senator Coash. Thank you for coming to testify today. I was just wondering, are you very familiar with the TANF and Title IV-E funds? [LB975]

JULIA TSE: Not entirely. I think that Robbie (phonetic) from Appleseed had some understanding at least from the IV-E perspective. [LB975]

SENATOR PANSING BROOKS: The IV-E, yeah. [LB975]

SENATOR COASH: Robbie (phonetic) said you were the expert. (Laughter) [LB975]

JULIA TSE: And in my testimony I've included some numbers about federal adoption incentive awards which we've received since it was established in 1998, and that's about \$4 million-and-some. [LB975]

SENATOR PANSING BROOKS: Okay, well, it's my understanding that the TANF funds are a block grant of about \$58 million to... [LB975]

JULIA TSE: Yes, yeah, so that...yeah. [LB975]

SENATOR PANSING BROOKS: But that is what's at risk, that. So, all right, thank you. [LB975]

JULIA TSE: Sure. [LB975]

SENATOR COASH: I don't see anybody else. [LB975]

JULIA TSE: Thank you, Senators. [LB975]

SENATOR COASH: Take the next testifier in opposition. Come on up. [LB975]

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SUSAN ANN KOENIG: Good evening, Chairman Seiler, members of the committee. Thank you for being here, attentive as you always are on your long days of service. My name is Susan Ann Koenig, K-o-e-n-i-g. I'm the founding partner of the Koenig/Dunne law firm in Omaha. This year marks 35 years that we've been in courtrooms every week advocating for what's in the best interest of children, and I'd like to bring a little bit of a practical perspective here. As either an attorney for children or a court-appointed guardian ad litem on behalf of abused and neglected children in juvenile court, I've been involved in hundreds of decisions surrounding child placement, from foster care and group homes to relative placement and adoption. I've also litigated landmark cases here in Nebraska on cases where religious beliefs and child custody, child placement were at issue. Ms. Miller and members of this committee have all raised the issue of best interest of the child and I want to add a little bit more to that. Senator Kolterman said, you know, not one size fits all, and that was the argument for why we might have a different focus for different agencies. But the complete disregard of this 100-year-old standard for how child placement should be made is really quite shocking why our state would even want to contract with any agency that refuses to be held by the standard that is used in every divorce case, every paternity case, every adoption case, every custody case. It's also the standard in abuse/neglect cases or in the no-fault cases where a child is homeless or destitute or without proper parental support through no one's fault. That's the language from our juvenile court statutes. In our county courts, our district courts, our separate juvenile courts, if you're talking child custody, child placement, the standard is best interest. It is not in LB975. And so what does this mean? It means that we're going to have two systems: one for children who are the most vulnerable, the ones in juvenile court; and then we're going to have a different standard for children whose parents are divorcing, when you have a conflict between two parents. So say, for example, ten-year-old Amanda is the subject of a custody fight in a divorce. We're going to look at what's in her best interests. But if ten-year-old Amanda is in juvenile court because she's been sexually molested and is homeless, well, the agency doesn't have to consider her best interest. This is shocking that we would think that we are going to create a second class of children in our state, those who are most in need of protection, those who are most vulnerable. There was mention earlier of the position of the American Academy of Pediatrics. Twenty-five years ago they began urging that religious exemption clauses be removed from state statutes, laws like this, and I'd urge you to do the same and refuse to advance this bill. Happy to answer any questions. [LB975]

SENATOR SEILER: Any questions? Senator Ebke. [LB975]

SENATOR EBKE: Thank you. Is there a well-defined, a well-delineated definition of what the best interest of the child is? [LB975]

SUSAN ANN KOENIG: I love that you asked that question, Senator, because actually our law firm would like to see more standards and we're working on legislation to spell out specifically

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in state statute. Where it does exist right now is in case law, countless cases where we have said, for example, one of the litigated cases here in Nebraska, Hassenstab v. Hassenstab, which went to Nebraska Court of Appeals, the court ruled that sexual orientation is not to be a factor in child custody cases, right? So, but that can be ignored. [LB975]

SENATOR EBKE: Sure. [LB975]

SUSAN ANN KOENIG: That can be ignored by these agencies if this law goes forward. [LB975]

SENATOR EBKE: Practically speaking, is the definition of best interest of the child different from courtroom to courtroom, different courts, say, in custody cases? [LB975]

SUSAN ANN KOENIG: Practically...I love that you defined that as practically speaking, right? Of course it is subjective. Nevertheless, what do we look at? We look at the age of the child; we look at the needs of the child; we look at the relationships that the child has; we look at the education, the social, emotional, psychological. So we know what the factors are if we read the cases. And some judges are better than others in applying it. [LB975]

SENATOR EBKE: Sure. [LB975]

SUSAN ANN KOENIG: But it is always the standard, universally the standard. [LB975]

SENATOR EBKE: But I mean I think everybody believes the best interest of the child is the most important. The problem is perhaps that, I mean, we all look at, we all define that differently. So absent a clear definition in state statute, everybody is, you know, going to...one group may see one thing as the best interest of the child based on their own predispositions, if you will. [LB975]

SUSAN ANN KOENIG: Unless they don't even have to look at it because the law says their beliefs give them the permission to pass on that, and that's what this bill does. [LB975]

SENATOR EBKE: Okay. [LB975]

SENATOR SEILER: Isn't it a totality of the facts for the best interest? [LB975]

SUSAN ANN KOENIG: Absolutely, on a case-by-base basis. [LB975]

SENATOR SEILER: Right. [LB975]

SUSAN ANN KOENIG: That's right. [LB975]

SENATOR SEILER: Anything...questions? Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: I think...don't you think it would be sort of hard to create what it actually means and that it's been left general so that it is a case-by-case, fact-by-fact basis? [LB975]

SUSAN ANN KOENIG: I think that what will hold courts more accountable and, you know, hopefully agencies more accountable, is taking what is in case law where it has been established and setting that forth so that when there is a determination made we can have findings. You can say, why did I base this? Because I looked at A, B, C, and D. These were the five factors, the ten factors. And some you may give more weight to than others. We perform this kind of analysis in many...under many areas of the law, right? But I think we have room for improvement here in Nebraska through some clearer statutory delineation. [LB975]

SENATOR PANSING BROOKS: Thank you. [LB975]

SUSAN ANN KOENIG: Yeah, thank you. [LB975]

SENATOR SEILER: Further questions? Seeing none, thank you, Susan. [LB975]

SUSAN ANN KOENIG: Thank you, Senator. [LB975]

SENATOR SEILER: Next opponent. [LB975]

TYLER RICHARD: (Exhibit 19) Good evening, Chairman Seiler and members of the committee. My name is Tyler Richard, T-y-l-e-r R-i-c-h-a-r-d, and I represent Outlinc, O-u-t-l-i-n-c, and we are Lincoln's gay and transgender community center. For five years Outlinc has been working to make Lincoln the best place in the Midwest for lesbian, gay, bisexual, and transgender people to live, work, and play. Our educational and social programming serves hundreds in Lincoln annually, with thousands of people accessing our on-line resources. On behalf of the board of directors and the dozens of families that regularly participate in our programming, I am here to express strong opposition to LB975 on the grounds that it would hurt children and families in Nebraska. Outlinc believes that all families in our state have value and

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that the best way to strengthen children and families in Nebraska is through inclusion. The families that regularly attend Outlinc's programming have, like many families, put their kids first. The parents have given up a vacation or a concert because their kid needed a new bike. They have decided on a minivan over a sports car because that was the best way to get their kids to soccer practice. They've shown up to events tired and exhausted but shown up anyway because it was important to their kids. There's nothing unique or special about these sacrifices. Putting the needs and wants of others first is a basic family value. That's part of why so many people become parents: to give of themselves. As a state, we should find more ways to embrace the value of putting kids first. LB975 doesn't do that. It puts a few providers in front of our state's children and does so while sending a hurtful and harmful message to families in Nebraska. I would also add that Outlinc and many of our partner organizations have provided trainings for organizations that want to better serve the children in Nebraska that are gay or transgender. A number of the organizations that have testified so far today have expressed support of nondiscrimination for the children that they serve and I would love those organizations to be in contact with Outlinc to find out about the trainings and the services that we can provide so they can better serve Nebraska's gay and transgender youth. And with that, I will ask if you have any questions for me. [LB975]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. [LB975]

TYLER RICHARD: Thank you all very much. [LB975]

SENATOR SEILER: While the next opponent is coming up, I remind the committee we have an Exec meeting right after this... [LB975]

SENATOR CHAMBERS: A what? [LB975]

SENATOR SEILER: ...that will take about two minutes. [LB975]

SENATOR CHAMBERS: (Laugh) I know. [LB975]

SENATOR SEILER: Next opponent. [LB975]

SENATOR PANSING BROOKS: Only two? [LB975]

SENATOR SEILER: Yeah, but it's important. [LB975]

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GAIL STEEN: (Exhibit 20) I can talk very quickly. My name is Gail Steen, G-a-i-l S-t-e-e-n. I'm a private attorney here in Lincoln, Nebraska. I do only family law at this point so I'm involved in juvenile court as well as divorce, custodies, all that joy. I am handing out my testimony and I would ask that it be made part of the record. Rather than read through it, I just want to address some of the points that have been raised and incorrectly answered before the committee. To begin with, there was a question about how are children placed in foster care. If the children are through a juvenile court action, they are placed with HHS. HHS then contacts the various agencies in their area to see if any of them can take this child. They may give information, like it's a 12-year-old girl and she should not be placed with any younger child, but usually it's pretty generic at the first. After that first screening of do you even have a bed available, then we get down to the more technical questions of what this child needs. A child can also be voluntarily placed with the department, meaning there's not court involvement. That follows the same process. Lastly, a private person can place a child with a licensed childcaring agency. For instance, a family may want to place a child with Boys Town for the programming that's available to that program. The question is always funding. And so if the child receives Medicaid, they would still receive the restrictions of federal and state funding. Senator Kolterman indicated that corporal punishment is illegal in Nebraska. That's not true. Corporal punishment is illegal...is legal to do in Nebraska as long as it doesn't rise to the level of abuse or neglect. Also, a question was raised about whether or not HHS has its own legal department. It has attorneys that are hired by HHS. They have to be special assistant attorneys general to appear in court. I would also remind the senator that I can give advice to my client; my client does not necessarily have to follow that advice. So just speaking up for the people at legal...or for the legal team at HHS. Lastly, Senator Pansing Brooks had indicated to, I believe, Mr. Williams of Compass that their agency could still receive placement and still place with children and not receive federal dollars. I don't think that's true. They have to be a licensed agency in the state of Nebraska. If they're receiving any Medicaid money, they would still receive the federal. If they want to do anything that's involved with HHS, they would still have to follow...they would...in order to get that federal money, would have to be through HHS. And then I would just be available for any questions. [LB975]

SENATOR SEILER: Any questions? [LB975]

SENATOR PANSING BROOKS: Okay, I have a question. [LB975]

SENATOR SEILER: Senator Pansing Brooks. [LB975]

SENATOR PANSING BROOKS: So can you explain then the private adoption agencies still receive federal money and... [LB975]

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GAIL STEEN: They still have to be licensed. They have to be a licensed agency to be a private adoption agency. If you are a private person that wants to use this agency, there may not be any federal dollars. It depends whether or not you're getting a federal subsidy, which probably you are not if it's a private adoption. But as for a placing, that would be...to me, that's a different...an adoption placement is different than a foster care placement, to me. [LB975]

SENATOR PANSING BROOKS: Okay. Well, what about a private foster care placement? Do those just not happen? [LB975]

GAIL STEEN: Not...not...not legally. (Laughter) You cannot place a child in foster care and have another agency care for your child... [LB975]

SENATOR PANSING BROOKS: Right. [LB975]

GAIL STEEN: ...by just a private thing. You can voluntarily place your child with HHS and not have court involvement. You can't just...you know, you can place a child at Boys Town, for instance, that kind of private placement. But then you've got whether or not there's any Medicaid money that's available for the funding of that child. So that would be the distinction. [LB975]

SENATOR PANSING BROOKS: Okay. Thank you. [LB975]

GAIL STEEN: Thank you. [LB975]

SENATOR SEILER: Any further questions? Seeing none,... [LB975]

GAIL STEEN: Thank you. [LB975]

SENATOR SEILER: ...thank you for your testimony. Next opponent. Seeing nobody moving...oh, do we have somebody? Okay. No? Okay. [LB975]

SENATOR COASH: Hold on, she's getting something. [LB975]

SENATOR SEILER: Oh, you are going to testify. Okay. [LB975]

ELLEN HANSEN: I apologize. My i Pad (inaudible) has my notes on it. Good evening, Chairman Seiler, members of the committee. Ellie Hansen, E-l-l-e H-a-n-s-e-n, and for legal purposes my legal first name is E-l-l-e-n. I appear this evening as someone who spent a

significant portion of her life in foster care, came of age, aging out of the foster care system in Kansas, having lived through the successful privatization of foster care in the state of Kansas. As an adult, I chose to study social work. And in retrospect, I identified myself as falling under the LGBT umbrella when I was approximately 11 to 14 years old. In turn, I have cared for a transgender foster child and I have worked with many other LGBT youth in the foster care system. I would like to point out the statistic that males who spend 18 months in our foster care system, and I use air quotes because systems work and the one that we currently have doesn't. And this just LB95...this current bill serves to complicate things and make it work even less than it already does. But a male that has spent 18 months in our foster care system has a 90 percent probability of doing adult prison time. I think of my foster brother Jonathan (phonetic), who's currently sitting in federal prison. I think of my foster brother Harold (phonetic), who's currently sitting in prison in the state of Kansas. I think of Latasha (phonetic), Kelsey (phonetic), Tasheena (phonetic), Britney (phonetic), Christina (phonetic), and countless others. I think of the difficulty of placing LGBT foster children, which most of the people, including the introducer and those who have testified today, have no idea how difficult it is. And I don't think that many have ever had the chance to look in a child's eyes that's in the current foster care system and have to see their reaction and have to deal with the emotional fallout when they're told that a bed is not available for them. I would like to point out that the implications of passing this bill will likely violate the Indian Child Welfare Act. As a member of the Choctaw Tribe, I would like to make that especially clear. Nonreferral of potential adoptive and foster parents is a blatant violation of the National Association of Social Workers code of ethics. This would potentially jeopardize a professional standing within that organization of social workers within the state. The DCF deputy director obviously didn't do his homework before he showed up today saying that no information...oh, I went and requested information from the federal government about communication between the department and the federal government agencies, and none was able to be found, no written communication. However, I was able to ascertain, by speaking to numerous people, that loss of funding is very much likely should this bill pass, as Senator Chambers already mentioned, and resulting would be creating a catastrophic dilemma... [LB975]

SENATOR SEILER: Go ahead, finish your sentence. [LB975]

ELLEN HANSEN: Thank you...of inability to place children in homes licensed by faith-based organizations, potentially. [LB975]

SENATOR SEILER: Any questions? Thank you very much for your testimony. [LB975]

ELLEN HANSEN: Thank you. [LB975]

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SENATOR SEILER: Any further opposition? Further opposition? Anyone in the neutral?  
[LB975]

TRACEY LATTURE: Tracey Latture, T-r-a-c-e-y L-a-t-t-u-r-e. This has been really good for me to be here, especially when you guys were trying to hold HHS or DHHS accountable. Just for an example, with my son I've been asking for him to be able to attend church or be in a Christian-based foster care system for the last three months, and it's been denied. I am a Christian, but I am very concerned about religion and people that aren't able to conceive their own children or people, you know, same-sex marriages using children like mine and "bio-parents," you know, using those children as a commodity. The best interest of children and legal quagmires really aren't compatible. Lawyers should not be in the childcare industry. Like I said, this has been...you know, it was pretty clear it was a no-fault case, but now it's a...you know, they're wanting to inflict help on me that I didn't ask for. He was on Medicaid. We had utilized every service there was. There was one angry psychiatrist that pulled her rank and at a time when I was under...or my family was in crisis. And to be pulled into a system, a very expensive system that was totally unneeded, and in my opinion illegal, my son was kidnapped. And I need the Christian community and I need you guys, if you truly have the best interest of children, see how those children are being captured. You know, have an interest in what their "bio-family"...you know, you can't make their parents go away. You know, their parents are their parents till the day they die, and they get it figured out. You know, and you talk to some of these kids that have grown up in the foster care system. Where do they go when they age out? If it's possible, they go home. Thank you. [LB975]

SENATOR SEILER: Thank you. Any further in the neutral? Seeing none, Senator Kolterman, you may close. [LB975]

SENATOR CHAMBERS: He's still here? (Laughter) [LB975]

SENATOR KOLTERMAN: I'm still here, Senator. Well, what a day. It's been good conversation. It's been good testimony from both sides. I appreciate both sides coming to testify. I hope that everybody knows that my intent is not to hurt children, take anything away from children; quite the opposite. I still have some question about, you know, executive orders. I have to look into that deeper. I think there's case law that might look at that differently, but I'm not an attorney. We do have evidence, though unconfirmed at this point, that no other states have passed similar legislation...that have passed similar legislation have seen a reduction in federal funding, nor have they seen any lawsuit with regard to discrimination. But what we have seen is the ejection of faith-based agencies throughout the nation, some by choice, some by...because of their religious preference. I'm willing to tighten up, you know, some of the definitions. I'm willing to work with you. But I will say that I still believe what we're trying to do here is fair. I don't look at

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it as being discriminatory, as some do. On the other hand, we're not going to change people's opinions about that in this setting today. I do believe that a right to believe is absolute, but the right to act according to those beliefs is not absolute. So our assertion that this is a carte blanche protection of faith-based institutions I believe is unfounded. But here again, I'm not an attorney so I can't dispute that. But I would again like to thank the committee for hearing this. I will continue to work to make sure that kids find homes. Doesn't matter to me whether they are in a same-sex home or whether they're in good Christian, loving homes. The point of this bill is to make sure that we don't lose adoption providers. So thank you. And I would answer any questions you might have. [LB975]

SENATOR SEILER: (Exhibits 21-28) Any questions? Seeing none, there are a few letters for support: Nebraska Family Alliance, Gregory and Katherine Penny, Nebraska Catholic Conference, Leah Kampschneider, Dave and Christie Behle, and Todd and Nicole Camp. Opposition: former Senator Gwen Howard, and the National Association of Social Workers. They will be...those letters will be submitted for the record. Anything further? [LB975]

SENATOR KOLTERMAN: Thank you, Senator. [LB975]

SENATOR SEILER: This hearing is closed. We'll have a quick Exec. [LB975]