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Floor Debate  
April 12, 2017

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[LB44A LB44 LB68 LB72 LB75 LB88 LB91 LB91A LB145 LB158 LB172 LB225A LB233  
LB259 LB263 LB263A LB376 LB395 LB411 LB415 LB417 LB427 LB428 LB526 LB640  
LR26 LR27]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixty-fourth day of the One Hundred Fifth Legislature, First Session. Our chaplain for today is Senator Bolz. Please rise.

SENATOR BOLZ: (Prayer offered.)

PRESIDENT FOLEY: Thank you, Senator Bolz. I call to order the sixty-fourth day of the One Hundred Fifth Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

PRESIDENT FOLEY: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT FOLEY: Thank you, sir. Are there any messages, reports, or announcements?

CLERK: Just an announcement, Mr. President. The Transportation Committee will have an Executive Session at 10:00 in Room 2022. That's all that I have.

PRESIDENT FOLEY: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda, General File appropriations bill. Mr. Clerk.

CLERK: Mr. President, LB91A is by Senator Hilkemann. (Read title.) [LB91A]

PRESIDENT FOLEY: Senator Hilkemann, you're recognized to open on LB91A. [LB91A]

SENATOR HILKEMANN: Thank you, Mr. Lieutenant Governor. LB91A appropriates funds from the Health and Human Services Cash Fund for Program 33 to aid in carrying out the

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provisions of LB91. I appreciate everyone's support for LB91 on both General and Select File and ask that you give a green vote on the LB91A. Thank you, Mr. President. [LB91A LB91]

PRESIDENT FOLEY: Thank you, Senator Hilkemann. Debate is now open on LB91A. Senator Chambers. [LB91A]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is a noncontroversial bill. It is important. So I have some things that I've got to say this morning and I decided to pick this bill instead of taking a substantive bill. I was aware of what the spokesperson for President Trump said when he facetiously compared the Holocaust to what's happening in Syria. To suggest that Hitler did not do anything as bad as what al-Assad is accused of having done is not only unconscionable, monumentally ignorant, it is totally inexcusable, and the President ought to fire this man. There are some things that can be said which constitute a slip of the tongue. This was a total slippage of decency, humanity, and everything that should be present in a person holding that position. Some people call this a Jewish issue. This is not a Jewish issue. This is a human issue and it impacts on every human being on this planet. I don't know what was in Spicer's mind, if anything. But the Jews were gassed, 6 million, 400,000 gypsies, an undetermined number of undesirables, Communists, labor union people, Russians; they were put to death in a gas chamber. The gas was Zyklon B. Zyklon B was manufactured by IG Farben. This was the largest manufacturer of chemicals and pharmaceuticals in the world--in the world. Its tentacles reached everywhere, including into the United States. You all have heard of Bayer, you've heard of BASF. Those companies still exist today and they were a part of IG Farben. It was a cartel. The way the Nazis first were going to kill the Jews was to put them in hermetically sealed vans and as the driver drove them to a place for mass burial, carbon monoxide was piped into that chamber. When the truck stopped and they had to remove these bodies, not only was not everybody killed, but those who died defecated, urinated. The sight and the stench were horrendous and it was determined that this was too harsh an experience for the sensitive Nazis, so they had to find a different way to kill these people. So instead of doing it in this fashion, because the sensitive Nazis had to remove these bodies, they would dig the large trenches and line the Jews up on their knees so that when they were shot they'd fall into the trench and no sensitive Nazi would have to touch them. Then they'd walk down the line and shoot everyone in the back of the head at the base of the skull and, as happens, not every shot produced death. Some people were, thus, buried alive, children included. [LB91A]

PRESIDENT FOLEY: One minute. [LB91A]

SENATOR CHAMBERS: They needed to find a better, more efficient way since Hitler decided on what he called the "Final Solution." Adolf Eichmann was the architect of the Final Solution and that Final Solution meant eradicating all the Jews from Europe. And to do this, they had to

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do eliminating on a massive scale. Prior to the establishment of the extermination camps, which Mr. Spicer referred to as "Holocaust centers"...Holocaust centers. This is a man speaking for the President. I haven't seen the outrage that I think ought to be manifested. I know Jews, not just according to the stereotype, have very capable spokespersons. They have B'nai B'rith, the Anti-Defamation League. But it shouldn't be left to a people to have to be the only ones... [LB91A]

PRESIDENT FOLEY: Time, Senator. [LB91A]

SENATOR CHAMBERS: ...responding in an appropriate way... [LB91A]

PRESIDENT FOLEY: Time, Senator. [LB91A]

SENATOR CHAMBERS: ...to what happened. [LB91A]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Erdman. [LB91A]

SENATOR ERDMAN: Thank you, Mr. Lieutenant Governor. I rise with a similar opinion today, not about LB91A but about something I read in the Lincoln Journal Star this morning, and it said that a rare thing happened. The budget was approved by the committee 6-3, a budget that shows a 1.1 increase in spending. We have a shortfall here, but it's business as usual in the Legislature in the state of Nebraska. We don't make cuts. We decrease the amount of increase that we wanted. I don't know about you, but I did not come here to raise or spend more. I come here to make cuts and to do what I think is the moral obligation. And what the people sent us here to do is live within our means. We are not doing that. So I'm starting the discussion today about the budget. Are we going to talk about the budget or are we going to talk about the budget? So the Appropriations Committee--and they do a yeoman's work, there's a lot of things to do--they sweep money from committees that have raised funds because of fees and things that they do. They sweep \$500,000 from the Brand Committee. That's not tax dollars, not state dollars, but they can do that. And we continue to do those kind of things. We take money from potato growers. We do everything that we can to balance the budget so we don't have to make cuts. The state of Nebraska, the last time I seen, has nearly 19,000 employees, 19,000 if that information is correct. That's one employee for every 100 Nebraska people. Is that the right number? I don't know, but I know this. We have way too much spending and we've got to make some decisions on how we cut this thing and not have an increase. So we have cut back from what we wanted the increase to be and we call it a cut. It's tremendous how we work on this program here. I don't know, maybe I'm the only one in this whole body that thinks that we have a problem. We have a problem. Houston, we have a problem. And how we deal with that, we're going to spend another 1.1 percent more than we did last year. We're going to take funding, we're going to take the necessary funding needed for Corrections. They don't need that. We're going to cut that. What

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else are we going to cut that we need? So if you're within earshot today and you're hearing what I'm saying, stand up. Pull up your "big boy" and "big girl" pants, Senator Pansing Brooks. I'll offend everybody here today. It's time for us all to make a contribution to what needs to be done here. A 1.1 percent increase in spending isn't going to cut it in my book. And if you're okay with that, let it be. We'll be here till August. We'll be back in October when we use up the rainy day fund and the Cash Reserve and we use all that up and then the revenue doesn't come in as we projected to come in because we're betting that it's going to rise. Talked to the back home last night. County attorney told me, said first time in 12 years he's had anybody come in to him to file Chapter 12, had three this last week. Things are bad in Nebraska. But we're going to keep spending more and we're going to take more tax dollars. We're going to solve this problem; we're going to spend our way right out of this thing. No, we're not. It's time for us to understand; it's time to make some decisions that count. [LB91A]

PRESIDENT FOLEY: One minute. [LB91A]

SENATOR ERDMAN: Your little private thing that you want money for, we can't cut that. Don't cut my deal. It's okay to take that one's money but don't take mine. We all got to get next to that big old tax pool and hold hands and on three we all got to jump in and make a contribution. We all have to make a decision on how we're going to cut this thing. All right? So there it is. Those are my thoughts for the day and I will have others. Thank you. [LB91A]

PRESIDENT FOLEY: Thank you, Senator Erdman. Senator Chambers. [LB91A]

SENATOR CHAMBERS: Thank you. Mr. President, I'm going to continue with my thoughts for the day. I was talking about the President's spokesperson and when he began, the President's spokesperson, to apologize, he made a bad situation worse. What he should have said, if anything, he blundered miserably, he made a statement that was so intolerable and outside the pale that the only course left for him, because whatever he said reflected on the President no matter what disclaimers he made to try to reclaim a modicum of honor, if he ever had any, is to resign. He would offer no more explanations because there is no explanation. All he could make is a confession and then try to make the record straight, balance and close the books by resigning. But he did not choose to do that. And I can't make him do it. But as I was saying, IG Farben manufactured this gas. When the concentration camps were utilized earlier in the war, the extermination camps, as I said, were created in 1940 to help facilitate the Final Solution. They worked these people to death. Hitler had said your wages shall comprise food, if you work you will eat. Many people starved to death anyway. The amount of so-called nutrition was not enough to sustain a full-grown human being. But it didn't matter because these people were easily replaced by others. So those who didn't starve generally died from overwork. After the extermination camps were put in place, they could be liquidated on a large scale. But before the

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extermination camps, they were executed, if you want to call it that. IG Farben, which had tentacles in America, established a manufacturing plant at Auschwitz, one of the most notorious extermination camps. And not only did he manufacture artificial rubber and other commodities, they did pharmaceutical experiments on live inmates. At Buchenwald they did a similar thing but they also conducted experiments with toxins, antitoxins, and induced diseases. These are the things that were being done. There were many death camps but the most notorious--sometimes I use notes--Auschwitz, of course; Belzec; Chelmno; Majdanek; Sobibor; and Treblinka. And when Auschwitz was acting at peak efficiency, they actually housed 100,000 people. The... [LB91A]

PRESIDENT FOLEY: One minute. [LB91A]

SENATOR CHAMBERS: They could kill 2,000 people at one time. And if they really were working, they gassed and incinerated 12,000 people a day. So for this individual to suggest that what happened in Syria is worse than what I'm talking about, marks a man who is completely out of touch with reality. He tried to clean it up, if such a thing can be done. I will wait till I'm recognized, Mr. President, then I'll be through. [LB91A]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Halloran. [LB91A]

SENATOR HALLORAN: Thank you, Mr. President. I would like to just stand behind the other Steve in commenting about the budget. You know, at home when young people say, ask adults commonly, what should I do for a living when I graduate from high school, a lot of times people will say, well, work for the government. And the young person will say, well, why would I do that? And the answer is, because you're never going to get fired. It just does not happen. And I know through this whole budget discussion we're going to have people say we're heartless, we have no charity in our hearts. And to anyone that says that, anyone that says that, we have an obligation to our constituents back home. They're not heartless. I would compare on a percentage basis of my income, with anybody, my charity giving out of my pocket. Okay? When I pay taxes, I'm not contributing to charity. I'm paying an obligation that I have to the state government or the federal government. And I understand. I'm okay with that obligation as long as it's well spent, as long as it doesn't grow faster than my budget grows as an individual. But it's not charity. When I pay my federal taxes, my state taxes, some of that's going to go to various aspects of the federal and state government that are going to give to people who need help. And while I'm okay with that, there is a lot of abuse that goes on in that process. But to me, charity doesn't come from the government. Charity comes from right here. Okay? When I write a check of my disposable income, that's charity. And anyone that wants to stand up during this debate on the budget...and it's going to happen. We're going to have the American flag waved and we're going to have our Christianity put on display here and we're going to be accused of being heartless. I'm just saying

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my heart is with my constituents back home. Okay? They're to a point where they have obligations for their family and that's their first obligation. There's going to be bankruptcies. I don't want to overexaggerate that but there will be bankruptcies. We're depending on what projected revenue is going to be for this budget. Well, we've been notoriously wrong here in the recent past, haven't we? And we're betting on the come on that projection of revenue and I'm here to say that that's going to be wrong, that's going to be inaccurate, that's going to be an overprojection. And yet we're going to base it, we're going to base our budget on that projected revenue. The storm is brewing out there, folks. This state economy is sucking air. And so I stand behind the other Steve, Steve squared, and we're going to have a healthy discussion on this budget. But don't, don't accuse any of us of being heartless when we say we need to cut back on our budget. Thank you, Mr. President. [LB91A]

PRESIDENT FOLEY: Thank you, Senator Halloran. Senator Chambers, you're recognized. This is your third opportunity. [LB91A]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, as Spicer, who represents Donald Trump and all that Donald Trump stands for and the people who support him...and Trump made it clear who those people are when he appointed Steve--I don't even want to say his last name--Bannon, the alt-right person who is a racist, anti-Semite, and all the other negative terms, and Trump, knowing this, took him on. Spicer had no reason to think that what he said would be anything out of line with what Trump has shown himself to be. Well, what Spicer tried to clean his remarks up with was the comment, well, Assad was gassing his own people. I don't know what Spicer meant by that. Did he mean that Assad had fathered all these people, because the Jews were Hitler's people. Hitler was a chancellor. He was the top dog in Germany. He was the head of that country. There were Jews who were citizens of Germany. They were his people in the same way that the ones who died in that chemical attack were Assad's people. But I guess Jews, to Spicer and Trump, are not people, or, though they held German citizenship, were not Germans. However you try to parse it, the Trump administration and the people around him are showing the lack of regard they have for human beings. This comment by Spicer demonstrates it. I haven't heard or read where Trump disagreed with it because Trump has said too many things himself. So when the people of America can see these kind of remarks emanating from the highest office in this country and not say anything about it, it tells the world what America is. So when America wants to condemn other countries for disrespecting human rights, I, as a black man, would like to have the opportunity to join that discussion and talk about all the white people, such as some in this Legislature, who want to take away the right of black people to vote; the violence inflicted on us by police which they get away with. Talk about disregarding human rights? All of the countries of the world can point to America and successfully level the charge of hypocrisy. Those things that I'm saying in that regard may be considered general allegations. The main thing I'm focusing on this morning is very specific. It marks the Trump administration. It says something about the American people.

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As one whose people were mistreated through violence, lynching, deprivation of human rights, I took an interest in things like that that happen to any group anywhere in the world. I read a lot about what happened to the Jews, and some of the things that I read when I first encountered them I could not believe would be allowed to happen. But while they were happening, Americans knew. [LB91A]

PRESIDENT FOLEY: One minute. [LB91A]

SENATOR CHAMBERS: There was one of the death camps when the Jews were to be liberated and black soldiers were the ones who came. These Jews had never seen a black man before and they dubbed these liberators as the "black angels." This kind of literature would not be taught in the American schools; it's probably not known by anybody on this floor. But I'm saying what I'm saying to indicate that I feel a strong sense of solidarity with any group--I don't care who they are--who are reduced to the level of subhumans, the Untermenschen, as the Jews were called by the Nazis. And I've had my say on that and I hope that I can control my urges and not say too much more about it as we go along. But that's not an absolute promise that I will make. Thank you, Mr. President. [LB91A]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Hilkemann, you're recognized to close on LB91A. [LB91A]

SENATOR HILKEMANN: After that interlude, I'll just remind everyone that this is a cash fund transfer and costs our General Funds nothing. Your support would be appreciated. Thank you. [LB91A]

PRESIDENT FOLEY: Thank you, Senator Hilkemann. Members, you've heard the discussion on LB91A. The question before the body is the advance of the bill to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk. [LB91A]

CLERK: 33 ayes, 0 nays on the advancement of the A bill. [LB91A]

PRESIDENT FOLEY: LB91A advances. Next bill, Mr. Clerk. [LB91A]

CLERK: Senator Friesen would offer LB263A. (Read title.) [LB263A]

PRESIDENT FOLEY: Senator Friesen, you're recognized to open on LB263A. I understand Senator Smith is going to handle this. Senator Smith, you're recognized. [LB263A]

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SENATOR SMITH: Thank you, Mr. President. Good morning, colleagues. The original LB263 had no fiscal impact. However, with adoption of AM670, introduced by Senator Bolz, a \$9,600 fiscal note was established on this bill. The Native American Cultural Awareness and History Plate will require appropriation out of the Motor Vehicle Cash Fund for fiscal year 2017-2018 of \$9,631. Thank you, Mr. President. [LB263A LB263]

PRESIDENT FOLEY: Thank you, Senator Smith. Debate is now open on LB263A. Senator Krist. [LB263A]

SENATOR KRIST: Ah, yet another specialty plate that we are taking upon ourselves to put in place. I couldn't agree more with this plate, but I've established a precedent: no more plates while I have the power to vote. You can do it on your own with 250 signatures and get it out there, citizens of Nebraska, but you're not going to have my vote on any more specialty plates. Thank you, Mr. President. [LB263A]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Chambers, were you trying to be recognized? No. Okay, fine. No one else in the queue, Senator Smith, you're recognized to close on LB263A. He waives closing. The question before the body is the advance of the bill to E&R Initial. Those in favor say aye; those opposed vote...or, excuse me, vote aye; those opposed vote... [LB263A]

SENATOR CHAMBERS: (Microphone malfunction)...vote. [LB263A]

PRESIDENT FOLEY: Yes, sir. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record vote has been requested. Please record, Mr. Clerk. [LB263A]

CLERK: (Record vote read, Legislative Journal pages 1015-1016.) 26 ayes, 6 nays on the advancement. [LB263A]

PRESIDENT FOLEY: LB263A advances. Proceeding now to General File, 2017 senator priority bills. Mr. Clerk. [LB263A]

CLERK: Mr. President, LB158 by Senator Pansing Brooks relates to juveniles. (Read title.) The bill was introduced on January 9, referred to the Judiciary Committee, advanced to General File. There are Judiciary Committee amendments. (AM145, Legislative Journal page 426.) [LB158]

PRESIDENT FOLEY: Senator Pansing Brooks, you're recognized to open on LB158. [LB158]

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SENATOR PANSING BROOKS: Thank you, Mr. Lieutenant Governor. Members of the body, I am happy to open today on LB158 because the constitutional right to an attorney is one of the most basic rights of our legal system. Unfortunately, Nebraska isn't currently fulfilling its constitutional responsibility to ensure this right for those in our juvenile justice system. LB158 establishes that when any juvenile court petition is filed, counsel shall be appointed for such juvenile. Fifty years ago, the United States Supreme Court extended the right to counsel to juveniles in In re Gault. The court stated that youth need the "guiding hand of counsel" to navigate the complicated legal system. Writing for the majority, Justice Fortas famously quoted, "Under our Constitution, the condition of being a boy does not justify a kangaroo court." Despite this ruling, there remains a wide gap in juvenile access to counsel across our state. Last interim we did a study looking at access to counsel. We learned more facts that make the need to move forward this session seem imperative. According to Voices for Children data, a mixture of urban and rural counties across our state, including Cherry, Otoe, Nance, Douglas, Garden, Sarpy, Furnas, Cheyenne, Kimball, and Lancaster, are providing counsel 100 percent or near 100 percent of the time. So many Nebraska counties are doing a great job and have a lot to be proud of. But in other counties, the percent of juveniles with access to counsel is very low, some as low as 0 percent. A map and spreadsheet showing access to counsel has been provided to you so you can see how each county scores. Under our current law, kids have counsel appointed at the time of petition statewide if they're under 14. But if a child is between the ages of 15 and 18, they only have counsel appointed if they live in a town with a population of 150,000 or more. This arbitrary and inconsistent right to counsel makes no logical sense. It's justice by geography and by age. Why should a child in one part of the state have less protection than a child in another? Why should one child have their constitutional rights guaranteed while another child does not based solely on where they live? This is an especially important question when we consider the real consequences for a child who does not have counsel. Some mistakenly think the charges and consequences for juveniles are minor. This is not always so. And maybe it used to be. I need to explain briefly why assuring juveniles get attorneys is so critical. I refer you to "The Juvenile Justice Process" sheet that I handed out. The juvenile justice system has two tracks. One track deals with issues under 3(a) that go down the track of child welfare and is under the purview of the Department of Health and Human Services for abuse, neglect, and trafficking cases. The child under these cases is treated as a victim legally. The second track is one within the juvenile justice system. It includes probation and diversion. Under the juvenile justice system, a court has the entire panoply of dispositional options available, including detention and/or out-of-home placement for any matter. Any matter the court can place a child out of home. A child may be taken and has been taken out of their home for something even as significant as an MIP. And I know you will have a couple senators say, oh, well, they just handled that. But if the facts surrounding that child's case so warrant and there are intervening actions by the child, that child can be placed out of home. This is dramatically different from the adult criminal justice system, and I hope you understand that. On the juvenile justice side, if the charge is small enough, the county attorney has the discretion to refer the case to diversion without going through the court

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at all. Such a decision is far less costly to the county and infringes less on the juveniles' rights. No attorney is required at that point if the county attorney sends the juvenile straight to diversion without filing a charge. If the county attorney chooses to file charges, even if he or she later decides to offer diversion instead, then that child needs an attorney. Anytime a juvenile must appear before a court, it is necessary for them to be represented by counsel. If a county believes that the case is so serious to warrant bringing a juvenile into the juvenile court where anything can happen to the child, including detention, then the case is serious enough for that child to have been warned about their rights, explained what's going to happen, and come to court with full knowledge and make a decision whether or not they want to keep or waive counsel. Again, the criminal justice system for adults is entirely different. In our adult justice system, an adult gets a lawyer if there is a chance their liberty will be taken away. Even if a charge can result in just one day of jail, an adult is offered a lawyer. In juvenile court, charges aren't linked to sentences in the same way. Regardless of the charge, the judge has every option open to him or her in sentencing, including out-of-home placement, either into a detention center, a foster home, out-of-home placement. That is why it is so important for these juveniles to have representation. In 2008, our Legislature, recognizing the Nebraska juvenile indigent defense system was in need of some serious attention, commissioned a \$250,000 study of the system. I have provided a copy of that to you. I have presented you with the executive summary and the conclusions in that report, which came out in the fall of 2009. Other than fixing the juvenile code, the next highest priority was to fix excessive waiver of counsel for juveniles, excessive waiver of counsel for juveniles. The report said, quote: Regardless of the alleged offense, youth who would otherwise not be able to vote, drink, or enter into binding legal contracts should not be able to enter into plea agreements or navigate their cases without the assistance of counsel. In addition, the fact that the length of detention does not necessarily correlate to the severity of the charge, since many youth charged with minor offenses end up detained for long periods of time because of probation violations or because they are awaiting placement, means the severity of the charge is totally unrelated to the need for defense counsel, unquote. This study used assessment watch procedures in court. They found that in some parts of the state that 60 to 75 percent of the youth waive their right to counsel and that youth are encouraged to do so by a combination of individual and systemic factors. The report states, "In the counties with high waiver rates, assessment team investigators observed practices by judges that subtly encouraged youth to waive counsel--for example, giving youth the impression that children who waived counsel would be treated more leniently, or arranging the docket so that the cases of youth who will waive counsel are heard first, and the youth who follow are encouraged to waive by the example of the earlier cases. Parents also encourage youth to waive counsel, sometimes applying substantial pressure." Of course, my friends, the parents are aggravated at the kids and don't want to deal with them anymore. One case mentioned in the report was especially troubling to me. A 17-year-old boy appeared in court with his mother, accused of a minor drug charge. In front of a packed courtroom, the judge asked if he understood the rights given to the whole group at that

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day's mass arraignment--a mass arraignment, my friends. They bring the kids en masse and arraign them. [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR PANSING BROOKS: The youth said yes. The judge then told him he had the right to request the case be transferred to juvenile court. The youth said that he didn't want that. The judge then advised him he had the right to counsel. The juvenile decided to proceed without counsel and the court entered a guilty plea. The entire exchange happened in about three minutes. Once the youth had pled, the judge proceeded to disposition, asked the juvenile if he planned on going to college. The youth answered yes and named the top school choice. The judge then said, you realize that you now have lost any ability to receive federal funding for financial aid because you just pled guilty to a drug offense? There was an audible gasp of shock from both the youth and from the people waiting for their cases to be called. That is why I brought LB158, because the kids don't have any grasp of our legal system and the rights that they have as juveniles because they are kids, they are children. Ask yourself, what would you want for your child if you were before the judge in juvenile court? What if your child made a mistake that could result in detention? [LB158]

PRESIDENT FOLEY: Time, Senator. [LB158]

SENATOR PANSING BROOKS: Wouldn't you want your child... [LB158]

PRESIDENT FOLEY: Time, Senator. [LB158]

SENATOR PANSING BROOKS: ...to have the same opportunity for representation... [LB158]

PRESIDENT FOLEY: It's time, Senator. [LB158]

SENATOR PANSING BROOKS: ...as any other child? If the answer is yes, please vote green on LB158. [LB158]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. As the Clerk indicated, there are amendments from the Judiciary Committee. Senator Ebke, as Chair of the committee, you're recognized to open on the committee amendments. [LB158]

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SENATOR EBKE: Thank you, Mr. President. LB158 as amended by AM145 advanced from the Judiciary Committee on a vote of 7-0 with 1 absent. On behalf of the committee, I ask that you vote yes on both AM145 and LB158. During the public hearing on LB158, a number of proponents testified in support of the bill. Proponents included child advocacy groups such as Voices for Children, the Nebraska Children's Commission, Nebraska Appleaseed, Nebraska Youth Advocates, and the Foster Care Review Office. Others included the Nebraska Criminal Defense Attorneys Association and the Nebraska State Bar Association. Nearly all of the proponents of the bill focused the bulk of their testimony on two concerns. First, the fact that juveniles, just as adults, have a constitutional right to representation in matters that impact their freedom and their future. And two, the importance of fairness and just outcomes in our juvenile justice system. The only opponent appearing at the hearing was the Nebraska Association of County Officials. Although they expressed vague concerns about cost, NACO did not provide testimony to rebut the constitutional concerns raised by proponents. Furthermore, evidence provided by the proponents at hearing and in written letters suggest that in those counties where appointment of counsel for juveniles is now commonplace, costs have not risen and, in fact, savings may be seen...may be being seen through the speed and efficiency in which cases are now handled when an attorney familiar with the system helps a juvenile navigate it. The committee amendment, AM145, makes two minor tweaks to the language of the bill. Under current statute, certain matters may be resolved without the need for court intervention through a juvenile pretrial diversion program. AM145 clarifies that appointment of counsel is not necessary in instances where pretrial diversion is an option and where it resolves the matter. AM145 further provides language regarding a juvenile's ability to revoke a previous waiver of his or her right to counsel and instructs the court to inform the juvenile of this right on subsequent hearings. I ask for your green vote on AM145 and LB158. [LB158]

PRESIDENT FOLEY: Thank you, Senator Ebke. Mr. Clerk. [LB158]

CLERK: Mr. President, Senator Pansing Brooks would move to amend the committee amendments with AM996. (Legislative Journal pages 1016-1017.) [LB158]

PRESIDENT FOLEY: Senator Pansing Brooks, you're recognized to open on AM996. [LB158]

SENATOR PANSING BROOKS: Thank you, Mr. Lieutenant Governor and members of the body. AM996 addresses concerns from NACO and a few local judges that LB158 could result in some increased costs at the county level. First, I want to point out that LB158 would bring substantial cost savings due to several factors, including a reduction in the number of hearings. Currently, if a juvenile does not waive their right to counsel at a juvenile hearing, it necessitates a second hearing whereby the attorney would be present. With counsel being appointed at the time of petition as LB158 stipulates, that second hearing would become the first. Indeed, this was the

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experience in Lancaster County after they began appointing counsel at the time of petition. Second, LB158 provides that families pay for counsel unless they are indigent. This is an important new provision of this bill and different from our efforts last year. I also want to say for the record that I do not believe a child's constitutional right to attorney should ever be denied due to costs. However, I do understand that our counties face their own budgetary restraints and that they want to be assured of these savings. As such, I'm introducing AM996 which transfers \$400,000 from the Supreme Court Automation Fund to a new Juvenile Indigent Defense Fund that will be under the purview of the Nebraska Commission on Public Advocacy commission. The Nebraska Commission on Public Advocacy was created in 1995 to provide property tax relief to counties that are required to provide legal representation to adult indigent defendants charged with first-degree murder and serious violent or drug-related felonies. So this commission is the appropriate place to house a Juvenile Indigent Defense Fund. To be eligible for the Juvenile Indigent Defense Fund grants, a county shall demonstrate that after the effective date of this act, the county's per capita juvenile costs have increased as compared to such county's per capita juvenile court costs for the preceding three fiscal years. This setup is modeled after LB605 in 2015 which created the County Justice Reinvestment Grant Program, the language of which you can find in Nebraska Revised Statute 81-1426.01. While I had hoped we could avoid diverting dollars from the Supreme Court Automation Fund, this source of dollars was simply our best option to assure all juveniles have counsel. The Supreme Court Automation Fund can be found in Nebraska Revised Statute 24-227.01. The automation fee was raised from \$6 to \$8 in 2009 through LB35. In the testimony from 2009 when they increased the fees, Senator Ashford stated that the automation fee was necessary to complete the automation of the court system and that Douglas County was the last district court that did not have the automation complete. There is a precedence from taking from this fund to fund other projects. In 2014, LB906 diverted \$600,000 of this fund for retirement...to fund judges' retirement. The Nebraska Association of County Officials provided the only opposition testimony at the hearing, and I have included their letter that with the addition of AM996, they're now on board with this bill. So I want to thank NACO for working with me so I could resolve their concerns. And with that, I ask for your support on AM996, the underlying amendment AM145 from the Judiciary, and LB158. Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Debate is now open on LB158 and the committee amendments and the amendment to the committee amendments. Thirteen senators in the queue, Senator Brewer, you're recognized. He waives the opportunity. Senator Hansen, you're recognized. [LB158]

SENATOR HANSEN: Thank you, Mr. President. Colleagues, I rise today in support of LB158 and the Judiciary Committee amendments. I am thankful for Senator Pansing Brooks both introducing and prioritizing this bill this year. I'm going to read into the record one of the things we heard into the hearing. We received a letter as Judiciary Committee members from Douglas

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F. Johnson, who is a separate judge of the juvenile court in Douglas County, that he cowrote with a private practice attorney in Omaha, Christine Costantakos, in support of the bill: For over 20 years, our Legislature has recognized that each child has a clear right to legal counsel in juvenile court proceedings based upon abuse, neglect, or dependency under Chapter 43-247(3)(a) and to that end requires the appointment of an attorney, who serves not only as the child's guardian ad litem but also legal counsel to protect the child's legal rights. In enacting and amending legislation over the years requiring the appointment of an attorney as guardian ad litem at the outset of a case filed under Chapter 43-247(3)(a), our Legislatures have expressed the understanding of this imperative--Children who are wards of the state are entitled to legal representation, as you all know, and the guardian ad litem is the one that's assigned to fill that role. We try and provide the same standard of attorney/client relationship for all the children that we have in legal representation. If, in its wisdom, the Legislature has honored the right to legal counsel for juveniles throughout the entirety of abuse, neglect, and dependency proceedings, why would we not recognize the same right to immediate appointment of legal counsel for other juveniles involved in law violation, delinquency proceedings in our juvenile court? Indeed, as compared to those proceedings brought under Chapter 43, delinquency proceedings pose a much greater threat to a juvenile to lose their liberty...lose his or her liberty as a result of confinement or commitment to a treatment facility or other institution. In Gault, the U.S. Supreme Court found that delinquency proceedings are technically 'civil' in nature, does not lessen the impact upon a juvenile's loss of liberty. And quoting from the case: For this purpose at least, commitment is the deprivation of liberty. It is incarceration against one's will, whether or not it's called 'criminal' or 'civil.' Just as Gault, the juveniles involved in delinquency proceedings in Nebraska need the assistance of counsel to cope with the problems of law, to make skilled inquiry into the facts, to insist upon regularity of proceedings, and to ascertain whether he or she has a defense and to prepare and submit it. They also need the assistance of counsel in prosecuting appeals, and for all proceedings that might occur...for all proceedings that might occur after the entry of the initial dispositional order. Gault found that juveniles, quote, require the guiding hand of counsel at every step in the proceedings against him, and certainly this means from the beginning to end of each proceeding. We appreciate the opportunity to address you in regards to this bill. We urge you to make it become true throughout the whole state." I skipped around a little bit in the letter just to make sure I had the opportunity to discuss it in my time. But we certainly can...if anybody is interested in seeing it, can certainly make that happen. Colleagues, we here have an opportunity to make sure our kids are taken cared for. I mean, that's kind of fundamentally where we're getting at. I know as an attorney, as somebody who is able to practice in front of a court and somebody who has had the training and skill and passed the exam passed by the state of Nebraska, I know I would not want to ever go in front of any court for any situation without an independent counsel to have everything from an objective view of the situation to particular expertise in that court or that subject matter. And this is something I know as an adult who has been trained in the law. Why we would ever want to foster or encourage situations in which children have to navigate things that, as Senator Pansing Brooks said, are

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going to have lifetime effects on them, quite possibly. I don't know why we'd want to go down that road. I appreciate Senator Pansing Brooks working so dedicatedly hard on this issue and finding an opportunity to get the counties on board by providing the new cash fund, and would urge my colleagues in the body to support LB158. Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Hansen. Senator Krist. [LB158]

SENATOR KRIST: Thank you, Mr. President. I wonder if Senator Hilgers would yield to a question. [LB158]

PRESIDENT FOLEY: Senator Hilgers, would you yield, please? [LB158]

SENATOR HILGERS: Absolutely. [LB158]

SENATOR KRIST: As a real lawyer and someone who might know a bit about the constitution, if we know on a federal level that it has been ruled upon that a child has the same right to counsel as an adult, is it not our obligation--I don't want to put words in your mouth--but I feel it's my obligation as a legislator to make sure that that right is afforded to the child. Could you speak to that for a few seconds? [LB158]

SENATOR HILGERS: Sure, absolutely, Senator Krist. The constitution means something in my view. If people have constitutional rights, they need to be protected. And the right to counsel, as you noted, has been determined at the federal level. Juveniles have a right to counsel just as adults do, and I think we have an obligation to protect that. Absolutely. [LB158]

SENATOR KRIST: Alleluia. Thank you. And I want to put that on the record first. The next thing I'd like to do is talk...there is a bit of scuffle going on about us telling people if you have a population of less than 150,000 people that we don't think you should afford that constitutional right to that child in your area. That is absolutely false. If you show me a transcript of any debate that's gone on, on this floor or in our committee that would say that we agreed to that last year, you are wrong, unless you show me it in writing. Okay? It is a constitutional right. Now, if it's a matter of money, we have an issue that will solve that. If it's a matter of not having enough lawyers, we have talked to the Bar Association and they are willing in any way to bring lawyers to the table. I talked to Judge Turnbull who I think is probably the most aggressive and supportive of the juvenile detention alternative initiative in the state, and he said he would never bring a child in without making sure that he understood his rights, particularly if there is loss of freedom, if they're being charged in an adult court system, which they are if they're 16 years old, they have a driver's license. They're being treated as an adult. That's not a juvenile court. But

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particularly, if there is a loss of liberty and/or the possibility of a felony conviction. I'm going to start reading some things into the record that I think are important. And if you don't listen to them, if you've made your mind up, then go back to your office and forget about me. But I think you need to hear some of the testimony that we have heard in committee. This one is actually from Julie Rogers, and you all know Julie. She's the Inspector General for children and family service...children...Nebraska Child Welfare IG. Among the duties of the Office of Inspector General of Nebraska Child Welfare is the identification of systematic issues which may require policy changes in legislative section Nebraska statute 43-4302. The OIG wanted to bring to your attention the issues it has identified and directly related to LB158, which changes provisions relating to the youth representation in juvenile court. In its annual report released September 15, 2015, the OIG identified concerns with a lack of consistent, timely, and quality juvenile court representation. Those problems exist to this day. Life-changing decisions are made in juvenile court. Without quality representation at the very beginning of the juvenile case, the due process rights and outcomes of children and families are negatively impacted. This is a woman who makes her life's work, her job out of making sure our kids are represented and the issues are represented for our kids in the system, both in the legal system as well as the Department of Health and Human Services related issues. I don't know how you can't realize that a right to counsel is a constitutional right. Now how we pay for it--no unfunded mandate. [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR KRIST: You have an amendment on there, AM996, that clearly identifies a way to amend. Now I know Mr. Steel doesn't want us robbing out of his cash funds, but you know what those cash funds are? They're in support of these kinds of activities. And that fund will build itself back up. And if he wants another dollar added to that cash fund to make up for this in the long term, then that is another action or another decision that we will have to make. But that's what those cash funds are for. So if you feel like it's a matter of money, find another cash fund. We don't want to make an unfunded mandate on the counties. And you heard Senator Pansing Brooks in her negotiation with NACO. They are in support of it as long as it's not an unfunded mandate. We'll, you know...and again, I'm shocked that we have to be talking about an unfunded mandate which would make sure that our kids are properly represented, which is their constitutional right. But it's a fact of life in here. And the second part that I think is very important for us to realize is that people... [LB158]

PRESIDENT FOLEY: Time, Senator. [LB158]

SENATOR KRIST: Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Hughes. [LB158]

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SENATOR HUGHES: Thank you, Mr. President. Good morning, colleagues. Deja vu all over again. We had this bill last year. And I will give Senator Krist credit for finding a compromise that we could all live with. There's no one on the floor who is saying that our children don't deserve right to counsel. That's their right. That's our constitutional right. The reason I fought it last year and am going to speak against it again this year is because it's one size fits all across the state. And that's what's a problem for me. In visiting with my judges last year and with my judges before the session started, I'm getting to know them. I have every confidence in their ability to handle the situations of the tasks of the jobs they have. And Senator Krist mentioned a judge out there that is very emphatic about the fact when a juvenile comes before him, he makes sure they understand what their options are. I think all of our judges do that. If there's a problem with this issue in the three largest counties where we gave them a carve out last year to handle this, it's working. I think we need to give more time to see if there's a problem. And I'm certainly not hearing that there's a problem from my district. I want to give credit to Senator Patty Pansing Brooks for her passion on this issue. It's rightly deserved. But for her district in the metropolitan area, I have no doubt that the volume that's coming before the juvenile system needs to be handled differently than what it is in the rural parts of the state in greater Nebraska. There are discussions about when you are in church--in church--in court, excuse me, why you need counsel because you are making life-changing decisions. Well, you made a life-changing decision when you got into trouble. People need to be held accountable for their actions. We all do that. And the more that we allow people to not face the consequences of their actions, the more of that activity we're going to see. This is not an issue that there's a lot of contention on...about. Everybody deserves counsel. There's no question about that. I do have a concern about how it's paid for. And Senator Pansing Brooks has found a fund that will pay for that. I'm not sure how I feel about that. I know the Supreme Court is not enthused about giving up some of their funds to pay for this. But what is at issue is one size fits all across the state of Nebraska. And we talk about a lot of different things, whether it's juvenile justice or how we fund water projects or who's paying the property tax bill. Nebraska is a very diverse state. One size does not fit all. There's no question about that. [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR HUGHES: And that's our job in this body to reach that compromise that's not overly burdensome on some but, yet, is adequate to meet the needs of others. That's the balance we have. That's where we have the philosophical differences about what role government plays in each of our lives and the lives of our citizens that we represent. I reiterate, we had this discussion last year. We solved the problem. Let's see if it plays out. This is not something we need to address again. In my district, it's not a problem. Let's not be forcing another government rule to make people do things that...it's a solution in search of a problem, in my opinion. Thank you, Mr. President. [LB158]

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PRESIDENT FOLEY: Thank you, Senator Hughes. (Visitors introduced.) Continuing debate, Senator Williams. [LB158]

SENATOR WILLIAMS: Thank you, Mr. President, and good morning, colleagues; and good morning, again, to all of our friends across the state. And I stand this morning in support of LB158 as I was a year before when we talked about this issue. It was interesting to me that we started our morning off with Senator Bolz reading the lyrics from "America the Beautiful" and it reminded me of how important it is and how lucky we are to live in the country that we were born into. And one of the unique and characteristic things is this crazy thing we call the constitution that is of vital importance to our long-term success as a government of the people. And there's certainly a lot of people that take liberties on this floor in their interpretation and talk about the constitution. But I think the one thing that we all agree on is the importance of that document. And that document unequivocally gives certain rights, and one of those is the right to counsel. Now we step back from the issues and we talked about it this morning: Senator Erdman, Senator Halloran, and others talked about dollars this morning and I agree. We are responsible. We are the people that have to take the responsibility of watching how we spend our dollars. But I can't put dollars on a constitutional right. And I would ask us to think broadly about trying to put dollars on a constitutional right. And in essence, that's what we're doing here with this issue today. And that's what we did when some of us reluctantly voted for the bill that we passed last year that granted counsel to juveniles in our larger counties, but created justice by geography and saying that a juvenile outside of those counties is different somehow and may not be valued the same way. I'm not willing to do that and I'm not willing to put dollar signs on the constitutional requirement here. We do have an issue, however, that I wish we had a better solution for. I appreciate the work that Patty Pansing Brooks has done with her amendment that finds a source through the judicial branch to pay for the requirement here rather than pushing that out to the counties. My concern is in talking to the people that count, and I would remind those of us here that there is only one voice that truly talks for the judiciary and that's the Chief of the Supreme Court, Judge Heavican. And they are concerned about taking some dollars out of the technology fund because of the importance of technology. And that is a concern. I wish in my heart of hearts that there was another cash fund to grab that from. But I will tell you I'm going to stand firm on supporting what I believe are the constitutional rights of the juveniles in our state. And it's not dollars. It can't be dollars. [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR WILLIAMS: Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Williams. Senator Kolowski. [LB158]

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SENATOR KOLOWSKI: Thank you, Mr. President. I yield my time to Senator Krist, please. Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Kolowski. Senator Krist, 5:00. [LB158]

SENATOR KRIST: Reading into the record again, this is testimony from Margene Timm. I quote: I'm an attorney in Lancaster County Public Defender's Office. I'm a juvenile division supervisor. I'm here testifying on behalf of my office as well as the Nebraska Criminal Defense Attorneys Association. I'm an attorney who is in the trenches. I'm in court every single day. I'm representing juveniles. I believe there's a letter from Judge Heideman, who is one of the Lancaster County juvenile judges, that's been submitted to this committee. Some of his observations are mine. He makes some of the same points I am seeing as a defense attorney in juvenile court. I believe it was LB894 last year required Lancaster County to start appointing attorneys at the time of filing. At that time, according to the statistics of Voices for Children, Lancaster County was only providing attorneys in 63.2 percent of the time. That's much lower than Douglas and Sarpy County. They were over 90 percent. We've seen, I quote, we've seen a number of benefits in improvements. First of all, there's been a reduction in the number of hearings. With attorneys being appointed right off the bat, getting discovery, meeting with clients, that first hearing is now what used to be second or third hearings. The juveniles are prepared to make decisions and move forward, whether they can waive their right to an attorney. It is a constitutional right to have an attorney--these are my own words now. It is also a constitutional right to waive an attorney. But if you don't know any better, where do you draw that line? Quoting again: Another advantage or improvement that we've seen is more families are actually appearing for the first court hearing, again, saving costs to the counties and service--saving costs to the counties and service--I reiterate, saving additional court time, saving the parents from taking off multiple times from work, juveniles from school. They're appearing at the first hearing and part of that is because as soon as we get appointed in the case, we, the attorneys, reach out to the family. We notify them. We try to get them in so that we can interview them and prepare them for court. Now to Senator Hughes's question or comment about some areas of the state doing better than others, I want to just quote what she said about a young man who...he was 11 years old and when he first appeared in juvenile court. The first hearings he did have an attorney, but after that he waived. He never had another attorney for any subsequent filings. He now has many adjudications on his record, including three felony adjudications. He's been detained multiple times. He's been in and out of home placement...in out-of-home placements. We've represented another youth who was on a juvenile detention center on a...in another county. When I went to visit him, the youth on the charge for an incident at the detention center, he's been there for two months. He sat there for two months. He didn't have an attorney. He told me that he had no visitors. He hadn't had a detention hearing. This is what happens to kids when they get lost in the system. Now at \$150 or \$250, well, actually Lancaster County in their detention facility says the per diem rate is near \$300 a day--\$300 a day. Two months, he's in

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the facility. Getting him an initial hearing and getting him seen in front of a judge in an expeditious way and getting him the advice that he needs is critical to getting him through the system in a short period of time so that he's not sitting there. [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR KRIST: Thank you, Mr. President. I'll finish this time on the mike by saying very clearly what we did last year was a compromise. It wasn't an admission that just because you have a jurisdiction that has less than 150,000 members or 150,000 citizens that we don't think those kids are just as important as the ones in Douglas, Sarpy, and the counties that were named. We said we were coming back with an option to pay for it if that was the problem. Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Groene. [LB158]

SENATOR GROENE: Thank you, Mr. President. We've heard about constitutional rights, that the kids are being denied their constitutional rights. This is what happens now. A child or juvenile or 7-year-old or an 18-year-old walks into court. The judge says, you have a right to an attorney. Parents are there. The young person can say yes or no. The judge then says, wait a second, this is serious enough, I am going to appoint you an attorney. It happens all the time. The constitution says you have a right to an attorney. It also says you have the right to deny. We are taking away that right to deny an attorney. And you say, no, no, we're just giving them counsel for one visit. Money changes hands. Either we, the taxpayers, pay for that consultation or the middle class parents pay for that consultation. Or the rich parents are going to pay that lawyer for that visit. Now they're sitting in that visit, and the parents and the child are having that teenage moment, conflict. The young man says, I want an attorney. Mom and Dad said we can't afford an attorney. You got to be 19 years of age for age of majority to sign a contract to rent, to buy, but you can make a contract with an attorney over Mom and Dad's objection. That's what we are doing here. That's what you're doing. You're taking away the rights of that young person and their parents to say, no, I don't want an attorney because money will change hands. Therefore, you're forced to have an attorney. No matter how they phrase it, you are forced to have an attorney. Douglas County, we had a...I heard Senator Krist, but we got a panic there and it's getting worse. Has it gotten worse because now we have more hearings and more court cases with juvenile justice? We need more judges? More time is consumed in front of the bench? Probably. Senator Williams said, people who count. We have a society where parents don't count anymore. They don't count. We heard that Judge Heavican counts. Parents don't. They're just out of the equation. They can't give guidance. They're out of it. They can't say we don't need, young man, young lady, we don't need an attorney. We can handle this with the courts. No, parents are out of it. You can come in, eat my food, you can live in my house, but I can't guide your destiny

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because some lawyers from eastern Nebraska know what's best for rural Nebraska. We made an agreement last year. Leave us alone. We take care of the court cases. We have--what do you call it--divergence or whatever. We do not treat our children bad. We do not throw them in jail. We teach them a lesson in life and I trust my judges. I elected that judge, by the way. I voted for him or her to see if she will take care of the situations we have. This bill takes away the rights of citizens and parents to decide if you want counsel. You're getting it if you like it or not. That's what it says. That's what it says. They're telling us that that young person standing in front of that judge can't make the decision if they want counsel or not. But in a consultation with somebody who's going to monetarily gain from their services, who's going to be slanted to, yes, you need my services,... [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR GROENE: ...they can make that decision there. But they can't make it in front of the judge. Do you see where we're at in this? We know what's best. It's the old feel good, we're going to help children. Let's go to Billy's and have a drink. All right. That's what we're doing here. This is unnecessary. This is a lawyers' employment bill. This is a lawyers' employment bill, that's what it is. It's a good way to get business. Scare the kid, tell him you need my services, don't listen to Mom and Dad. I'll get you through this. And he'll get the same thing after paying the lawyer as the judge would have gave him in the first place. That's what happens out there. Thank you, Mr. President. I would appreciate you freshmen are getting told other stories, but an agreement was made last year and it's working well. [LB158]

PRESIDENT FOLEY: Time, Senator. [LB158]

SENATOR GROENE: Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Groene. Senator Baker. [LB158]

SENATOR BAKER: Thank you, Mr. Lieutenant Governor. Good morning, colleagues. It's already been identified that Lancaster County does appoint counsel for juveniles now. I have a letter here from the Honorable Separate Juvenile Court Judge Linda Porter I would like to read into the record: Dear Chairperson Ebke and members of the Judiciary Committee, Thank you for the opportunity to address you in regards to LB158 concerning a youth's right to counsel in juvenile court. I have served as a judge in the Separate Juvenile Court of Lancaster County since 1999. I am a member of the Nebraska Children's Commission and the Supreme Court Commission on Children and the Courts. Last year I sent a letter in support of LB894, which extended the early, automatic appointment of legal counsel in all juvenile cases coming to my courtroom. I wrote in support both my own experience as a judge and based on the principles

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recommended by the National Council of Family and Juvenile Court Judges that youth who are represented by counsel understand the proceedings better and fairness is better preserved for youth and the state. At the time, I felt that early and automatic appointment of counsel would benefit youth, families, and the court itself. I am happy to report the rollout of last year's legislation has been beneficial in my courtroom. Appointing a lawyer at the time the paperwork is filed, I have found that youth, parents, and attorneys are coming to court better prepared and ready to move the case forward sooner, whether that is by trial, plea, or dismissal. Appointed counsel have worked out arrangements with the county attorney to get law enforcement reports prior to meeting with the juvenile. They're able to meet with the juvenile before we even come to court to discuss the facts of the case, what to expect in court, and the orders I'm empowered to make. They're able to guide the youth to a decision about how best to handle the case and answer the charge or charges. Under the new system, we're having most cases resolved in terms of adjudication in a single hearing, and I feel youth and their parents better understand the process. Under the old system, the same process would have taken at least two hearings, if not more, with parents having to take off work and the youth missing school to attend each court date. It has worked out to be a more efficient and I believe a more meaningful process for the youth and their parents. As a final note, I would add that when counsel are able to explain to a youth Nebraska's process for sealing juvenile records and the benefit of having a record sealed, it can provide an incentive to participate and comply with the court orders and probation requirements. As a result, I think the new process of early appointment of counsel can enhance their motivation to complete probation successfully because they understand then from the start what it means to have their records sealed. Thank you for your consideration. Honorable Linda S. Porter. I yield the remainder of my time to Senator Pansing Brooks. [LB158]

PRESIDENT FOLEY: Thank you, Senator Baker. Senator Pansing Brooks, 1:30. [LB158]

SENATOR PANSING BROOKS: Thank you, Mr. Lieutenant Governor. So I have a court sending out a letter. Number one, I've been working with the court nonstop. And the Chief Justice is totally on board with providing counsel to children. We're in a battle of whether or not the courts provide it, whether the counties provide it. Everyone is pointing at everybody else about what needs to be done to provide counsel. The argument isn't that kids need to understand what's going on when they go to the court. The argument is who pays for it. The Court Automation Fund has been used for things other than automation. It was created in 2009 and was increased from \$6 to \$8 so that the fees could be used to help Douglas County become automated. Now we have cuts and last year we had a bill that took \$600,000 out of that fund to pay for retirement. There's no question, as Senator Williams has said, right to counsel is a constitutional right. We cannot balance our state, our court, or our county budgets on the backs of children. That's what we're doing. And as far as these ridiculous comments that, oh, you made an agreement, yeah, last year, we came to an agreement to look at it for that year and have it be

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cities over 150,000. So let me be clear, if there's any kind of issue and we cannot get full counsel,... [LB158]

PRESIDENT FOLEY: Time, Senator. [LB158]

SENATOR PANSING BROOKS: ...I will come back. Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Halloran. [LB158]

SENATOR HALLORAN: Thank you, Mr. President. First, I do want to commend Senator Patty Pansing Brooks for her strong emotions on this issue. I know it's close to her heart. She's worked on this hard. I would say that it does appear that it's working at some level for Lancaster and Douglas County. I think that's wonderful, but one size does not fit all. I have visited with my judges back home on several occasions. And I'm going to have to read some notes here, but bear with me on that. The judges back home say the bill is an overreach and unnecessary in many situations. A parent or guardian must currently be present. Parent has the option to waive legal representation--we all know that--and is educated by the judge on what that means and the implications of waiving those rights. It would take away parental control. We've heard that discussed. Would require additional staff to be hired. I'm not so concerned...I'm concerned about the costs. But things do...I hate to say this: We're a bunch of rubes out there in the country. I know a lot of people might think that. But the fact of the matter is we have judges that we do have confidence in. We can vote them out any time we wish. That doesn't happen. And it does puzzle me a little bit that from time to time we'll discuss other issues in regard to judges, like, for example, mandatory minimum sentencing, and we'll suggest that we have to have...we have to allow judges to have more discretion. We have to allow them to trust their judgment at some level. Now the judges back home said this was totally unneeded for subdivision (4) traffic violations. Don't need legal counsel for that. It's overreaching for subdivision (1) misdemeanors and (3)(b) habitual disobedience. I would be amenable to limiting automatic legal representation when no parent or guardian is present, can be located, or will not attend. Clearly our judges back home, our judges back home are going to say, in that case, they're going to say, you're going to have counsel, even if the minor discounts the need for it. Also be amenable when parents or guardians are the victims or a family member is a victim. A case in point back home: Case in point back home is a 17-year-old molested a 4-year-old in the same family. The 17-year-old was an adopted, not that that makes any difference; but that's the case in front of the courts right now. The parents of that 17-year-old and that 4-year-old...the 4-year-old was molested, in that case, the parents shouldn't be obligated to give consent to have legal counsel for that 17-year-old. There's a little bit of a conflict there. In that case, the judge is going to rule that there be legal counsel. I trust our judges. I think we all need to give them a little bit more confidence. Thank you, Mr. President. [LB158]

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PRESIDENT FOLEY: Thank you, Senator Halloran. Senator Wayne. [LB158]

SENATOR WAYNE: Thank you, Mr. President. I rise in support of both the amendment and the underlying bill. In listening to the conversation and listening to sidebar conversations--and many of the people I want to speak to are "execing" right now and I wish they were here--but the reality is, is I'm probably the only one in this body who actually currently practices in juvenile law, not just in Douglas County but across the state. And it's interesting that we have fundamental rights for different parts of the counties, depending on which county you live in. I hear Senator Hughes speak of overreach, but later today we're going to discuss LB68 which is a one size fits all for many of the other counties, but it's different. And I think the fundamental problem is, times have changed. Let me repeat that, times have changed. And most of the parents across the state going to juvenile, and when they go into the juvenile settings, Senator Schumacher, they still assume that it's the same juvenile proceeding that happening 30 or 40 years ago, Senator Halloran, where when I was stopped on a farm and I had a beer, it really didn't even go to court because the sheriff typically dropped you off at your parents' house and said I'm letting your parent know we're not going to talk about this. And for some reason, if you did have a juvenile proceeding, everybody sat down and said, look, we're going to put the kid on probation; here's what's going to happen, let's everybody go about their way, we'll seal the record. That has changed. We are now a very litigious society and our juvenile system has went from a family-friendly environment to a criminal proceeding almost, and it really is. So let me tell you about my experience of why, Senator Schumacher, it's important to be appointed at petition, since I do, do experience in Douglas County where we are appointed at the filing of a complaint or a charge. I meet with my parents and my kids at the beginning, before we even go to an arraignment. I tell them that, one, I represent the kid, and in no circumstances can you as the mother or father of this kid say you want to waive counsel. Yes, unfortunately, Senator Groene, who's not here, the Supreme Court has made that clear that parents no longer have that right because of the consequences that these young children can face down the road. So we sit down and we talk. And then guess what I do; I automatically reach out to the county attorney, and most of my kids go to pretrial diversion where it never hits the actual court. We walk into court. We sit down and say we're going to continue this out for six months. And if the kid is doing well, the case is over with, case gets sealed. But in Nebraska, we also have a very detailed process of sealing records. And if you don't have a court-appointed attorney or an attorney, you're pretty much not going to get that done. So there are significant reasons. Why? Because times have changed. You are not practicing 30 years ago where your juvenile record sealed is no longer considered. When you are an adult at 21 years old and you get a DUI and you go in front of a judge for sentencing, if you have a minor in possession in juvenile, whether it's sealed or not, that judge will review it and you might have gone from probation to a 30-day sentence because of what happened in your juvenile court proceeding. But you won't know that, because the judge is not going to advise you of that. What a judge does is no different than any other advisory opinion which is you have the right to a counsel and here is what could happen. I could

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put you in anything from probation all the way to YRTC if you're a male or Geneva if you're a female. As a kid that I represented many of times, they say, okay, that sounds good. But a judge will not go on to tell you that if you have a marijuana charge, you are not going to be able to apply for some federal grants and federal money for school. [LB158 LB68]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR WAYNE: So all this community college that we continue to push goes out the window. What I guess is more interesting to me is that if there is an issue in western Nebraska when it comes to farming, I talk to the senators out there to understand a little bit more about it. But on this bill, most of the people who are here have not talked to me about it nor asked me what I think about juveniles and how it works in the juvenile law. So I would ask you to give me the same respect and deference that I give you all and let's have a conversation about what actually happens in juvenile law and how it actually applies to the real world, instead of assuming, because in western Nebraska in your experience, that it's different. Times have changed. And no matter where you live, you should have the same fundamental rights, whether you are born and living as a juvenile in Scottsbluff as you do in Omaha. We should not distinguish rights by geographical location or by sizes of counties. And if we start to do that, it's going to make for a very, very long session. Because we can... [LB158]

PRESIDENT FOLEY: Time, Senator. [LB158]

SENATOR WAYNE: Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Wayne. Senator Ebke. [LB158]

SENATOR EBKE: Thank you, Mr. President. I wonder if Senator Wayne would yield to a question or two. [LB158]

PRESIDENT FOLEY: Senator Wayne, would you yield, please? [LB158]

SENATOR WAYNE: Yes. [LB158]

SENATOR EBKE: Senator Wayne, you said you practice...a court-appointed practice, for juveniles and adults, or one or the other? [LB158]

SENATOR WAYNE: Both, yes. [LB158]

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SENATOR EBKE: And when you are a court-appointed attorney, who pays your salary, your fee? [LB158]

SENATOR WAYNE: We submit our bills to the court and the court has a determination of whether our bills are reasonable, and they are paid for by the county. [LB158]

SENATOR EBKE: Okay, thank you. I passed around a...and I'll get back to you, maybe, Senator Wayne. I passed around a letter that I received from Corey Steel, who is the administrator of the court, this morning, and I just wanted to make sure when I saw AM996 drop this morning that the court was on board with that. As Senator Pansing Brooks noted, the court is perfectly on board with the notion of appointing counsel for juveniles. They are less on board with this particular funding mechanism. I just want to point out that in most cases, with both adults and juveniles, all cases, I believe, the counties are actually the ones responsible for it. Now, I understand that my colleagues are concerned about the costs to their counties...the potential costs to their counties. But here's the problem. It's a constitutional right. And we're going to talk about this, this afternoon when we get to LB68. And many of us would argue that the constitutional...a constitutional right is not one that is dependent on where you live; that it should not be dependent on where you live. And I would argue the same thing is the case here, that if you have a constitutional right to counsel and you cannot afford your own attorney or you are too young to make that decision appropriately, that it is the responsibility of the county to make sure that you have your counsel and make sure that your rights are adequately represented. I appreciate Senator Pansing Brooks bringing this bill. I am sort of up in the air on AM996 and the mechanism for funding. I believe that, ultimately, the counties ought to be responsible for this, just as they are in other cases. I do support AM145, which was the Judiciary Committee amendment, and Senator Pansing Brooks's underlying bill, LB158. And Senator Wayne, I was going to yield to Senator Wayne. Senator Pansing Brooks, would you like some time? Senator Pansing Brooks, would you like some time? There's Senator Wayne, he's coming. I would yield the remainder of my time to Senator Wayne if he would like it. [LB158 LB68]

PRESIDENT FOLEY: Thank you, Senator Ebke. Senator Wayne, two minutes. [LB158]

SENATOR WAYNE: Thank you. Thank you, Senator Ebke. Again, I would ask anybody to ask questions so we can build a record. I think that's what is good as we pass legislation, is to build records and talk to people who actually experience this every day. But as I continue to talk about my real-life experience of what happens, whether it's in Douglas County or, again, Madison County or, again, any other county that I practice in. Having an attorney means a lot because it also gives the judge clarity, especially when you start talking about admissions of guilt. And that's what we do in juvenile; we still have to plead guilty, although we don't call it that, to charges. But what's interesting about a criminal charge in the adult court is there's a couple

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advisory rights that a judge will read in adult court that oftentimes are left out in juvenile court that we always state on the record. One, has the attorney had a full access to the file? That means, that they do discovery and know all about the case. Then they ask the defendant, or in this case a minor, have you talked to your attorney about the entire case? [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR WAYNE: They answer yes. Then they ask the attorney, do you see any reason, legal reasons, why we shouldn't go forward today? What that does is to make sure underneath statute and constitutional rights that the person pleading guilty has a knowingly, intelligently waived their rights, whether it's to counsel, whether it's to pleading...to an admission of a guilt, or making sure they just understand the process. So if it's appealed, the judge has assurances, not only did the judge give an advisory, but on the record, their counsel gave them an advisory. On the record, they went through the entire process to make sure a juvenile understands what they're actually pleading to. And the reason it's important is because most of the time in juvenile court, we plea sometimes on...most of the time on the day of the arraignment. Why is that important? Because we can continue the process of getting students help if they need help with chemical dependency, etcetera, etcetera. But otherwise, there's also a trial strategy behind it. Sometimes we don't. We stretch it out because we know the charges will get dropped once the kid does some pretrial diversions. All that is important and why it is needed for an attorney to be involved at the time of the filing, not waiting until after the judge reads them their rights, not waiting until after... [LB158]

PRESIDENT FOLEY: Time, time, Senator. [LB158]

SENATOR WAYNE: Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Wayne. (Visitors introduced.) Continuing debate, Senator Murante. [LB158]

SENATOR MURANTE: Thank you, Mr. President; members, good morning. I rise attempting to learn more about LB158. I have spoken off the microphone with a number of members; I spoke with Senator Pansing Brooks yesterday, and I remain undecided on the bill itself and on AM996. I have had some discussion with a few members of the Appropriations Committee about the nature of this particular cash fund and the discussion that took place over the course of this year in the Appropriations Committee relative to this specific cash fund. So rather than ask an individual member of the Appropriations Committee what sort of discussion occurred on this particular cash fund, I'll sort of toss it out there and see if anybody answers the question who erves on the Appropriations Committee. And if nobody specifically asks, I'll just come on the

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microphone again and ask. Hopefully Senator Stinner will be here at that time. So based on the reports that I've seen in the Journal Star and in conversations I've had with members of the Appropriations Committee regarding the budget, it is clear that the Appropriations Committee has utilized many of the cash funds in our state for the purposes of balancing the budget. It is my understanding that this particular cash fund was not touched, or has not yet been touched, by the Appropriations Committee. What I'm interested in learning is if we have such a reliance on the cash funds that exist around the state, why was this left untouched? Why did the Appropriations Committee choose, of all of the cash funds to raid, to leave this one intact? I don't know if that specific discussion even occurred, but if it did, I would like to know the answer to that question. I got some understanding from Senator Stinner as to the specific purpose and nature of this cash fund, and it would appear to me that a concern I would have with the amendment, not the policy of the underlying bill but above...but of the policy of using a cash fund for purposes unrelated to the cash fund's purpose. I find that concerning. That's not, in my view, a fundamental reason to vote against the bill, but it is an area that I approach with great caution. Because I do believe cash funds exist for a specific purpose, and if we're going to be raiding cash funds, we should be using it for something relative to that purpose and it needs to be more specific than just issues related to the judiciary, in my view. Would Senator Pansing Brooks yield to a question? [LB158]

PRESIDENT FOLEY: Senator Pansing Brooks, would you yield, please? [LB158]

SENATOR PANSING BROOKS: Yes. [LB158]

SENATOR MURANTE: Thank you, Senator Pansing Brooks. I want to ask you a couple of questions just to make sure that I have a fundamental understanding of what the bill does, notwithstanding the cash fund element. So it sounds like what you are attempting to accomplish, and correct me if I'm wrong, is to require counsel for juveniles between the ages of 14 and 18 in the 90 counties that are not Douglas, Sarpy, and Lancaster. Is that 30,000-foot view of what we're talking about here? [LB158]

SENATOR PANSING BROOKS: That's about right, but there are about eight counties...five counties that have already done it themselves out west. [LB158]

SENATOR MURANTE: Okay, great, that's good to know. Does your bill provide for any exceptions to that rule? [LB158]

SENATOR PANSING BROOKS: The goal is to have counsel at the filing so that the kids can go into court and know what they're doing. They can then waive counsel. So that's...I don't know if that's what your exception is. They will go in with an understanding of whether or not they want to retain counsel or whether they want to waive it. [LB158]

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PRESIDENT FOLEY: One minute. [LB158]

SENATOR MURANTE: Okay. Thank you, Senator Pansing Brooks. [LB158]

SENATOR PANSING BROOKS: Thank you. [LB158]

SENATOR MURANTE: Would Senator Wayne yield to a question? [LB158]

PRESIDENT FOLEY: Senator Wayne, would you yield, please? [LB158]

SENATOR WAYNE: Yes, yes, yes, yes. [LB158]

SENATOR MURANTE: Thank you, Senator Wayne. You asked, in your first time on the microphone, for questions about your specific field, and I appreciated that question because it is a world that I don't, fundamentally, understand just because I haven't worked in it. So when we're talking about providing counsel across the board, and it sounds like it's without exception, you provided a good example or instances where it would be appropriate to require counsel because parents aren't making decisions in the best interest of their children and so forth. What I'm interested in knowing is, have you experienced instances where it would, in your view, be appropriate for parents to waive counsel and they are acting in... [LB158]

PRESIDENT FOLEY: Time, Senators. [LB158]

SENATOR MURANTE: Maybe next time, Senator. [LB158]

PRESIDENT FOLEY: Thank you, Senator Murante. Senator Chambers. [LB158]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm watchfully listening. This is not my bill. So I'm working with Senator Pansing Brooks. But I just want Corey Steel and the Chief Justice to know that in the same way I talk about the Catholic Church coming in here lobbying, when they lobby, they're just like any other lobbying group to me. I've stood firm behind doing things to benefit the court. If I had to make a choice, a Hobson's choice, neither one is good, I'm going to vote for the children and not the Supreme Court. They'll find a way to make the money. They'll find a way to get the money. They should have come to me and asked me will I give them a dollar. I'll tell them, yeah, I think justice for children is worth a dollar. What do you think? The judges haven't seen me oppose them and their legislation. Watch me. And these counties? I want Mr. Dix and those others to see what I'm able to do. I'm fed up with the

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nonsense I hear. Senator Groene says what he's got to say, then he leaves when somebody is speaking who knows something. Senator Hughes says something, then he's not here when the explanation is given. They remind me of Pilate and Jesus. I like to bring their religion because they supposedly believe that. Pilate asked Jesus on one occasion, what is truth? And he walked out and didn't wait for an answer. That's what these people on this floor do. Now, would Senator Groene say he'll give up legal counsel for that committee? No, he wants that legal counsel for the committee because he doesn't know enough to do things without legal counsel. But when it comes to the children, well, we do things a certain way out there; we don't throw them in jail. Yes, they do. Yes, they do. He doesn't know what goes on out there. And he also doesn't know how incompetent some of the judges are. I've gotten complaints. I haven't always filed a complaint. I've had discussions about these judges. And Senator Hughes talks about what his district tells him and doesn't care. He said when we were having meetings on Kintner that in his district people didn't care what Senator Kintner did. They didn't care. So the policy of the state is based on whatever the few people are he talks to in his district will say. How many of you all would say that the child should be able to make a decision as to whether he or she wants to go to school? The child knows enough. The child says, I don't want to go to school. No. And the parents cannot waive the right of the child to go to school. And the state will say, we stand in loco parentis, which means we stand in the place of the parent because the parent doesn't know enough and the state does and the state is going to require this no matter what the parents may say. As George Bernard Shaw said: on occasions, parents are the very ones who should not have children. There can be an adult of limited capacity at a plea stage in a court, in a trial. And you know what the judge will say? We're going to have you submitted to a mental exam to see if you're competent to make a plea. And then if the judges asked why you did that, he'll say, well, this person is operating at the level of a 12-year-old. Well, now if an adult operating at that level is not competent to make a decision or offer a plea and must have a lawyer, then how about a 12-year-old child? You all don't make sense. And I'm not going to waste my time with a lot of things said. But I'm going to watch. And we are going to have an interesting session. And you wait until the budget bill comes up here and these people from these various counties want something. I've told you all how I feel about these children. And I handed out a mocking picture to the rest of you... [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR CHAMBERS: ...where some children from Sutherland wanted to take a picture with me. I'm not aware of them wanting to take a picture with Senator Groene. And I had said in Senator Groene's absence, he ought to give up. I didn't say this, but I'm going say it now. I asked why he wants legal counsel for his committee. He ought to give it up. Give up legal counsel. Don't have that person on the payroll. That person is paid. Let Senator Groene make the decisions, he's a grown man. But it's different then. But when it comes to the children, let this be done this way or that way. I wonder how many times he sat in court and watched these judges.

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And you don't elect judges, Senator Groene. You vote as to whether they should be retained or not. Judges are not elected in Nebraska, they are appointed. That's how much he knows even about how the judges get into office. But you all listen to that. You see these people don't know anything, and then you still go along with what they say as though they're authorities. [LB158]

PRESIDENT FOLEY: Time, Senator. Time, Senator. [LB158]

SENATOR CHAMBERS: You said elected, you said you elected him. [LB158]

PRESIDENT FOLEY: Time, Senator. [LB158]

SENATOR CHAMBERS: Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Krist. [LB158]

SENATOR KRIST: Thank you, Mr. President; good morning, again, colleagues. I wonder if Senator Wayne was available for a few questions. [LB158]

PRESIDENT FOLEY: Senator Wayne, would you yield, please? [LB158]

SENATOR WAYNE: Yes, Mr. President. [LB158]

SENATOR KRIST: So you were on my list. I understand your time on the mike, you made sure that you wanted to answer a few questions, and I think it's extremely appropriate. If I want to buy an airplane, I'll come talk to me. If I want to talk about juvenile justice, I'll come talk to you because you're practicing in the field. Did I hear you say before that with your kids that it's critical to advising them in terms of their rights and making sure that they know, if waiving their rights to counsel, what the implications might be? [LB158]

SENATOR WAYNE: Yes, it's critical, because, again, and I'll keep this real short because I'm on your time, but times have change. Everything done in juvenile court will affect that kid the rest of their life. And so the criminal aspects and the litigious aspect of things that go on, even as early 14-year-olds, affects these kids the rest of their life. So it's critical because oftentimes, as Senator Groene stated, and now he's back in the room, they don't even...parents don't know the consequences. They think it's just a simple minor in possession, go on probation and we'll be done with it. Well, there's a lot more to the story than that. [LB158]

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SENATOR KRIST: And is it also true that a child, a young adult, who is 16, who has a driver's license, basically is treated as an adult in traffic courts? [LB158]

SENATOR WAYNE: In traffic courts, they are treated as an adult. And underneath waiving counsel, I guess, now they are treat as an adult, that they could just waive counsel without fully understanding things either. [LB158]

SENATOR KRIST: So how long have you been working in the juvenile field? [LB158]

SENATOR WAYNE: For the last five years specifically, well, no, last 13 years I've been in juvenile and criminal courts. But I started doing full time the last five years. [LB158]

SENATOR KRIST: And is it your opinion that this is a critical...actually I'll repeat the same question I did to Senator Hilgers before. Now as a legislator, you were on the school board, you practice in the area, but now as a legislator do you feel compelled to make sure that these kids get counsel statewide and there is no justice by geography? [LB158]

SENATOR WAYNE: Yes, everybody who enters into the court system should have their own interest represented so they can make the best decision they can regarding their life and their interest. [LB158]

SENATOR KRIST: Thank you, Senator Wayne. And I know I didn't prep you for this, but if you would like to take the remainder of my time, you're welcome to it. [LB158]

SENATOR WAYNE: I can, yes, thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Wayne, two minutes, if you'd care to use it. [LB158]

SENATOR WAYNE: Yes, I do. Because this is such an important topic and because some people have entered the room again, I want to make sure that they understand, times have changed. We're no longer going into a juvenile court system where it's just a probation and we go about our way. So let me tell you what happens if a kid goes in for a minor in possession, no matter where they are at in the state. It's no longer we're just going to give probation and things will be great. What they want to get from a judge and what the judge will ask for a chemical dependency evaluation. So that means that kid is going to get subject to a chemical dependency evaluation to make sure, especially if it's a marijuana charge, that they don't have a chemical dependency. Now guess what, you're worried about costs? County is not going to pick up that cost because the

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parents, typically, have to pay for it; and if they can't pay for it, the counties will have to pick up that cost. So you get a chemical dependency evaluation. Your kid is on probation for the next six months. They have some interviews with some therapist. And, Senator Groene, a kid might say, you yell at them too much. Now that's part of a record. Now we have to start looking at the entire family. See, what happens in Douglas County Court is we start with a simple delinquency status and then somehow we turn it to a IIIA charge, and somehow this case is dragged out for two years because the court wants to deal with the whole family and make the best of the family and so they look at all aspects. It's no longer we're just going to go to court, we're going to have a simple conversation, we're going to give a kid probation and seal his record. Even in western Nebraska, it's not that simple no more. Why? Because western Nebraska is dealing with meth charges; western Nebraska is dealing with a lot of marijuana coming over from Colorado. So, yes, you're going to get this either way. But I will submit to anybody, don't put your kid in a criminal court system without their own legal counsel. Do not put yourself in a criminal court system without your own legal counsel. So I submit to you, Senator Groene, well, I will yield...I can't yield because I already got yield. I'll wait until my time. But, Senator Groene, I am going to ask you a question on the mike and I'm going to ask everybody else here a question and I don't know who I'm going to ask it to, but would you go into court charged with a minor in possession or a DUI... [LB158]

PRESIDENT FOLEY: Time, Senator. Time, Senator. [LB158]

SENATOR WAYNE: ...without having your own legal counsel? [LB158]

PRESIDENT FOLEY: Thank you, Senator Wayne, time is up. Senator Hilgers, you're recognized. [LB158]

SENATOR HILGERS: Thank you, Mr. President; good morning, colleagues. I rise in support of LB158 and the accompanying amendment for a pretty simple reason which is, I believe it's our constitutional obligation to provide counsel to juveniles. And we've had a lot of conversations on a lot of different issues in this Legislature since I've been here about what the constitution means. What kind of rights do we have? What does a fundamental right mean? And I think those are incredibly worthwhile conversations to have. And in this case, what it means is you have a right to an attorney. A juvenile has a right to an attorney. That's constitutionally a fact. Now, I think there's a lot of good reasons beyond that for a policy perspective why juveniles should have the right to an attorney. Even if it wasn't constitutional, I think they ought to. And it's an incredibly important time in their life to make sure they don't get on the right...wrong track. And having good counsel is incredibly important then, just as it is when they are an adult. But regardless of the policy perspective, I believe it's a fundamental right, it's a constitutional right, and we have the obligation to protect it. Now, the question then for the Legislature is how do we fund that?

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Because there are things, we do have to spend money; lawyers are not free, and we do have to provide funds in order to pay for those attorneys. And that is a policy perspective...that is a policy judgment that is within our purview and we can decide. And I appreciate Senator Pansing Brooks's effort to do this in a way that doesn't increase property taxes, that doesn't put an unfunded mandate on the counties. So that's why I'm in favor of the amendments, because it provides a funding mechanism. It may not be ideal for everyone. But when it comes to fundamental rights, it doesn't matter if it's ideal or not. We have an obligation to protect those rights. And so that's why I support it. And I know there's been some suggestion that in some cases, counsel is not needed. And that very well may be true. It very well may be the case that in some instances a 14-, 15-, 16-year-old really doesn't need a...they know the judge or they're not really having their rights abused. That may be true in some instances, but I guarantee you it's not true in all. And if it's not true in all instances, then we...it doesn't matter, in my view. It's not the type of policy question we can decide and say, they...because some don't need it, then all don't need it. That's not, I believe, within our power. So for those reasons, I support LB158 and AM996 and AM145 and I encourage your green light on that. And I'd yield the rest of my time to Senator Pansing Brooks. [LB158]

PRESIDENT FOLEY: Thank you, Senator Hilgers, Senator Pansing Brooks, 2:30 minutes. [LB158]

SENATOR PANSING BROOKS: Thank you very much, Senator Hilgers and Mr. Lieutenant Governor. That was loud. Again, I just want to remind people that the fund that we're looking at is the Court Automation Fund. And it was created to help with automation of, especially, Douglas County. And so now what we're doing is creating a trigger so that if the counties do have the increase in money, we look back at the past three years and they can apply for the extra money that it ends up costing. And they can apply for that money and get reimbursed. It was the same as the trigger we did with LB605. Again, the automation fee was raised to \$8. The Douglas County automation has been done, has been completed. It's now being used for all sorts of other matters. And I can't think of anything more important than a child's right to counsel. I'd like to give...oh, I can't give any time. Thank you. Thank you very much. [LB158]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Wayne. [LB158]

SENATOR WAYNE: Thank you, Mr. President. And I won't, probably, take up all my time. I see Senator Murante, after me, wants to ask some questions. Again, why is this important? It's simple. Actually I'd like to...if Senator Groene would yield to a question. [LB158]

PRESIDENT FOLEY: Senator Groene, would you yield, please? [LB158]

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SENATOR GROENE: Yes. [LB158]

SENATOR WAYNE: Senator Groene, would you, hopefully this never happens, be charged with something and would you go to court without an attorney and go through the process without an attorney? [LB158]

SENATOR GROENE: Yes. [LB158]

SENATOR WAYNE: And why? Why would that happen? [LB158]

SENATOR GROENE: Because I talked to the district attorney and he said we'll put you in diversion and we'll get you on probation and you'll be out on your way. [LB158]

SENATOR WAYNE: Do you understand... [LB158]

SENATOR GROENE: I can talk to the district attorney. I don't need a lawyer to do that. [LB158]

SENATOR WAYNE: You're right. And do you understand that the district attorney does not have your best interest at heart, that this is an adversarial proceeding? [LB158]

SENATOR GROENE: I believe he does, because we elect him and he understands what crimes need to be punished and which ones need probation and diversion. [LB158]

SENATOR WAYNE: And do you understand all the consequences of a diversion program? [LB158]

SENATOR GROENE: My judge explained it to me that it's a way to teach him a lesson by putting him in public service, to take some counseling and to become productive citizens. [LB158]

SENATOR WAYNE: And you expect a judge to give that right to you if you were in court? [LB158]

SENATOR GROENE: Yes. [LB158]

SENATOR WAYNE: That judge would be violating his ethical obligation if... [LB158]

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SENATOR GROENE: Well, the judge can't do it; it's the district attorney, it's done ahead of the court. I understand that, Senator Wayne. [LB158]

SENATOR WAYNE: So you're taking the district attorney's word, who ran on being tough on crime... [LB158]

SENATOR GROENE: I would take the district attorney's word over a lawyer who is going to make money and the more hours he can charge for, the more he can go home and take it to his family. Yes, I would. As an elected official, I would side on the side of an elected official. [LB158]

SENATOR WAYNE: I appreciate that. I hope you give me the same deference, as an elected official, on more bills that come in front of this body. [LB158]

SENATOR GROENE: Thank you, sir. [LB158]

SENATOR WAYNE: Thank you. What you heard is a person who has total faith in the prosecutory element or position in his county. I can tell you that most prosecutors that I have worked with are fair and just. However, they have a job to do, and I'm glad Senator Groene brought that up, that their job is to convict people. That is what they ran on. If you find me one prosecutor who runs on giving probation for a multi-theft juvenile, I would be shocked and I would endorse that person. But that's not how it happens. They run on being tough on crime, yes, being fair. But juvenile is a different ball of wax in the sense that they run to make sure that kids are put away sometimes, particularly in Douglas County, not necessarily Don Kleine, but that is their job, right, to protect students...to protect the society. My point in all of this dialogue is simple. I would never recommend, I hope Groene takes this advice, going to court without a counsel. Never walk into court without a counsel, not because I'm looking to get paid as an attorney, but the person you hire as an attorney is the only person in that courtroom who has your best interest at heart and makes sure that you understand all the consequences. If you rely on a district court person, whether it's a prosecutor or the judge, which, one, the judge can't do, I think you're making a fatal mistake. And I wouldn't do that for my children. I wouldn't do that for anybody else's children. And with that, I'll be waiting for Senator Murante's questions. Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Wayne. Senator Murante. [LB158]

SENATOR MURANTE: Thank you, Mr. President; members, good morning. I think Senator Hilgers' floor speech sort of encapsulated for me the policy challenge that I'm having with this

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bill, because he stated that...and I'll try and quote him as directly as I possibly can off of memory, that, sure, there are some people who don't need counsel, but there are others who do, and it's true for some but, I believe the quote was, it's not true for all. Fair enough. The implication with that statement is there is a universe of people out there who objectively need counsel and there is a separate universe of people who objectively don't. The bill that we have before us says everyone gets counsel and they can't waive it, as I understand it. So whether you need it or not, you're going to get it. So I'll ask, first, Senator Wayne a question. [LB158]

PRESIDENT FOLEY: Senator Wayne, would you yield, please? [LB158]

SENATOR WAYNE: Yes. [LB158]

SENATOR MURANTE: Thank you, Senator Wayne. Senator Wayne, so what I'm trying to wrap my mind around is the statement that I just made. Would you agree with that, that there are certain instances where objectively counsel is necessary and other instances where objectively counsel would not be necessary? Would you agree with that statement? [LB158]

SENATOR WAYNE: For adult court, yes. For juvenile, no. [LB158]

SENATOR MURANTE: Okay. Can you conceive of...okay, can you expand upon that? Why would...let's say in the best-case scenario, you have loving parents who are making decisions in the best interest of their child in a simple case. Why in that instance, in the best-case scenario, on the positive extreme, would that juvenile need counsel? [LB158]

SENATOR WAYNE: The best example I'll give you, and I'm glad Senator Groene is listening, is that well-being parents and a kid who steals, let's say he steals a Snickers bar and gets charged with theft. I would delay, as a strategy, of pleading guilty to everything to try to get this kid on some prediversion program to make sure he doesn't have that conviction. Why? Because most parents don't understand the ramification of a theft charge. You can't even work at Burger King taking cash with a theft charge. So parents just don't know the ramifications of some of the charges that follow with them. For example, the last one--I know I'm on your time--is if you're 16 years old and you get a weed charge, a marijuana charge. You potentially cannot be able to get Pell Grants and federal funding because of that charge. And I'm pretty sure you probably didn't know that, and most of the body didn't know that, because they haven't experienced that. That's why it's important for especially juveniles, even if parents are well off. And even some might have attorney parents that don't understand the nuances of those particular two situations that have life-changing effects for a kid. [LB158]

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SENATOR MURANTE: Okay, thank you, Senator Wayne. Now, what I'm trying to determine is whether your argument is sort of an inherency -based argument. There is not an example that you could come up with that does not fit that description, if that makes sense. So you came up with the example of stealing a Snickers bar. Is there a lesser offense, a simpler offense in which you think it can be taken care of without counsel and without jeopardizing the future of the juvenile? [LB158]

SENATOR WAYNE: No, because, again, even if it's as a minor in possession, even when I was growing up, if a sheriff caught you drinking at a party they took you home and that was the end of it. Today you are charged and that charge carries with you. So if you get a DUI, instead of it being your first DUI, at sentencing the judge is going to say, well, for five years you've had a problem with alcohol, you're not learning your lesson. I see your DUI; I see your minor in possession six years ago when you were 15. That carries with you. And I don't think parents understand that and that's why it's a different...that's why parents can't waive counsel. [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR MURANTE: Is that one minute? [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR MURANTE: Thank you, Mr. President. So Senator Hilgers is a long way from the microphone. But thank you, Senator Wayne, for your commentary. What I'm trying to determine right now is whether the initial statement that I made in this floor speech is accurate, because quite frankly, I don't have enough information right now to make that determination. Is it possible for a juvenile, someone between the ages of 14 and 18, in 90 counties in this state, to effectively have representation and for justice to be served without the imposition of counsel? If the answer to that question is, yes, it is possible, then the question becomes why are we mandating it across the board? If the answer is no, then I think we have a legitimate bill that I could support. What I'd like to hear more from is...I would like to hear more from the attorneys on the floor, Senator Hilgers, Senator Wayne, and I'll speak with them off the microphone... [LB158]

PRESIDENT FOLEY: Time, Senator. [LB158]

SENATOR MURANTE: ...to sort of inform myself on that...on that specific issue. Thank you, Mr. President. [LB158]

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PRESIDENT FOLEY: Thank you, Senator Murante. (Visitors introduced.) Continuing debate, Senator Groene. [LB158]

SENATOR GROENE: Thank you, Mr. President. Just for clarification, Senator Chambers shouldn't assume. I understand he has a law degree and he's not an attorney so I'll give him a pass. But you're supposed to know the answer to the question before you ask it. The kids from Sutherland, I took a picture with them; I spent time with them, I gave them a nice talk. They spent time in my office. My staff lined up the picture with Senator Chambers. So to clear that up, yes, I have a picture with this same group of students. I'm trying to understand about how we're paying for this. Senator Ebke, in her honesty, passed out this e-mail from Corey Steel: I was informed this morning of the amendment. The Chief Justice and I are in favor of the original juvenile right counsel legislation, but we are not--and bolded--in favor of AM996. The automation fund pays for our IT system for the judiciary branch. We have no General Fund appropriations for our IT across the state. It has allowed us...for us to continue to move the judiciary branch into the electronic age with upgrading our hardware in the courts, e-filing, and enhancement to the JUSTICE system. This amendment shifts the burden of defense counsel from juvenile from local counties and is now to be funded by the judiciary branch of state. In our opinion, this will open up the state to take on more and more responsibility and funding for defense counsel in the years to come. The judicial branch is against this. They didn't agree to give up their funds. They have a purpose for those funds. This isn't my e-mail. This is addressed to Senator Ebke, as Chair of the Judiciary Committee. So they want you to vote no on AM996. As far as rights...is Senator Wayne here? I have a question for you. [LB158]

PRESIDENT FOLEY: Senator Wayne, would you yield, please? [LB158]

SENATOR GROENE: If you would accept it. [LB158]

SENATOR WAYNE: Yes. [LB158]

SENATOR GROENE: Does the constitution differentiate between age, juvenile, adult when it gives the constitutional right to representation or denial of representation? [LB158]

SENATOR WAYNE: The Nebraska Constitution... [LB158]

SENATOR GROENE: I'm talking about the United States Constitution. [LB158]

SENATOR WAYNE: Well, the United States Constitution says "right to counsel." It does not distinguish between age. [LB158]

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SENATOR GROENE: All right. So we give this to juveniles, who cares what age. So some smart lawyer in the Bar Association said, boy, this is money. Let's pick some 23-year-old in the state pen who was offered, by the judge, counsel but turned it down. And they say, wait a second, if he was 18 he would have been given counsel; because he's 23 he didn't get it. What's going to happen down the road, folks, is we as taxpayers are going to be giving counsel to everyone. Now legal services and lawyers are a business. There is a trend in the United States for more and more individuals to defend themselves. Boy, that is taking business away from the bar associations across the country. How are they going to make money if we don't force them to hire a lawyer? Judge Heavican told us in his speech, more and more individuals are representing themselves. That's not good for business. This is a lawyer employment bill, folks. That's what this is. That's all it is. The juveniles are taken care of; they're given justice. Believe it or not, most parents still...children make mistakes, teenagers revolt, it's handled and we go on with our lives. Senator Wayne said this isn't 1970, 1980. He's right. [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR GROENE: We seal juvenile records now. We never used to. It's improved, not gotten worse. When you were younger, my generation, if you made a mistake, it haunted you. Now records are sealed. Things are better, not worse. This bill is unnecessary. It's a lawyer employment bill, that's what it is. They're losing business, folks. You know, car dealer tells you that he sells you a car because he wants you to be safe, because he cares about you and wants you in a new car and the headlights work. He's a businessman. Lawyers are business people, they need customers. This is a lawyer employment bill. I'll leave it at that. [LB158]

PRESIDENT FOLEY: Thank you, Senator Groene. Senator Chambers. [LB158]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I know Senator Groene better than he does himself. I'd like to ask him a question or two. [LB158]

PRESIDENT FOLEY: Senator Groene, would you yield, please? [LB158]

SENATOR GROENE: Yes. [LB158]

SENATOR CHAMBERS: Senator Groene, did you say a person should not ask a question...it wouldn't be wise to ask a question if the person doesn't know what the answer will be? [LB158]

SENATOR GROENE: No. I did say that. [LB158]

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SENATOR CHAMBERS: Okay. [LB158]

SENATOR GROENE: But you also need to not make a statement. [LB158]

SENATOR CHAMBERS: Okay. [LB158]

SENATOR GROENE: Even worse, don't make a statement unless you know what the answer...it's the truth. [LB158]

SENATOR CHAMBERS: Well, what was the statement or the question, however you want to phrase it? [LB158]

SENATOR GROENE: Colleagues, this is the photo I spoke of. Why do you young people seem to be drawn to me and not you? Just wondering. Then you made statements about Senator Groene and the kids from Sutherland, which is my district, that I didn't take a picture with them. That was false. [LB158]

SENATOR CHAMBERS: Okay. I stand corrected. I'm not through with you yet. [LB158]

SENATOR GROENE: I might be. [LB158]

SENATOR CHAMBERS: Would you like to make a wager on how I listen better to what you say than you remember what you say? I know what you said... [LB158]

SENATOR GROENE: I would say that goes both ways, sir. [LB158]

SENATOR CHAMBERS: I know what you said better than you know. I'll make a wager that I can prove it this morning, that you said something and you don't know that you said it. But I knew you said it and I said you said it. But you doubt that I'm correct. And you also doubt what you may have said. Would you like to make a small wager that I know what you said but you're unsure (inaudible)? [LB158]

SENATOR GROENE: No, I don't want to make a wager. And I made a mistake when I said judges were elected. But then I corrected myself and said I voted for a judge. I understand that correction, if that's your wager, sir. [LB158]

SENATOR CHAMBERS: And you know you said you elected that judge, don't you? [LB158]

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SENATOR GROENE: I voted for that judge is what the accuracy is. [LB158]

SENATOR CHAMBERS: But you know that you said,... [LB158]

SENATOR GROENE: Yes. [LB158]

SENATOR CHAMBERS: ...I elected that judge. That's what you said. [LB158]

SENATOR GROENE: In a way I did. It depends what your definition is of elected. [LB158]

SENATOR CHAMBERS: No. The word you said. Did you say the word "elected"? [LB158]

SENATOR GROENE: Yes, I did. [LB158]

SENATOR CHAMBERS: Okay. [LB158]

SENATOR GROENE: But then I corrected myself and said voted for that judge. [LB158]

SENATOR CHAMBERS: Okay. Senator Groene, I said what you said. You were wrong. Now I'm going to ask you another question. Is there a position in Nebraska's criminal justice system designated by district attorney? [LB158]

SENATOR GROENE: It's county attorney. District attorney is the state or federal. [LB158]

SENATOR CHAMBERS: And where did you get that term...why did you use the term "district attorney"? [LB158]

SENATOR GROENE: Because I watch too much TV and they always call them DAs on there. [LB158]

SENATOR GROENE: Thank you. And you were not paying attention to the facts of the situation. Now, don't leave yet. I'm not through with you. Are you a fish...do you fish? [LB158]

SENATOR GROENE: I used to, but not anymore; days get shorter and too much work to do. [LB158]

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SENATOR CHAMBERS: Is a person who fishes known as an angler? [LB158]

SENATOR GROENE: Yes, or fisherman or fisherwoman. [LB158]

SENATOR CHAMBERS: Now, when you fish, do you just put a hook on a piece of string or fishing line and drop it in the water and the fish takes it? [LB158]

SENATOR GROENE: If they're hungry enough. There is always a dumb one out there. [LB158]

SENATOR CHAMBERS: If they're...no, just a hook, just a naked hook, will a fish just take a naked hook? [LB158]

SENATOR GROENE: I've seen it done. [LB158]

SENATOR CHAMBERS: Is that how you fished? [LB158]

SENATOR GROENE: When I just want to rest and make my wife think I'm actually doing something, fishing is work if you catch something. [LB158]

SENATOR CHAMBERS: But if you wanted to catch a fish, would you just put a hook on a line and drop it? [LB158]

SENATOR GROENE: Depends if I was hungry. [LB158]

SENATOR CHAMBERS: What is it that people refer to that they put on a hook to have the fish take that item and at the same time take the hook? What is that object or item referred to as? [LB158]

SENATOR GROENE: Bait. [LB158]

SENATOR CHAMBERS: Okay, or a lure? [LB158]

SENATOR GROENE: I took the bait. I understand that, Senator. [LB158]

SENATOR CHAMBERS: Bait or lure...or a lure? [LB158]

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SENATOR GROENE: Or lure or worm or chad. [LB158]

SENATOR CHAMBERS: Okay. Have you ever...but would lure or bait be an accurate description? All right. [LB158]

SENATOR GROENE: Bait is the bigger general term and then... [LB158]

SENATOR CHAMBERS: Thank you. [LB158]

SENATOR GROENE: ...you can go into some classes from there. [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR CHAMBERS: He is so afraid to answer now because he thinks I got something up my sleeve and I'm not even wearing sleeves. Senator, so I'm not going to question him. Members of the Legislature, I know Senator Groene. He wasn't on the floor. When you want to catch a fish, you put a lure out there. His staff is the one that made sure I got a copy of the picture. Now, if they're going to take a picture with me, obviously as a courtesy they'd take one with Senator Groene. I lured him back into this Chamber, didn't I? I've criticized his being absent before and he never came running. But he thought he had me this time because the picture had been taken with him. So here he comes because he got Chambers. So he's wiggling on the hook and saying I got you. Then here's what I say. Did the fish take the hook or did the hook take the fish? I caught my fish. [LB158]

PRESIDENT FOLEY: Time, Senator. [LB158]

SENATOR CHAMBERS: And I had my fish...you said time? [LB158]

PRESIDENT FOLEY: Yes, sir. [LB158]

SENATOR CHAMBERS: Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Chambers and Senator Groene. Senator Hansen. [LB158]

SENATOR HANSEN: Question. [LB158]

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PRESIDENT FOLEY: The question has been called. Do I see five hands? I do. The question is, shall debate cease? Those in favor of ceasing debate vote aye; those opposed vote nay. Have you all voted who care to? Senator Hansen. [LB158]

SENATOR HANSEN: Mr. President, a call of the house. [LB158]

PRESIDENT FOLEY: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB158]

CLERK: 22 ayes, 1 nay to place the house under call. [LB158]

PRESIDENT FOLEY: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave to the floor. The house is under call. Senators Watermeier, Quick, Morfeld, Kuehn, Smith, Brasch, Harr, Clements, Erdman, Linehan, Hilkemann, please return to the floor and check in, the house is under call. Waiting for Senators Morfeld and Erdman. Senator Kuehn, would you check in, please. All unexcused members are now present. Senator Hansen, how did you want to proceed? [LB158]

SENATOR HANSEN: We do a roll call, reverse order. [LB158]

PRESIDENT FOLEY: Roll call vote in reverse order. The question before the body is to cease debate. Those in favor say aye; those opposed nay. Mr. Clerk. [LB158]

CLERK: (Roll call vote taken, Legislative Journal page 1018.) 25 ayes, 9 nays, Mr. President, to cease debate. [LB158]

PRESIDENT FOLEY: The motion to cease debate is adopted. Senator Pansing Brooks, you're recognized to close. We're still under call. [LB158]

SENATOR PANSING BROOKS: Thank you, Mr. Lieutenant Governor. Again, my friends, yesterday, when I talked to you, I had 38 people saying if we found funding that wasn't attached to the counties, that you would be supportive of this. We have got to provide a constitutional right to counsel for children. It has saved money in all the counties that have discussed this. It saves money by not having two hearings. They have one hearing instead of two because the juvenile doesn't come to court and the judge says--do you want a lawyer; and then the child says--yeah, I do want a lawyer, then everybody has to leave and come back to another hearing.

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So that's one way that it saves money, the cost of a \$300 to \$400 hearing alone. The court automation fee has been used for various purposes. I have talked with various people to consider raising the court fees by one dollar. We have some of the largest...excuse me, lowest fees in the country for court fees. One dollar could go to the court, to an indigent juvenile...indigent fund that's under the Public Advocacy Commission. But again, this is a way not to ask the counties, even though the counties are...just like they pay for a right to trial, just like every adult who goes into court, if they're even going to lose one day of liberty, they have the right to counsel...every adult. But children who are wandering into the abyss and morass of the juvenile justice system and where for any charge a judge may take them out of the home and place them into detention or into a foster home, we want to just let the judge play attorney and judge. And those are totally different roles, my friends. If you understood that, everyone needs an advocate. I would not recommend any one of you or any one of your children ever walking into a courtroom without an advocate. I would never do it as a lawyer. And certainly I would never recommend that any one of your children or your friend's children walk into a court not understanding what right to counsel is. Imagine how many kids understand counsel. Then you say, what about right to an attorney? They don't really understand that either. Then they talk about waiver, waiver of rights. We know that a child's brain does not fully develop until 24 to 26. They can't assess risk. Guess what kind of risk you're assuming by pleading guilty and saying I don't want a lawyer? What I'm asking is that at the filing, as Senator Wayne has said, they get to talk to counsel and understand, are they going to lose the chance to go to college and get a loan? Because if you plead guilty to a small drug charge, you're going to lose that ability to get a loan to go to college. So I think it's highly appropriate, the Supreme Court fully agrees with me that this is something that needs to be done. What our bone of contention is whether it comes out of the Court Automation Fund. And they have dipped into that fund for other purposes than court automation. Again, it's a constitutional right to an attorney. Fifty years ago, In re Gault, Judge Fortas set that law that they are to have attorneys. But we sort of think, oh, they're just children, it's a schoolyard fight. Kids are now going to jail and getting charged for a schoolyard fight. That didn't happen when I was a child. When I was a child, you went to the principal's office,... [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR PANSING BROOKS: ...your parents were called. That was it. Now you're being dragged down to the station and you're being charged as a juvenile. That world is totally different from when you and I were small, my friends. It's a world fraught with legal dangers to children. And we expect them to wander that abyss all on their own. So I ask you to follow through on the vote on AM996 which takes money out of the cash fund and it will build back up, as it always does every year, from the Court Automation Fund, and then vote yes on the Judiciary amendment and the underlying bill, LB158. Thank you. [LB158]

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PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Members, you heard the debate on AM996. The question before the body is the adoption of the amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk. [LB158]

CLERK: 23 ayes, 12 nays, Mr. President, on the amendment. [LB158]

PRESIDENT FOLEY: AM996 is not adopted. I raise the call. Continuing debate on LB158 and the committee amendment. Senator Hughes. I'm sorry. Mr. Clerk for a motion. [LB158]

CLERK: Mr. President, Senator Krist would move to reconsider the vote with respect to AM996. [LB158]

PRESIDENT FOLEY: Senator Krist, you're recognized to open on your motion. [LB158]

SENATOR KRIST: Thank you, Mr. President. Not voting for that amendment because you gave your word that if the amendment passed, you would then vote for the bill is, fill in the blank. Fill in the blank. We have about four options to fund this program. We can go back to the county aid funds. We could add a dollar to the fees on this particular fund. We could take it out of General Funds. Senator Murante can carry on his conversation with members of Appropriations and develop a different cash fund. We can do all that between General and Select, but if you vote in some capacity not to provide a constitutional requirement for right to counsel for your juveniles and you come up for election in two years, good luck. Most parents cannot handle the question. And legally, they can't answer the question for the kid. This is one of those issues that you live or die by, because there are people in your communities, your districts who are going to look at your vote and they're going to say you don't care about the kids. And get up on the mike and start asking me questions about why I think that's the case, because I'm willing to take any questions you need. I've seen too many of these things happen across the state. I've heard both anecdotal and real information that if we don't provide counsel for kids, bad things happen. Senator Wayne told you all, you can't even work a cash register at Burger King. I went into Wendy's, I don't do very much fast food, but I went into Wendy's the other night. They had three kids back there working and only one of them could use the cash register. No, I can't do that. I can't touch the money. No, I can't do that, I'm sorry, I'm going to have to get Clarissa (phonetic) up here to do the job. This affects kids. The decisions that are made affects your kids. The 40,000 people that are in your district, the 1.9 million population across this state, and whatever proportion of that is kids, it affects them. We already have data and we have presented data that says it saves time; it saves money. In the long run, we've had people who are in the trenches, including Senator Wayne, and folks from Lancaster and Douglas who say it is an efficiency issue. I'd like to take that card of 38 vote count and I'd like to run down the votes who actually came in, in support of an alternative motive. Now, if you don't like that cash fund, we'll fix it between General and

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Select. If you didn't vote for a funding mechanism and you gave your word that if there was a funding mechanism that didn't go out of the pocket of the county that you represent, fill in the blank. Senator Howard and I have had this conversation a million times. Your vote count sometimes isn't worth the time to go around and take someone's word on what they're going to do. That's pathetic. We'll take a reconsider motion on this one and this time I think you should reach down and say, is this important enough to kill today or can we at least allow it to go to Select File and allow Senator Pansing Brooks and others like me to work on the funding issue? Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Hughes. [LB158]

SENATOR HUGHES: Thank you, Mr. President; good morning, colleagues. You'll notice I did vote yes on AM996. I did not give Senator Pansing Brooks or Senator Wayne my pledge to do that. But if the funding source can come from somewhere other than my...our property taxpayers, it does make this bill a little more palatable to me. I'm still opposed to the bill, because, quite frankly, the way we handle things in the 90 counties that don't have a juvenile justice court system is working. It's working. I don't know what we don't understand about that. Our kids are getting representation when they need it. Our judges are making sure that the kids understand what they're faced with when they come before them. I have faith in my judges. Would Senator Wayne yield to a question, please? [LB158]

PRESIDENT FOLEY: Senator Wayne, would you yield, please? [LB158]

SENATOR WAYNE: Yes. [LB158]

SENATOR HUGHES: Thank you, Senator Wayne. In your experience in the court system, what kind of...what are your charges when you deal with juvenile? Is it the same as when you're in adult court or how do you handle that? And I...don't get too specific. [LB158]

SENATOR WAYNE: No, it's actually different. Juvenile court has a flat fee, at least in Douglas County; and it varies county by county. Juvenile in Douglas County is \$65 an hour. District court is \$85 an hour, whether you're in court or not court, same as juvenile, \$65 an hour straight flat fee in Douglas County. [LB158]

SENATOR HUGHES: And how is that rate set? [LB158]

SENATOR WAYNE: It is set by the local county board. They set what your reasonable rate is. And then we have a process which the judge reviews all your charges, and sometimes if you put

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down you did legal research for two hours, they say, no, it'd only be an hour. So that's how they manage their reasonable rates and reasonable charges. [LB158]

SENATOR HUGHES: So when you say the county board is at the commissioners or supervisors or who is that board? [LB158]

SENATOR WAYNE: Yes, the commissioners and the Supreme Court or, in this case, the juvenile courts set the rates. But the commissioners put money aside for those rates and they budget for it. [LB158]

SENATOR HUGHES: So when you take on a juvenile case, are you...it's not pro bono, but your expenses are being met. Are you not making money or where... [LB158]

SENATOR WAYNE: No. [LB158]

SENATOR HUGHES: ...how do you come out on that? [LB158]

SENATOR WAYNE: No, if you talk to most juvenile attorneys, we are not making money on a juvenile court case. We, typically, are losing money and writing it off because of what we can do through our cost-saving method. Well, we are not making money, to answer your question. We get paid \$65 an hour. Those cases can last anywhere from six months to two years, and, typically, it's a...you see a lot of high turnover because the money is not worth all the energy you put into a juvenile court. [LB158]

SENATOR HUGHES: And that \$65 an hour, that's regardless if the county is paying or if you're charging the parents? [LB158]

SENATOR WAYNE: No. If we charge parents, and this is why I say you don't make money, if I were to charge a parent, it would be substantially higher than that. That is what the fee is for the county when you're court appointed. The same case that would be...hire a private attorney, I wouldn't take a private juvenile without \$1,500 or \$2,000 down, and that's on my low end, because it drags out so long. So that's why you lose money, because you just can't make it up. It's not a jobs program. [LB158]

SENATOR HUGHES: So the time consumed...you said you don't take private cases? [LB158]

SENATOR WAYNE: I do take private cases, but they cost more. [LB158]

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PRESIDENT FOLEY: One minute. [LB158]

SENATOR HUGHES: Okay. But the time commitment for...whether the county is picking up the tab or the individual is picking up the tab, there is not a lot of difference? [LB158]

SENATOR WAYNE: No. And that would be determined by your fee as a private person, what you would charge. But as a private attorney, you try to bill what you think how long the case is going to last. The minimum, they last about six months, so you try to bill all that up-front. That way you make sure you secure your money and you're not running around chasing payments. [LB158]

SENATOR HUGHES: What would be the time frame that a normal or an average case that you deal with in juvenile court takes? Would that six-month number be average? I know it probably varies, but just curious how much time it's going to take. [LB158]

SENATOR WAYNE: The minimum sentence of probation is six months, at least in Douglas County for the most minor crime. So at a minimum, it's going to be six months, assuming everything goes perfect. [LB158]

PRESIDENT FOLEY: Time, Senators. [LB158]

SENATOR HUGHES: Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Hughes and Senator Wayne. Senator Schumacher. [LB158]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Senator Erdman started out today reflecting what a lot of people believe, that we have a problem with creeping government, little bit at a time, gets bigger and bigger. I probably would argue with some of the things that he said, but his observation is shared by a lot of people. And in our juvenile court system, it's been a case of creeping government. Used to have a simple case, you had a criminal system. Somebody did a crime, they went before the judge, they got sentenced, probably taken out and hung. But things went on. So we created a special court system for people under 18 years old. And a special, special one if you're under 16 because you had to go to juvenile court if you were under 16. And it was a diversion program from our criminal system. County attorney could make a decision whether to file between 16 and 18 years old in either adult or juvenile court. And the juvenile system had two functions. One, to take care of kids who were abused and had problems that way. And two, to take care of kids who did something who would be criminal

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had they been adults. And they weren't going to be convicted of a crime. They were just going to be classified and helped. Then we entered into the world of following a Supreme Court decision, of Gault, that, basically, said, well, the kid has got a right to an attorney. Okay? And all of a sudden, Mom and Dad had rights to attorneys if they were there. Sometimes there were guardians ad litem that had rights to attorneys. And we had a whole infusion of attorneys and then rules. Senator Wayne says how you can come in the back door and use these presentence investigations that later on in adult life and it went on. So now we come a new level of thought that's out there, outside of the juvenile court, diverting people from the juvenile system. So we have a diversion from the diversion program. We also imposed ourselves a rule that said the county attorney must file everything in juvenile court if they're under 18 and if he wants to take it out, he's got to present his case to the court. That's how government grows. At this point in time, no state or federal court has said we have got to do what this bill does. If we pass this bill, it is our mandate and we can't pass the buck to anybody else. I thought it enlightening in the letter that was handed out that our Chief Justice, a guy who is a bright guy, who we just gave a raise to a little bit ago, said that on the scale of things, from our perspective, if we're to have to give up our computer fund or fund this program, although it's a good idea, we take the computer fund as more important. That took a lot of hyperbole out of this debate today. Basically, someone else foots the bill, it's a great idea. But if it comes out of our computer fund, it isn't. I believe local judges should have the discretion to use their skills that we pay them to use. I believe that's the case on mandatory minimums. I believe that's the case on sentencing. And I believe it's on the case on whether or not you should force somebody to take an attorney that they really don't want. You have to ask them whether they want it, but you shouldn't. That should be a local discussion whether you actually take it the next step and force them to take it. I find it also... [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR SCHUMACHER: ...persuasive that the argument is, hey, the brain is not fully formed until it's 25 years old. Why don't...doesn't this bill say, okay, at 25, below that you're forced to have an attorney? Or what about if you got a little older, you got some senior moments? Shouldn't they be forced too? And then I hear that parents don't know whether it's good or bad. So shouldn't just everybody be forced to do this? I mean, it's a constitutional right, after all. Or should we just let common sense prevail? And as Senator Hughes says, what's working is working. Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Senator Murante. [LB158]

SENATOR MURANTE: Thank you, Mr. President; members, good morning. I want to thank Senator Wayne and Senator Hilgers for their very informative comments relative to the policy question of LB158. I'll continue having those discussions on the microphone with them. But I do

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need, with respect to the reconsideration motion and AM996, I simply don't have enough information to state whether or not this particular funding mechanism is the most appropriate. I will say I heard some suggestions off the microphone that a fee increase might be a better course of action. I'm not sure that I would agree with that assessment. It would appear to me that AM996 is likely, at least in my view, a better course of action than that. But would Senator Wishart yield to a couple of questions? [LB158]

PRESIDENT FOLEY: Senator Wishart, would you yield, please? [LB158]

SENATOR WISHART: Yes, I will. [LB158]

SENATOR MURANTE: Thank you, Senator Wishart. And I thank you for your off-the-microphone conversations, as well, relative to this particular fund. As I discussed in my first time on the microphone, it has been reported, and I've had conversations with several of your colleagues on the Appropriations Committee about the utilization of cash funds for the purposes of balancing the budget and that there will be extensive use of cash funds as the budget hits General File. Could you go over for me a little bit the conversation within the Appropriations Committee relative to this specific cash fund and what discussions happened on this specific cash fund? [LB158]

SENATOR WISHART: Yes, I can. So first of all, I did pull a fund analysis report for this specific cash fund, the Supreme Court Automation Cash Fund. And because we have a decrease in court filings, we have seen a decrease in the funds available in this fund. In 2014, for example, there was \$3 million. We estimate in fiscal year 2017 about \$900,000. And then in '18 and '19, roughly a little over \$1.1 to \$1.3 million in the cash fund. So as you can see, this fund is gradually depleting. [LB158]

SENATOR MURANTE: Thank you for that information. So in the discussion of the cash funds which were being utilized for the purposes of balancing the budget, was this fund in that discussion? [LB158]

SENATOR WISHART: So we did discuss this fund mainly when the Supreme Court came to us with an issue they wanted to change the funding of IT personnel from cash to General Funds at about \$890,000 per year. The committee chose not to accept that request. And then in talking with the Supreme Court more recently, as well, it just looks like this cash fund is obligated, the dollars that are currently in it. [LB158]

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SENATOR MURANTE: So was there...so clearly at this point, the money that is in this fund is not being utilized to balance the budget. And I'm curious as to why the Appropriations Committee chose not to utilize the funds in this...the money within this fund and rather utilize money from other funds. Or was that discussion just...did that never occur? [LB158]

SENATOR WISHART: So when we looked at cash funds and looked at each one of them, if cash funds were fully...if those cash funds were fully obligated, then, obviously, we would be not taking additional funds out of those. [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR MURANTE: Okay. So if the cash funds were obligated, can you explain to me a little bit what that means relative to...because now we are being asked to use that money for a different purpose, when you folks made the decision on Appropriations Committee not to use it for the purposes of the budget. So can you explain that reasoning for me a little bit? [LB158]

SENATOR WISHART: Sure. So we didn't, in the Appropriations Committee, from my notes and from my recollection, specifically talk about this cash fund because when we looked at it, first of all, we saw that the numbers were depleting in terms of the yearly amount that's in the fund, which means that in the long run this fund, in itself, it's just not replenishing in a sustainable way. But also in talking with the Supreme Court, the dollars that are currently sitting in the cash fund... [LB158]

PRESIDENT FOLEY: Time, Senators. Thank you, Senator Murante and Senator Wishart. Senator Clements. [LB158]

SENATOR CLEMENTS: Thank you, Mr. President. I rise in opposition to a the motion, MO79, and AM996. This has been a short budget year, we all know. And on the Appropriations Committee, we have been finding funds wherever we could. I believe that the Supreme Court needed the funds that they have and they've already been cut. They offered up, as I recall, I think, \$2 million of some other funds that they already did allow the Appropriations Committee to lapse. And that they are in need of IT computer systems. And the money that this would take out of that would harm their ability to have their IT systems fully funded. Also, I received a copy of the e-mail from Corey Steel, and again, I'll just read that he was informed this morning of the amendment. And I think that was not the right thing to do, to surprise somebody like that without getting more discussion with the Chief Justice or with his administrator. And they're saying here they're not in favor of the amendment. I think they've already done quite a bit of giving toward the budget and cutting down to bare minimum. I don't believe these funds are extra funds, that

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they're going to be needed for the JUSTICE system. Senator Groene, would you yield to a question? [LB158]

PRESIDENT FOLEY: Senator Groene, would you yield, please? [LB158]

SENATOR GROENE: Yes. [LB158]

SENATOR CLEMENTS: Senator Groene, I was gone with a school group while some of the discussion was going on. I was just wondering, how are the juvenile cases handled in District 42? Could you describe your discussion of that? [LB158]

SENATOR GROENE: Juvenile shows up in court. The judge asks, you have a right to counsel. Parents are standing there. And they will say I want counsel or I don't. Then they proceed from there. They ask them how they plead or...usually the juvenile...let's start over. The juvenile usually don't even show up in court. He's sent by the DA and social workers to diversion programs and it's all taken care of and they learn their lesson, gets some of those soft skills that we heard about lately through some of the programs. And then everybody goes on about their life. We understand youth make mistakes. And then if it's a serious crime, it's referred to adult court and then everything else kicks in the adult court system. The system works in rural Nebraska. Nothing has changed from a year ago. No crisis has shown up. No crisis was present prior to that; system works. Children learn their lesson, make mistakes, as all humans do, and everybody understands that. Nobody...their record is expunged, or sealed...not expunged but sealed. And there is no crisis here, unless some lawyers aren't paying their rent and they want some little money on the side because now we're going to force parents to pay for that. [LB158]

SENATOR CLEMENTS: Thank you, Senator Groene. I would yield the rest of my time to Senator Hughes. [LB158]

PRESIDENT FOLEY: Senator Hughes, about one minute. [LB158]

SENATOR HUGHES: Thank you, Senator. I appreciate the time, Senator Clements. Is Senator Schumacher available for a question? [LB158]

PRESIDENT FOLEY: Senator Schumacher, are you on the floor for a question? [LB158]

SENATOR SCHUMACHER: I am. [LB158]

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SENATOR HUGHES: Thank you, Senator Schumacher. When I began this morning in my opening remarks, I used deja vu all over again. Is that kind of the feeling we're getting today? Do you get that feeling? [LB158]

SENATOR SCHUMACHER: I get that feeling. [LB158]

SENATOR HUGHES: Yes. A year ago, two years ago, whenever it was, when we started this debate, we had, essentially, the same arguments that we did that we're having today. And for those of us in less populated areas of the state, do you think that things have changed since last year, that we need to necessitate this legislation? [LB158]

SENATOR SCHUMACHER: If there has been a change of circumstances, I'm unaware of it. [LB158]

SENATOR HUGHES: Okay, thank you. [LB158]

PRESIDENT FOLEY: Time, Senators. [LB158]

SENATOR HUGHES: Thank you, Senator Schumacher. Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Hughes, Senator Schumacher. Items for the record, Mr. Clerk? [LB158]

CLERK: Thank you, Mr. President. Senator Albrecht would like to print an amendment to LB172; Senator Groene, LB640; and Senator Erdman to LB427. Mr. President, the Special Committee on the Qualifications Challenge will meet at 1:00 p.m. in Room 1524; Special Committee at 1:00 p.m. (Legislative Journal pages 1018-1022.) [LB172 LB640 LB427]

Senator Schumacher would move to recess the body until 1:30 p.m. [LB158]

PRESIDENT FOLEY: Members, you heard the motion to recess till this afternoon. Those in favor say aye. Those opposed say nay. We are recessed. [LB158]

RECESS

SENATOR WATERMEIER PRESIDING

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SENATOR WATERMEIER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

ASSISTANT CLERK: There is a quorum present, Mr. President.

SENATOR WATERMEIER: All right, thank you, Mr. Clerk. Do you have items for the record?

ASSISTANT CLERK: Mr. President, one item. The Legislature has received the report from the Special Committee on the Qualifications Challenge for the 11th Legislative District. That's all I have at this time. (Legislative Journal page 1022.)

SENATOR WATERMEIER: All right. Thank you, Mr. Clerk. The Chair recognizes Speaker Scheer for an announcement.

SPEAKER SCHEER: Thank you, Mr. President. Just wanted to let my colleagues know we're going to modify today a little bit. We will be on the agenda for 1:30 on LB72. At the termination of that, we'll be on LB68. LB68 will terminate at approximately 4:10 to 4:15. And at the culmination of that cloture vote, we will then return to LB158. It was shorted about 45 minutes this morning because of the two A bills that we talked about this morning. So in order to get everything finished up today, we will return to LB158 at the end of the two cloture votes we have this afternoon and finish that up at...give it its 45 or 43 or 53 minutes that we were short and then we will be finished with all the bills that we had on the schedule today. Secondly, today is the last date to inform my office if you are planning on having dinners in the late nights for the first couple...four or five that we've notated. I will tell you that we've only had 15 people sign up. We will need at least a minimum of 25 in order to facilitate this. So if you have not contacted my office--don't come tell me because I'll forget--just please call my office, either talk to Spencer or Laurie and give them your name and we can collect the monies later, but we do need the names to make sure we have enough numbers as of tonight at adjournment. So if you haven't thought about it, please think about it today. It's no skin...I don't care. This is just something we were trying to offer as a alternative. If you don't want to participate that's great, but we do need a minimum of 25 in order to facilitate that. So if you have not and are thinking that you are going to, please contact my office. Thank you, Mr. President.

SENATOR WATERMEIER: Thank you, Speaker Scheer. Returning to General File. Mr. Clerk.

ASSISTANT CLERK: Mr. President. LB72 was introduced by Senator Schumacher. (Read title.) Bill was introduced on January 5, referred to the Banking Committee, that committee placed the

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bill on General File with no committee amendments. It was considered by the body on March 29 of this year, at which time an amendment was under consideration from Senator Crawford. (AM804, Legislative Journal page 847.) [LB72]

SENATOR WATERMEIER: All right. Senator Schumacher, would you refresh us? [LB72]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. LB72 embodies the very, very sound legal principle that the best law is simple and certain. Simple and certain was a thing called a bond. If a municipality, a government gave its bond, that was good as gold. And the priority was one and there was no uncertainty, no question about it. You could plan your life around it just as you could plan your life around the deed to your house once you paid it off and it was free and clear. Life got a little complicated with the financial crisis. And some municipalities were having difficulties paying their bond and bankruptcy court got involved. They filed bankruptcy. The question was, is a bond still good as gold, number one, full faith and credit? And the rule in very short order was the federal courts will follow the state law. And if the state law is certain, the federal courts are certain. In Nebraska, our law hints that a bond is first, has full faith and credit, but it is not crystal-clear. LB72 makes it like it always was, crystal-clear that in the event of a municipal bankruptcy a bond has full faith and credit, it's good as gold, it's paid first. It's simple as that. I ask you to support LB72 and oppose the intervening amendments that we have between now and cloture. Thank you. [LB72]

SENATOR WATERMEIER: Thank you, Senator Schumacher. Senator Crawford, would you give two minutes to update us on the amendment? [LB72]

SENATOR CRAWFORD: Thank you, Mr. President. Colleagues, proponents of LB72 have argued for the need for certainty. I introduced AM804 to introduce the idea that if we were going to have certainty, we could have certainty instead in a way that was fair to the major stakeholders, our taxpayers, our pensioners, and the investors. But, colleagues, essentially, we do not need to pass LB72. We have a bankruptcy court proceedings. And, colleagues, as we'll explain and remind you in our comments later on, it is the case that we do not have a bond crisis. Our cities are not having trouble finding investors. Interest rates are low on our bonds. And so it is not the case that we need to create this certainty in order to ensure that we have bond investments in our subdivisions. And so I will withdraw my amendment. [LB72]

SENATOR WATERMEIER: All right. Seeing no objections to withdrawing AM804, it is removed. Mr. Clerk. [LB72]

ASSISTANT CLERK: Mr. President, Senator McDonnell would offer AM789. [LB72]

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SENATOR WATERMEIER: Senator McDonnell. [LB72]

SENATOR McDONNELL: Thank you, Mr. President. I will withdraw AM789. Thank you. [LB72]

SENATOR WATERMEIER: Seeing no objections, AM789 is withdrawn. Mr. Clerk. [LB72]

ASSISTANT CLERK: Mr. President, I have nothing further pending on the bill. [LB72]

SENATOR WATERMEIER: Members, you've heard the opening on LB72. Those in the queue wishing to speak: Senator Quick, Senator Hansen, Senator Williams. Senator Quick, you are recognized. [LB72]

SENATOR QUICK: Thank you, Mr. President. I want to talk a little bit about you know we talked last time about more or less leaving this up to the judges to decide. I think if we would want to pick a position I think or who should be paid out first, I think instead of the bondholders first, I think maybe you should look at looking at the citizens of that community first, then your employees, and then go down to the bondholders. You know, as someone who...you know, I have a 401(k), I have my retirement accounts and I invest in those. There's no guarantees that I will get a return on my money. So, I also have bonds within those. So I feel like that's the chance that you take when you buy a bond or if you buy...if you invest in a 401(k). But the employees within the city and the citizens of that community shouldn't be put down on the priority list and let bondholders become the top of the list. When looking at this bill, I also seen that in here as part of the revenue sources, in one part it says the system revenue--which would define some of the revenue--system revenue means revenue or receipts derived from the ownership and operation or disposition of projects or systems of a governmental unit that are primarily used or intended to be used primary to provide public utility services, public transportation services, or public services. So I know like the city of Grand Island, they own their own power plant, so. They also have their own wastewater treatment plant. They have their own line department and do all the work on their infrastructure so utilities has their separate fund. So this means that that fund could be used to pay off bondholders, and I don't believe that should be the way it should happen. That would affect the ratepayers as well as the taxpayers if the city of Grand Island would happen to be...would file bankruptcy. They are actually right now...I believe the general fund is separate from the utility fund and they pretty much keep it that way. But this would allow for that to be drawn into that part of it, and how are you going to determine how much you draw out of the utility fund to pay for those? I also want to talk a little bit about the city services. I mean, if that's the case, will our city services suffer? Will our power plant suffer because they've taken money from our utilities department? Will our wastewater treatment plant suffer because of that? Will the people that are provided those services, will they suffer because of this, because we're going

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to put bondholders first? The other part of that is the employees will suffer because of part of that. And I just don't believe that they should be put at the bottom of the list. When we look at who was opposed to this bill, you had the city of Lincoln opposed, you had the city of Omaha, you have the League of Municipalities, which represents just about every community, village throughout Nebraska, and then you had the firefighters opposing this. So, we need to take a real look at what we're doing here and make sure we're not creating consequences that could affect ratepayers, affect taxpayers,... [LB72]

SENATOR WATERMEIER: One minute. [LB72]

SENATOR QUICK: ...and affect the employees and the services for citizens of our communities throughout Nebraska. With that, thank you, Mr. President. [LB72]

SENATOR WATERMEIER: Thank you, Senator Quick. Senator Hansen, you are recognized. [LB72]

SENATOR HANSEN: Thank you, Mr. President. And good afternoon, colleagues. Colleagues, I rise today to speak out against LB72 and hope that we, when we get an opportunity, we'll vote against the bill. This has been an issue we've been working on for several years now in various forms in the previous bill and the current bill. We've had plenty of discussions and negotiations on potential solutions and we fundamentally keep hitting one road block is that in the event of a bankruptcy, in the event of a bankruptcy of any political subdivision--this bill opens up to any political subdivision, it's more than just city--we want to put bondholders first. Now I understand the argument that bondholders have full faith and credit of the city. But I ask you, are there nothing else the cities do or municipalities, political subdivisions, counties, public power districts, anything of the sort, is there anything else they do that we also might want to give full faith and credit to? Any other contractual obligations, any other city services, any other thing that those political subdivisions might have a hand in that we will also want to give the opportunity for them to argue in front of a bankruptcy judge for full faith and credit? I think there are plenty of things. I think we're going to make some cases on those things. With that, I will yield the rest of my time to Senator Crawford. [LB72]

SENATOR WATERMEIER: Senator Crawford, 3:30. [LB72]

SENATOR CRAWFORD: Thank you, Mr. President. Thank you, Senator Hansen. And I appreciate Senator Hansen's mention that we have worked on this bill in multiple iterations and we have been working and talking about this bill at different times. Colleagues, I rise in strong opposition to LB72 and I urge you to vote red or not voting on cloture. And one of the reasons that we emphasize again that this is something we have seen and worked on before is that I want

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you to understand it's critical to vote red or not voting on cloture. This is not a bill that we need to advance to the next round to have more conversations. We've had ample conversations. And several of the ideas of different ways we might work on this bill have already been rejected, so I urge you to vote red or not voting on cloture. There are issues that we may need to discuss about financial stability and futures in our political subdivisions or about the stability of our pensions. But, colleagues, those need to be done through other means, not a bill like LB72. And, colleagues, I think there's a lot of misunderstanding about LB72, so I urge you to listen carefully. LB72 is not just about general obligation bonds. Colleagues, we've had a lot of conversation and much of the testimony of the bankers on this bill emphasizes general obligation bonds where there is a pledge of full faith and credit. But, colleagues, LB72 goes beyond general obligation bonds. It includes other limited bonds and other obligations. It's very important that you realize this. This is not just about general obligation bonds, but it is other obligations as well. And, colleagues, it's important to understand that this gives priority to the bondholders and the investors who are already being rewarded with interest and sometimes tax incentives to make these investments, gives priority to them. It also allows there to be a statutory lien on the taxing authority of subdivisions. And, colleagues, this is not just about municipalities either. It includes the governmental units of the independent agencies of the state of Nebraska, counties, school districts, public power districts, Educational Service Units, community colleges, natural resource districts, airport authorities, fire protection districts, hospital authorities,... [LB72]

SENATOR WATERMEIER: One minute. [LB72]

SENATOR CRAWFORD: Thank you, Mr. President...joint entities created under Interlocal Cooperation Act, a joint public agency, instrumentality or any other district authority or political subdivision. Colleagues, this is not just a municipal issue, although our municipalities are very concerned about this bill. But this puts the taxing authority of all of our political subdivisions at risk. And I urge you to vote red or not voting on cloture on LB72. [LB72]

SENATOR WATERMEIER: Thank you, Senator Crawford and Senator Hansen. Those in the queue wishing to speak: Senator Williams, Senator McDonnell, and Senator Crawford. Senator Williams, you are recognized. [LB72]

SENATOR WILLIAMS: Thank you, Mr. President. Good afternoon, colleagues. And you heard it said this morning deja vu again and you heard Senator Hansen talk about the fact that we have been talking about this piece of legislation for a number of years. And I've been involved with that for the last three years on this bill myself. What we are talking about here, as opposed to what you just heard, is actually a very simple bill that we should all agree on because it does create certainty in the bond market, which is a necessity for the communities and other entities that Senator Crawford was talking about. This has been labeled by some a banker bill, but I

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would recognize and remind you again that only 9 percent of these bonds are actually held by banks. Seventy-five percent of the bonds that we are talking about here are held by individuals and mutual funds. This is not a lineup of big business or Wall Street on one side and main street on the other. Over the course of time since I've been involved with this, we've tried three different solutions that have been put forward. One was to simply include print in the prospectus that is handed out to the bondholders that discloses to them that there is an inherent extra risk in these bonds because they are not backed by the full faith and credit necessarily of the municipality. City of Omaha, in particular, objected strenuously to having that language in there because they knew it would affect the pricing of the bonds. We also tried to pass an amendment that would have taken away the right of Omaha to declare bankruptcy. That's really the fear in this whole thing. The only circumstance that happens that causes an issue is if you have default. That was not suitable. We also tried to do at one point exactly what Senator Quick just talked about in his conversation and that was turn the thing around. If we want certainty, let's have certainty. Let's have it be certain that the pension plans come first and the bondholders come second. And again, objection because they know what that would do to the price of the bonds. We talked the last time we discussed this on General File about the various stakeholders, the city, the employees of the city, the taxpayers, and the bondholder. The city of course manages the whole thing. They are the ones that have gotten into the management issue of why the pension plan is so underfunded. The employees, we've talked a lot about them. They're making the personal choice to work at that job and use the benefits that are provided, and of course we as the taxpayer. But the one I think gets forgotten in this is the bondholder. Why are they even involved? Why is this even an issue? The bondholders are involved because the city wants and needs to borrow money. And the bondholders provide that service by loaning the city or the school district or the other municipality dollars. And in exchange for that, they'll be paid an interest rate and the city of course wants the best interest rate possible and that best interest rate possible is because of the certainty of the bonds,... [LB72]

SENATOR WATERMEIER: One minute. [LB72]

SENATOR WILLIAMS: ...the certainty of the security, the certainty of the full faith and credit of the municipality. This is not a new issue. The chance of it coming up and being a problem only happens, as I mentioned, if you have a bankruptcy. I would suggest that we put this issue to bed today. I encourage you to support LB72 and vote for cloture. Thank you, Mr. President. [LB72]

SENATOR WATERMEIER: Thank you, Senator Williams. Senator McDonnell, you are recognized. [LB72]

SENATOR McDONNELL: Thank you, Mr. President. I rise in opposition of LB72 on nothing but fairness. And the idea that Senator Schumacher has discussed about an order and for people

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to know and understand if there ever was a bankruptcy in the state of Nebraska--which there hasn't been--but let's talk about fairness. Let's talk about that individual that has given 30 years of their life, had an agreement with the city, was part of the pension system, possibly contributing 17 to 20 percent of their check for 30 years. Now they start their retirement life and at no fault of their own, never having a seat at the table, based on other people's decisions, they find out the city is going to claim bankruptcy, file bankruptcy. At that point, we're going to tell that individual and their families that because you gave that service for 30 years, you're now possibly 5, 10, 15 years into your retirement life, there's a banker out there that's going to get the money first. I don't think any of us disagree that that bondholder, that banker should get paid, but in what order? So now you're in a situation where you're bankrupt as a city, you're trying to recover. You're going to go ahead--the people that served that city--you're going to tell them, you're no longer going to get paid and your city services are now going to be cut or stopped, because we're going to pay the banker first. Again, not saying the banker shouldn't be paid, but in what order? They should be third in line. This is about fairness. It's one thing LB72 has done, it's brought the city of Omaha together. I don't know many bills or many issues where you have the mayor, the city council, every department head, the police union, the civilian union, and the fire union all coming together calling down here and saying, please stop this. What are you doing in the Capitol? What are you trying to do to a city? Why are you trying to tie their hands? Why are you trying to treat people that served the city that are pensioners, and then why are you trying to tell the taxpayers that their services would no longer be there? They would just be stopped. So then the city council, the mayor, the department heads at that point are trying to dig out of bankruptcy, but you've totally tied their hands. You've totally micromanaged from this building and told them how to handle their problems. And you also told the judge, hey, we don't want to have anything to do with bankruptcy court and the judge for his decision that it would be based on today if it went to bankruptcy. You're saying the judge has no...we're going to go ahead and tell you how to handle your affairs. We're going to go ahead and tell you that it's the banks first, the bondholders first. They get their money. But actually the people that served that city and the people that are living in that city no longer will be able to have the services, so, therefore, public safety, the roads, garbage. And now you're trying to dig out of bankruptcy to so you're trying to get the people to move in those businesses and move their families into that city to recover, to create wealth for that city again and put them on a good economic path. And you can't even do that, because who is going to move their business to a city that treats their employees like that or doesn't have the services, don't provide services? Is that someplace you want to move your family? Is that someplace you want to move your business? It makes no sense. This flies in the face of common sense. That's what this does. This is a solution looking for a problem. We've never had this happen. I understand Senator Schumacher, and I believe Senator Schumacher would look at a compromise. And I think the compromise--if he looks into his heart--the compromise is the people that served that city should be first and city services should be first. Then the bankers and the people that invested, fine, they're going to get paid. And no one is

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saying they shouldn't get paid, but they should get in line and be paid third. I'd yield the remainder of my time to Senator Crawford. Thank you. [LB72]

SENATOR WATERMEIER: Senator Crawford, one minute. [LB72]

SENATOR CRAWFORD: Thank you, Mr. President. Am I next in the queue? [LB72]

SENATOR WATERMEIER: Yes, you are. [LB72]

SENATOR CRAWFORD: May I just use that, too? Thank you. [LB72]

SENATOR WATERMEIER: I'll let you know that, too. Go ahead and continue, six minutes. [LB72]

SENATOR CRAWFORD: I appreciate that, thank you. Again, colleagues, I rise in strong opposition to LB72. Colleagues, the reason that we have not come to a solution is because there is no problem that this bill is well designed to solve. And as has been noted, we've had many conversations. And on this matter, I agree with my esteemed colleague, Senator Williams. I think we should put this to rest today and I think we should put it to rest today by not allowing LB72 to get the cloture votes that it needs to continue. Colleagues, again, I stress and I want you to understand what you're voting for if you're voting for cloture or for LB72. This bill puts a priority and a statutory lien on the taxing authority of subdivisions, not just municipalities but all of our subdivisions. Again, and also it is not just for general obligation bonds. This is not just a bill that makes sure that full faith and credit means that you have a lien on the statutory authority of all credit. That would be a much simpler bill. That would be a different bill. Colleagues, that's not what LB72 is. LB72 is much broader than that. And, colleagues, also I think there is misunderstanding. I think I've heard on this floor someone said 28 states already have a bill like LB72. Colleagues, that is not correct. And I want to just speak to the bankers' testimony on this bill about what's happening in other states. As they note, they note that 28 states appear to recognize some form of statutory lien with respect to general obligation bonds. That's not the same as LB72. Colleagues, even in their testimony they note that only five states have state laws that expressly grant statutory lien and binding obligations. But, colleagues, even in their testimony it notes that these states grant the statutory lien bonding obligation for general obligation bondholders. Colleagues, the only state that I know of that has a bill that comes close to LB72 is Rhode Island. So LB72 is not a common solution that other states are coming to. LB72 is a radical bill that provides a benefit for bankers and investors, investors who already receive the benefit of their interest on the loan because they're supposed to be willing to take a risk. Colleagues, there is not a bond problem in our state. And in other testimony it notes that California decided to pass a bill to grant a statutory lien for general obligation bondholders

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because they were having a problem in their bond market in their state. Colleagues, if that starts to happen in Nebraska, we can come back and have this conversation, but that's not happening in Nebraska. And, yes, this is a banker's bill because if you look at the committee statement, the only people that came in support of this bill were the bankers. None of the municipalities say we need this to pass so that there is certainty so we can get low interest rates on our bonds. None of the other governmental units are asking for this. Colleagues, many of you have said on the floor how important it is for our markets to work and allow the market to work. There are bond rating agencies. That's the market. That's the bond market. And if a city is being irresponsible with their pensions, they'll get a lower bond rating and the people who buy bonds can look at those bond ratings and decide what risk they want to take and if a city or a school district or any other governmental subdivision is engaging in financially risky behavior, they'll have more difficulty selling their bonds. But some people might choose to buy them anyway. If so, they should accept that risk because they'll be getting a higher interest rate. Colleagues, I urge you to vote red or not voting on cloture. LB72 grants a priority and a statutory lien on taxing authority to all political subdivisions in our state. It puts the bondholder and investor first in line and grants them a lien... [LB72]

SENATOR WATERMEIER: One minute. [LB72]

SENATOR CRAWFORD: ...on the taxing authority of all of these political subdivisions. Again, this is not just about municipalities, this is all of our political subdivisions. Why should...the bondholders and investors are important and they play an important role. But they are one of many people who contribute to the effectiveness and strength of our communities. Why should they be first when they're already getting interest on their loan and in many cases already getting tax incentives on their loan. It's important that we provide that they're not first in line and not given a statutory lien on our taxing authority, that they're not put in front of our taxpayers, citizens, and city workers, municipalities, teachers, all the other people who contribute to our community. Thank you, Mr. President. [LB72]

SENATOR WATERMEIER: Thank you, Senator Crawford. Senator Schumacher, you're recognized. [LB72]

SENATOR SCHUMACHER: Thank you, Mr. President. Remember the other day we were talking in terms of convention of the state and Senator Ebke asked Senator Clements whether he'd make a loan on...where the debt to revenue like 5 to 1 and he said, oh, not at all? And that was kind of the ratio of the federal government. I asked Senator Clements, but you do buy U.S. Treasury bonds, don't you? The answer was, yes, because they have full faith and credit. In order for the financial markets to work, in order for you to put your pension fund as you probably have if you have one into a city by a bond directly or indirectly through various funds, you want to

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know you are going to get your money back and that city is going to stand on full faith and credit to get your money back. That promise is not made to any other creditor, any other contract, any other negotiations of any kind. That is important for you to put your money there. You know, we all know that an ounce of prevention is worth a pound of cure. And the one thing that we can do to prevent cities from getting reckless with their borrowing is let them know that they're going to have to pay their bonds. That if they should ever get into trouble, they will not be able to play this group against that group against this group and try to weasel out of a debt, to hold them accountable to the pension of the people who invested in the bonds, gave them their money. That's the rule, always been the rule. The only wrinkle has been the bankruptcy court says, well, tell us that you want us to apply that rule. And that is what this law does. It is easy to make a decision now when there isn't an imminent threat of bankruptcy, when we can tell the future investors where they stand, so that future union negotiations can take into account where they stand and nobody is betting that, gee whiz, this is what some court is going to decide and give me. That's wrong. It's wrong for the city of Omaha to play the unions against the bondholders and try to date both gals. Other states have taken action along this line, California, Colorado, Florida, Idaho, Louisiana, Minnesota, New Jersey, Oregon, Rhode Island, Tennessee, Texas, Utah, a long list that I can go on and on. This is very simple. Do we continue to do as we always have and that is extend full faith and credit to those who loan money to our subdivisions, specifically, our municipalities? If we say, no, and things start going south, those interest rates are going to go sky high in any marginal municipality. We can write the rules today. We can let everybody know where they stand so when they're asked, do you have clear title to your car, you can say, yes. Not, oh well, I guess a judge is going to have to decide. No, we need certainty. Certainty is what makes the financial markets run. Knowing where you stand makes a determination of how much interest you require and how much risk you calculate. We're coming up on a cloture motion now. I would ask for your support for LB72. Let's let everybody know where they stand, not leave it up to the whim of a judge at some distant point in the future. Let the cities know they have to behave themselves with their debt, be conservative with their debt and what they allow. [LB72]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: One minute. [LB72]

SENATOR SCHUMACHER: I would ask at this time for a call of the house and a roll call vote in regular order. Thank you. [LB72]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Mr. Clerk, do you have a motion on the desk? [LB72]

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ASSISTANT CLERK: Mr. President, a priority motion: Senator Schumacher would move to invoke cloture, pursuant to Rule 7, Section 10. [LB72]

PRESIDENT FOLEY: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB72]

ASSISTANT CLERK: 27 ayes, 1 nay to go under call, Mr. President. [LB72]

PRESIDENT FOLEY: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Hughes, Bolz, Lindstrom, Chambers, Albrecht, Howard, please return to the Chamber and record your presence. Senator Watermeier, if you could check in. Senator Krist, if you could check in, please. Senator Hughes, Bolz, Lindstrom, Albrecht, please return to the Chamber and check in. Senators Hughes, Lindstrom, and Albrecht, we are under call. Waiting on Senator Albrecht. Senator Schumacher, we're looking for Senator Albrecht. I assume you prefer to wait. Yes? Okay, we'll wait. All unexcused members are now present. It's the ruling of the Chair that there has been a full and fair debate afforded to LB72. The motion before us is cloture and there's been a request for a roll call vote. Mr. Clerk, please call the roll. [LB72]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1023.) The vote is 33 ayes, 11 nays on the motion to invoke cloture, Mr. President. [LB72]

PRESIDENT FOLEY: The cloture motion is successful. The question before the body is the advance of LB72 to E&R Initial. Those in favor aye; those opposed vote nay. Have you all voted who care to? Record please, Mr. Clerk. [LB72]

ASSISTANT CLERK: 29 ayes, 14 nays, Mr. President, on the motion to advance the bill. [LB72]

PRESIDENT FOLEY: LB72 does advance. I raise the call. Proceeding on the agenda, General File, 2017 senator priority bill. Mr. Clerk. [LB72]

ASSISTANT CLERK: Mr. President, the next bill for consideration is LB68, offered by Senator Hilgers. (Read title.) Bill was introduced on January 5. It was referred to the Government, Military and Veterans Affairs Committee, placed on General File with committee amendments. The bill was considered on April 4. At that time under consideration was a motion to recommit

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the bill to the Government Committee, offered by Senator Chambers. That issue is now pending. [LB68]

PRESIDENT FOLEY: Senator Hilgers and Senator Chambers, there is a long list of senators in the queue, but if you'd each like to take a couple of minutes to refresh us on where we left off, Senator Hilgers, you may go first. [LB68]

SENATOR HILGERS: Thank you, Mr. President. Good afternoon, colleagues. LB68 deals with one of our fundamental rights, the right of our Nebraska citizens to keep and bear arms both under the United States Constitution and Article I, Section 1 of the Nebraska Constitution. And it deals particularly with a patchwork of laws that we have in our state, in our municipalities that put an impermissible burden on the exercise of that constitutional right. Specifically, members in our state are forced with either not traveling through Omaha or other municipalities without breaking the law or refusing to exercise their right. If they move to Lincoln, they have the...they have issues with losing their right without due process, the right to own and possess a firearm without due process, and other types of what I view are severe and impermissible burdens on our constitutional system. LB68 would take a portion of the authority, not all of the authority but a portion of the authority, currently given to cities to regulate the possession of firearms and transfer that authority to the state level to provide one clear, common-sense framework to help protect our law-abiding citizens and allow them to exercise their Second Amendment rights and their Article I rights under the Nebraska Constitution. Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Chambers, your motion is pending. If you'd like to take a minute or two to refresh us on the motion before we go to the speaking queue, or you may pass. Your choice. [LB68]

SENATOR CHAMBERS: Would you remind me of which motion this is? [LB68]

PRESIDENT FOLEY: This is return to committee, I believe. [LB68]

SENATOR CHAMBERS: Thank you. [LB68]

PRESIDENT FOLEY: Let me double-check that. That's correct, return to committee. [LB68]

SENATOR CHAMBERS: Yes. Thank you. Mr. President, members of the Legislature, am I speaking now or just refreshing? [LB68]

PRESIDENT FOLEY: This is refreshing, Senator. [LB68]

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SENATOR CHAMBERS: Okay. This is a motion to return the bill to committee so that if there is an inclination to do any work, it needs to be done there and not on the floor. Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: That you, Senator Chambers. Now we'll move to the speaking queue. Senator Harr. [LB68]

SENATOR HARR: Thank you, Mr. President. I didn't take a point of personal privilege but I do want to talk about something that allows me to take a point of personal privilege. Personal privilege is allowed when there is something affecting the rights, dignity, and integrity of the Legislature. Let me tell you, what we just did on that last bill affects all three of those. We did something--and I'll ask Senator Chambers a question in a minute--that I have never seen in seven years here, never even heard of happening before, and that's where the two sides in a debate sat down ahead of time and they decided who got to speak. I had my light on. I was ready to speak. I was not allowed to speak on that last bill. What are we doing, folks? Why are we silencing people? You want to talk about a fundamental right? I'll tell you a fundamental right. It's the right of free speech and that's been around since the constitution, not something just discovered by Heller five, six years ago. That's the very foundation of this body. We are a debating body and when we're not allowed to debate and talk and we silence members of this body, that's a dark day. Thank you. [LB68]

PRESIDENT FOLEY: Thank you, Senator Harr. Senator Hughes. [LB68]

SENATOR HUGHES: Thank you, Mr. Speaker. I'd like to yield my time to Senator Hilgers if he would like. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hughes. Senator Hilgers, 5:00. [LB68]

SENATOR HILGERS: Thank you, Mr. President. Thank you, Senator Hughes. As this debate goes forward today, what I expect...and by the way, let me thank the members of this body for what I thought was an incredible debate last week when we first had our first couple of hours on LB68. I thought it was very informative, I thought it was very educational, and I thought it was very valuable to both the body as well as and the citizens of the state of Nebraska. And I hope to have a similar debate today. And what I expect and what I've heard since last week, and what I'll hear today, I expect, are some of the horror stories, some of the intent of LB68 to create a Wild Wild West scenario here in Nebraska and in our cities. And I can tell you, colleagues, nothing could be further from the truth. And I'll answer each and every one of those charges as they come up today. But before we get into that, I think it is incredibly important to talk about the real impacts that LB68 would help resolve. And I read a number of stories, colleagues, on the floor

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last week from constituents around this state, many without means to fight a law, to challenge a law, to exercise their right to go get a concealed carry permit. We heard from domestic violence victims, people who were afraid of being stalked. We heard from single mothers. We heard from members of our armed forces who could serve our country and be armed at Offutt Air Force Base but can't be trusted to own a firearm in the city of Omaha. Those are the stories. You know, we talk a lot about putting ourselves in the shoes of others and I think it is one of the hardest things anyone can do. But I'm asking you today to put yourself in the shoes of the individuals who cannot exercise their own right to defend themselves and their families and their property. These are not Wild Wild West scenarios that LB68 is attempting to address. These are people in our community who want to just defend themselves, to have the security that comes with owning a firearm. That is guaranteed not just by the United States Constitution, not just by Heller and McDonald but by Article I, Section 1, the very first article, the very first section of our Nebraska State Constitution. So as we go through and we talk about some of the parade of horrors that LB68 will do: it will open up Pinnacle Bank to firearm possession; it won't. It will open up counties and jails to firearms; it won't. It will allow people to have weapons anywhere, anytime, in any place; it won't. It will deprive cities of the ability to fight crime and to deal with violence in their communities; it won't. But as we discuss those, let's keep in mind what LB68 is for. It's to help protect the rights of our fellow citizens that are guaranteed to them. This is not...in some ways, it's not a policy debate. There's portions of this that is a policy debate, I concede. But a portion of this is not. We are dealing with constitutional rights. We talked this morning about the constitutional right to counsel. We've talked before about the constitutional right to practice your religion, your constitutional right to freedom of speech. If you just don't like guns and you just don't want anything to do with a gun, fine. That's a different debate for a different time. We have constitutional protections. That's not what LB68 is about. Now the other thing I want to mention about LB68 that I think is incredibly important to remind the body is the process by which we got here. This came up in LB289 last year and a number of stakeholders came out, most prominently and most aggressively and most thoughtfully the city of Omaha police force. And consistently, they have come forward with evidence and arguments and examples that differentiate them from every other part of the city. And I will listen to any and all stakeholders and I will have a conversation... [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR HILGERS: ...at any time and any place about any bill. But the city of Omaha has consistently expressed their concerns and we spent weeks, months working through those concerns and coming up with a compromise. Not every...we don't get everything we want. City doesn't get everything they want, but we try to create good legislation. That was a good process. It was a helpful process. And what we have is a good bill that reflects that compromise. Now, I'm happy to listen to any other concerns that might be raised with the hope or the wish that maybe a lot of these concerns would have been brought up over the intervening year, but we'll address any

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concerns at any time. And I will listen. And if we can make a better bill even better, I'm all ears. My mom taught me a long time ago that there's no pride in ownership. There's no pride in authorship. I have no pride in where the ideas come from. If we can make this bill better, we will. [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR HILGERS: Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hilgers. (Visitors introduced.) Continuing debate, Senator Morfeld. [LB68]

SENATOR MORFELD: Thank you, Mr. President. And with all due respect to Senator Hilgers, he's wrong. This law will preempt ordinances, measures, and rules created by a city or a county regarding the possession of firearms. It's explicit. Its intent is explicit. Senator Hilgers and I engaged in a floor debate, in a back-and-forth here a week or two ago in which at end of it his explanation of that and how that wouldn't preempt that ability to regulate those firearms in our county jails, in our Hall of Justice, in our Pinnacle Bank Arena was so absurd that it made no sense whatsoever. It makes no sense whatsoever because it's not a true assertion. And don't take it just from me. Our county Sheriffs' Association just met today and reversed their supportive position on this bill based on...in its current form because of that. These aren't a bunch of gun nuts or left-wing antigun nuts, I should say, that are running around saying it's going to do this parade of horrors. This is our county Sheriffs' Association. It's our Lincoln police chief, who's out in the lobby right now talking about that. It's attorneys who actually deal with these ordinances and these laws every day and explicitly laid out in a memo that I passed out to all of you. And for Senator Hilgers to say that our broader trespass statute somehow controls a more narrow law that we create to specifically deal with the possession of guns is absurd. It's so absurd that it goes against law school 101 when it comes to statutory interpretation, which I decided to take out my case book just today to review. It is a commonly held precept that the more narrow law controls over a broader law. That is how courts engage in statutory interpretation. So the fact that we have a broader trespass statute is not going to stop or trump a more narrowly construed law that we create saying cities may not create measures, rules, or ordinances regarding the possession of guns. Now in order to violate that trespass statute, you have to be a prohibited person. And when you're on public property, which Pinnacle Bank Arena is, which a jail is, which the Hall of Justice down the street is, to be a prohibited person there you have to be violating some kind of rule, some kind of ordinance, rules and ordinances that we have specifically in this legislation decided to take away the authority from the cities and the counties. Senator Hilgers' explanation that the criminal trespass statute would control over this more narrow rule or this more narrow law is absurd. It goes against common sense, it goes against

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logic, and it also goes against basic rules of statutory interpretation, rules that are taught on day one in that class in law school. Colleagues, this bill is broad and overreaching. My first year in the Legislature here I made the mistake of listening just to the testifiers and not reading the text of this almost identical law because I was told that this would protect people's ability to travel from one portion of the state to another portion of the state and not be hindered by local ordinances. So my first year, I advanced this bill out of Judiciary Committee. But now that I've read the fine print... [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR MORFELD: ...I opposed this bill that year and I oppose it this year because it's absurd. And don't just take my word for it, which I remind you I'm not antigun. I'm a gun owner. There's a gun not too far away from my bed in my bedroom. So I'm not some antigun nut. I am a gun owner. I hunt. I enjoy my right to bear arms. I will protect my right to bear arms. But I will tell you that the single mom that Senator Hilgers talked about, she can still have her gun in her house. This law does nothing to infringe upon that. Senator Geist brought up that she feels more comfortable having her gun in her house. This law does nothing to help her with that. We already have that right. Senator Geist already has that ability. I already have that ability and I exercise it right now. LB68 is too far-reaching. It will harm public safety. It will hurt economic development, particularly for acts that are coming to Pinnacle Bank Arena. [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR MORFELD: Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Hansen. [LB68]

SENATOR HANSEN: Thank you, Mr. President. Good afternoon, colleagues. I rise in continued opposition to LB68 as we spoke upon it last time. My issues are manyfold. And I do appreciate Senator Morfeld laying out that there are some...more than some now, apparently, many law enforcement organizations who have serious control concerns with how this gun...the municipal gun ordinances being repealed will impact them. I know my sheriff, my chief of police have been talking to me about the things they face in this county. Now if there are some things...and some of the specific stories that I've heard on this floor are very specific details of very specific ordinances. If we want to have some of those conversations on whether or not a city can, say, pass an age limit on handgun ownership, that's one debate. This is a debate we're wiping out the complete authority, the complete authority of political subdivisions to have any sort of ordinances, including, as Senator Morfeld pointed out, the right to just say don't bring guns into the courthouse. That's something that's going away with this bill. Now this bill is very similar to

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a bill we debated in the past and I actually had some good conversations with Senator Hilgers. He said he'd listen to my testimony and we'd work on some of my issues from the first draft of the bill. And so of the multiple unconstitutional provisions, he got rid of one of them. And I appreciate that we've made it slightly less unconstitutional, but this still has this glaring, smacking, special legislation section. It's Section 5. In the amendment, AM630, it is literally on page 15 that we're giving special right for a membership organization that advocates for the rights of gun owners to sue cities, period. They have an extra right to sue cities that any other organization does not have. Further, we're giving just individual citizens the right to sue cities without actually having any harm. They just have to be physically present in a city in order to sue that city. Doesn't say for how long. Doesn't...they don't have to have any interaction with any sort of city official. They don't even have to have any sort of connection to it. They can just file a lawsuit by merely proving their presence in a city that has an ordinance that they don't like. Now of course I think there's a right, and I know there's a right, for individuals that when political subdivisions infringe their constitutional rights to file suit and, naturally, different organizations get involved in that in various issues and stakeholders from time to time. But why are we, in statute, why are we in statute saying, of all of the possible groups that could have an interest in this law, one specific membership organization--a term that's not defined to my knowledge--one specific membership organization gets a special right of lawsuit above all others? I just can't see the intent behind this bill, unless the bill...unless some of the intent of this section is to see what we're seeing in other states, granted, it's a few, but other states like Pennsylvania where multiple cities did get sued when they passed a bill like this. There was some question on local jurisdiction, local law, and there was a dispute between the cities and the state on whether or not their law was impactful. And four or five cities had massive lawsuits leveled against them that they had to appeal up to the state supreme court. Maybe Nebraska will avoid that. Maybe that won't happen. Maybe every city will have no qualms to the unconstitutional...similar unconstitutional nature of this bill and just be proactive and remove them. But if a single one resides, a single one has any hesitation to that this bill has the correct statutory framework, I have to imagine that some big, out-of-state money group is going to come in and try and get attorney's fees and try and find just any plaintiff who is physically present in the city of that nature... [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR HANSEN: ...to be able to file and have standing. We can discuss overreaching specific gun ordinances. We can overreach...discuss many of these things. But that's not the conversation we're having here. And to just say this is to protect the rights at certain times and just hand wave everything else away, hand wave every other concern and saying constitutional rights, constitutional rights, constitutional rights, let's make sure we have a constitutional bill to protect your constitutional rights, first of all. So that's one of my many concerns with LB68 and one I'm going to keep an eye on. Thank you, Mr. President. [LB68]

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PRESIDENT FOLEY: Thank you, Senator Hansen. Senator Crawford. [LB68]

SENATOR CRAWFORD: Thank you, Mr. President. Good afternoon, colleagues. I rise in support of the motion to recommit this bill to committee and I rise in opposition to LB68. Colleagues, the votes we make here are critical. These choices are not just choices on slogans or theories or themes. These are real changes in our law and they are often...and those changes can put our municipalities at risk. They can put our taxpayers at risk. They can put our citizens at risk. It is critical to understand what those risks are when you decide whether or not to push that green button. And I would urge you to not support LB68 and urge you to support the motion to recommit this to committee. Senator Hansen has just talked about what that liability risk looks like for our municipalities, colleagues, in terms of the bill has language that puts our municipalities at risk in terms of being sued. Colleagues, if there are unconstitutional laws that our municipalities have on the books currently that restrict gun rights, there is already the ability for those who are harmed by those unconstitutional bills, if they consider them unconstitutional, to challenge those in the court system already. If municipalities have any laws that are in violation of our very broad gun rights that we have in our Nebraska Constitution, they have access to the courts already to challenge those ordinances, challenge those resolutions. That is the way you should challenge any overreaching municipal ordinances or county resolutions that exist. Challenge them in the courts because we have a very strong provision in our Nebraska Constitution that protects gun rights and the courts are the access to challenge any ordinances or resolutions that are in violation of that very strong protection that's already in our Nebraska Constitution. And, colleagues, I also rise because my district is in Bellevue, and proponents of LB68 tell me that it's so important because people traveling across the state need to have the same gun laws across the state as they travel so they're not caught unawares. But then I find out, with AM630, that actually that's not so because we're going to make exceptions for Omaha. So the gun owners in Bellevue don't have to travel very far before they are back in that same situation that you told us that LB68 would fix. It does not fix that situation for the gun owners in my district. Almost every day they're going to be traveling into Omaha and so almost every day they're going to be going to a different jurisdiction that has different gun rules. I urge you to vote against LB68. Vote against cloture for LB68 and vote for the motion to recommit to committee. I yield the rest of my time to Senator Morfeld. [LB68]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Morfeld, 1:30. [LB68]

SENATOR MORFELD: Thank you, Mr. President. And thank you, Senator Crawford. I think it's also important to note, and I didn't get to it because I ran out of time the last time I spoke, is that going back to the point that I made about this not...or this making it so that we cannot prohibit firearms in places like Pinnacle Bank, places like our jails, places like our Hall of Justice and our courthouses, this also has a real economic impact. For instance, Billy Joel, who recently came to Lincoln, would not have come to Lincoln unless we had a prohibition on firearms and had metal

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detectors in Pinnacle Bank Arena. We would not be able to enforce that. We would not be able to offer that clause in the contract. That act would have not come. I was just at the Chris Brown concert on Monday and I can guarantee you, you would not want to not have Pinnacle Bank...or Pinnacle Bank have metal detectors in the entrance. There was a near riot right outside that facility just a few hours after that show. This is a public safety concern and these are serious public safety concerns that should not be taken lightly. This law--and if you look at the actual committee statement which I'll get up and read which goes to the intent of this law--expressly takes away the authority of the cities to be able to regulate the possession of firearms, and that means all rules, measures, and ordinances. [LB68]

PRESIDENT FOLEY: Time, Senator. Time, Senator. [LB68]

SENATOR MORFELD: Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Blood. [LB68]

SENATOR BLOOD: Thank you, Lieutenant Governor. Fellow Senators, those that are in the Chamber and paying attention, friends all, we've got another wedge issue. And what I notice as a freshman senator when we have a wedge issue is that, unfortunately, people are not listening to the debate and have their minds made up. And I think that's a mistake, because on wedge issues what I'm seeing is you're either with us or you're against us, and there is no middle ground. But guess what? The vast majority of people that own guns in Nebraska are moderate when it comes to the rules that pertain to their gun ownership, me being one of them. Now, we hear this great speech about how this is about Second Amendment and the rights to bear arms. Well, I sit on this committee just like the senator does that said that, and we were told during the hearing that, no, this bill is about being able to safely transport our weapons across the state of Nebraska from one community to another without fear of prosecution. And to me, that seems logical. And from the very beginning I've said I support that impression. I support that because if you are a lawful gun owner, transporting a gun for a lawful purpose, you should be protected. But with that said, I don't think LB68 is a good bill. We're talking about the bill, not whether you think everybody should have a gun, do whatever the heck they want to do with it, within reason, or because you are a responsible gun owner that all it's about is gun ownership. That's not what this bill is about. We were told this bill is about preventing a patchwork. But guess what? Omaha is carved out. And what's being left out of this conversation is that, yeah, we gave Omaha a carve out and we've compromised. But guess what? Omaha is still coming in neutral. They are not in support of this bill. And when we talked about it last time, one of the issues that we asked about is, why weren't other communities contacted? And it was kind of put on OPOA as the reason that these other communities weren't contacted. Well, when I write a bill--LB88 being a really good example--I had 20 letters of support from almost every entity that was included in my bill,

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because that's my job as a senator, I personally believe. So I'm concerned about those things but I'm really concerned about the robo e-mails that I got, the same issue over and over and over again. And one of them I got was don't give into partisan politics and special interest. Well, the only special interest people I had knocking on my door were paid lobbyists for the various gun entities. I didn't have any special interest groups coming to my door because I expressed to them that I am a responsible gun ownership and I support responsible gun ownership. And of all the hundreds of e-mails that I personally answered, if they were from my district, only three people took issue with my explanation of why I did not support LB68. One of them was because she wanted the right to sue municipalities if she didn't agree with any laws that they should pass. One of them was offended because I suggested the NRA does any lobbying in reference to guns. And the third person was just that, you know, I just really want to have something passed and so it's nothing against you personally but I think LB68 is our only chance. So I go back to what was said in the hearing. With that, I would ask if Senator Hilgers could yield to a quick question. [LB68 LB88]

PRESIDENT FOLEY: Senator Hilgers, would you yield, please? [LB68]

SENATOR HILGERS: Absolutely. [LB68]

SENATOR BLOOD: Senator, what percentage would you say of those that testified that as law-abiding gun owners that they wanted the opportunity to transport their guns for legal purposes across the state? Of all those that testified, what percentage would you say said that? [LB68]

SENATOR HILGERS: Percentage of people in... [LB68]

SENATOR BLOOD: ...in our hearing that came and spoke. [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR HILGERS: ...support who said what? [LB68]

SENATOR BLOOD: That they wanted to be able to transport their guns legally across Nebraska. [LB68]

SENATOR HILGERS: I think all the supporters said that. [LB68]

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SENATOR BLOOD: With that said, I would ask that those that have amendments that they have turned in, that they remove...that they consider removing their amendments so AM865 can come to the floor for debate. Because if you read my amendment, it clearly states and gives people the opportunity to transport weapons across the state of Nebraska without fear of prosecution and without all this mess that still needs to be fixed in LB68. Thank you. [LB68]

PRESIDENT FOLEY: Thank you, Senator Blood. Senator Ebke. [LB68]

SENATOR EBKE: Thank you, Mr. President. I find interesting dichotomy in what we've talked about today. LB158, we talked a lot about constitutional rights and we said, gosh, the constitution is the constitution whether you're in Lincoln County or Douglas County or Furnas County or Lancaster County. Everybody is entitled to a right to counsel. And then today we hear the other side of the story. The right to keep and bear arms needs to be limited to the local...based on the local circumstances in Omaha or in Lincoln or whatever. So I find this kind of interesting. I would point my colleagues not just to the Second Amendment of the U.S. Constitution but to Article I, Section 1 of the Nebraska Constitution, and then the correlating amendments to the U.S. Constitution, the Sixth Amendment right to counsel in the U.S. Constitution, and Article I, Section 11 of the Nebraska Constitution. We need to decide whether the constitution is the constitution or whether we can pick and choose, based on where we live, what elements of the constitution we're going to protect. And with that, I would yield the remainder of my time to Senator Hilgers. [LB68 LB158]

PRESIDENT FOLEY: Thank you, Senator Ebke. Senator Hilgers, 3:30. [LB68]

SENATOR HILGERS: Thank you, Mr. President. Thank you, Senator Ebke. I completely echo your comments regarding the importance of our constitutional rights. I want to respond to a few of these points. And I love nothing more than debate with other attorneys, and I say that seriously because counsel has been trained in how to read statutes and their arguments. And I enjoy the back-and-forth. It reminds me, when Senator Morfeld was speaking, it reminds me of something my first-year law professor told me, was the first one who calls another argument absurd has lost. And I counted I think at least three "absurds" from Senator Morfeld. And he waved his book around and he said this is not what Senator Hilgers says. Look at my book; it's really big. It does not do what Senator Morfeld is saying. What LB68 does, it eliminates the power of cities to enter into ordinances or other rules where the power comes from them to regulate possession. It doesn't say anything about their ability to apply state law at all. That power comes from the state. It's there. Now the statutory interpretation guy that Senator Morfeld references is when the two provisions are in conflict. And in my view, those two statutory provisions not in conflict at all. So what Senator Morfeld says LB68 does, I do not believe is correct. Nevertheless, as I said in the beginning, we want to make good legislation and I take

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seriously those concerns and I take seriously those who said, hey, we would like certainty. And so we have worked and are working on a potential amendment that would make clear what I think is already in LB68 and would be...and would work on that between General and Select. Again, I think LB68 is clear and it applies, but to make certain on some of these concerns, given how seriously we do take public safety, I'm willing to consider an amendment on Select File that would address that and make clear, belt and suspenders as they say. Now the other argument from my other attorney friend, Senator Hansen, is that this is special legislation, and this is sort of the Hansen argument, and I say that with all seriousness and all due respect because he raised that in LB289. But as Senator Hansen knows, there is a test from the Nebraska Supreme Court on what is special legislation, and it's a two-prong test. And the test is, is it a closed class, meaning can other entities become a member of that class, and two, is it arbitrary? In other words, did you just draw it out of whole cloth, that you just want to give it to somebody because of who they were and not because of any rational reason? Both of those tests fail here. Because no matter what class you're talking about, whether it is the city of Omaha carve out itself or the right of individual or organizations to sue, neither of those are closed. Neither of them are. Someday, maybe soon, maybe in a couple of years, city of Lincoln will be a city of the metropolitan class. [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR HILGERS: It is not closed, colleagues, and it is certainly, above all else, it is not arbitrary. As opposed to waving around books and making claims of public...of this great threat to public safety, what the Omaha police did over the course of many hours in the hearing, outside of the hearing, in meetings with us and others, they went over and over and over again, laid out their case and the evidence on why Omaha is different. Omaha has a specific gang problem. They know exactly how they're using their tools. They know the impact and they proved it. And it's our obligation, as legislators, to listen. That's what we did and that's why Omaha is different. Now I can say... [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR HILGERS: Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Bostelman. [LB68]

SENATOR BOSTELMAN: Thank you, Mr. President. Good afternoon, colleagues and Nebraska. I'm going to take a little bit different stand, a little different approach to what we're talking about today to bring some personal effects, I guess, personal experiences with shooting sports and firearms in our state. I rise in opposition to the motion 70 and I do support LB68. We

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currently have a patchwork of gun laws in this state and we need to address preemption, that we need to address, and preemption can fix that. And what do I mean? I've been involved with shooting sports for a number of years now. Shooting sports is growing exponentially across the state and across this country. Shooting sports include pistols, air rifles, shotguns, rifles, and black powder. These involve activities at junior high, high school youth, and even younger youth when it comes to air rifles and Daisy rifles. They're competing across the state. They're competing in our cities and towns. They are traveling from place to place either to compete or to practice. In fact, the largest high school competitive trap shoot in the nation, in the nation will occur in about a month right here in the state of Nebraska. We're going to have youth traveling from across the nation to come to Nebraska to shoot in this competition. The national 4-H shooting sports competition is also held in this state within the next month. I was involved with youth in 4-H shooting, 4-H shooting especially in trap shooting. We also shoot sporting clays. We also shoot skeet. There's also pistol shooting involved with that as well with our youth. Understand that when these youth come in to shoot, first thing they do is they through hunter education courses. They're taught how to properly handle, identify, and safely maintain that firearm, how to use that firearm in a safe manner. After they go through that instruction, then they come out to the 4-H instructors and then we teach them once again, in whatever discipline it is that they're looking to do, we teach them how to properly handle, transport, and fire that weapon, that firearm. In trap, let me tell you something. I've stood beside a kid that's in...a youth shooter as a freshman and he had a very difficult time in focusing on anything he did, anything. I literally would have to stand up on the line, what we call on the line, in a shooting position to remind him, stand a certain way, be ready to shoot, shoulder your rifle, call for your target, shoot your target, and stand there and keep him focused on what we're doing. Over the time that we had working with him, by the time he started as a freshman to the time he finished as a senior, he was one of the top shooters that we had in our club. It taught him how to focus, how to pay attention. It taught him important skills, life skills that he'll use now and into the future in his job and his personal life. The youth benefit directly in this sport. That is something we all need to remember and it does affect each and every one of us. As someone who actively teaches and trains, as I said, here in Nebraska how to be a responsible gun owner, it is particularly important to protect our Second Amendment rights. It is also important that I can teach Nebraskans how to follow the law. Those who shoot recreationally and competitively regularly travel with their firearms through our cities. The current patchwork makes it very hard for them to know how they should transport and where they are allowed to possess. Responsible, lawful gun owners... [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR BOSTELMAN: ...do not want to break the rules. That is why we need laws that any layperson can understand. We do not...we don't have that now, but we will with the passage of LB68. This bill represents progress that we should all feel proud to get behind. Let's support the

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committee amendment and vote green on LB68. And I give the remainder of my time to Senator Hilgers. Thank you. [LB68]

PRESIDENT FOLEY: Thank you, Senator Bostelman. Senator Hilgers, a half minute. [LB68]

SENATOR HILGERS: Thank you, Mr. President. Thank you, Senator Bostelman. In these brief seconds I will rebut one of the points that Senator Crawford made, which is that this does not actually solve the patchwork problem. It does not do everything the green copy of LB68 does...did. That is absolutely true. However, it does provide safe transport through Omaha, provides a mechanism that does not exist now to Nebraska citizens to enter into the city limits of Omaha with their firearm and not break the law. So that is not true. Omaha is different but there is safe transport through Omaha under AM630. Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hilgers. (Visitors introduced.) Items for the record, Mr. Clerk? [LB68]

ASSISTANT CLERK: Thank you, Mr. President. Your Committee on Enrollment and Review reports LB75, LB376, and LB417 as correctly engrossed and placed on Final Reading. Enrollment and Review reports LB44, LB44A, and LB225A, all to Select File. Your Committee on Judiciary reports LB145, LB259, LB395, LB411, LB526, along with...all to General File, some with amendments. And Judiciary reports LR26 and LR27 to the full Legislature for further consideration. That's all I have at this time. (Legislative Journal pages 1024-1025.) [LB75 LB376 LB417 LB44 LB44A LB225A LB145 LB259 LB395 LB411 LB526 LR26 LR27]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Continuing debate, Senator Howard. [LB68]

SENATOR HOWARD: Thank you, Mr. President. I yield my time to Senator Morfeld. [LB68]

PRESIDENT FOLEY: Thank you, Senator Howard. Senator Morfeld, 5:00. [LB68]

SENATOR MORFELD: Thank you, Mr. President. And thank you, Senator Howard. I want to go through a few different things. First, Senator Hilgers stated that I said "absurd" three times, and so that I've already lost the absurdity argument and lost the legal argument. Well, there's another famous law professor that said something three times as well: Read the statute, read the statute, read the statute. So we're going to read through the statute. First, LB68 explicitly, and as Senator Hilgers stated earlier himself, explicitly states that a local municipality or local county government may not create a rule, measure, or ordinance. Now let's read the more general trespassing statute out of 28-521: A person commits second-degree criminal trespass if, (A)

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knowing that he or she is not licensed or privileged to do so, enters or remains in any place with notice against trespass given by (1) actual communication to the actor, (2) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders, or (3) fencing or enclosure manifestly designed to exclude intruders. Now, in order to give notice and in order to communicate that, the city or the county must have a rule, measure, or ordinance and place a sign and give notice. If they can't give notice, then that person is privileged to be there because it's public property. And what this bill is doing, LB68, even as amended, what it's doing is stating that a city or a county cannot do that. They cannot issue a rule, measure, or ordinance. So they may not give notice to a public individual that they are not allowed to be in possession of a firearm in that public facility. It's not absurd. It's a pretty plain reading of the statute. It's a fairly simple interpretation of the statute, particularly if LB68 is passed. That is why the Lincoln Police Department is opposed to this. That's why the county sheriffs are opposed to LB68 on the green copy. This is a very simple reading of the statute as proposed. It's not absurd. And I'll continue to call it absurd because it is absurd to say that our current trespass statute would trump this more narrowly construed proposed statute. Also, Senator Ebke got up today and said that we're somehow violating the constitutional rights. We're not in support of gun rights. Right now individuals have the ability to challenge the constitutionality of current ordinances. I'm sure it's happened in the past. They have the ability to do that now. We also have the ability to look at a certain ordinance and say, you know what, as a state we don't believe that the city should be able to pass that kind of ordinance. We think that that ordinance is so absurd that we want to take away the ability of a city or a county to pass that ordinance. We can do that right now. Instead, what we're doing is just going, ah, we're just going to take them all away, because you know the reality in Ainsworth is the same as reality in north Lincoln where people get shot every year, or north Omaha where people get shot pretty much every month. [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR MORFELD: Thank you, Mr. President. Also, in regard to Omaha coming to the table, the reason why Lincoln didn't come to the table after talking to them was because they were opposed to it, as with a lot of other different agencies. And so, yes, OPA came to the table. They made a deal. I don't see them out in the lobby, excitedly lobbying for it. And not only that, it does the exact opposite of what this bill proposes to do, which is create a patchwork where a third of our population lives, in the city of Omaha. Also, I have not been given one example of a law-abiding citizen who's carrying their gun that somehow ended up in jail unexpectedly because they didn't know of a certain city ordinance, and they were just traveling from one place to another for Thanksgiving or going to a sporting event. When you are a gun owner, you have a heightened expectation to understand the rules, the ordinances, and the laws when you travel with that firearm. I know that, as a gun owner; other people do. This is not a problem. [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

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SENATOR MORFELD: This is a made-up problem, colleagues. [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR MORFELD: Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Hilgers. [LB68]

SENATOR HILGERS: Thank you, Mr. President. I want to respond to that last point and strongly disagree with my friend and colleague, Senator Morfeld, that this is a made-up problem. I read story after story after story on the floor last week about individuals who were forced to make a choice, a choice between lawfully exercising their constitutional rights and violating a law, or not exercising those rights. Again, we heard from single mothers, we heard from members of our armed forces. Colleagues, this is a real problem. And the notion, I think, that the standard for burdens on constitutionally is, well, how many people have been arrested? You know, there hasn't been that many people arrested. There's been maybe a couple. So therefore, this is an appropriate burden. That should not be the standard. The standard is...or should not be that standard. In my view what is currently going on in Nebraska is an impermissible burden. This is a real problem. It may not be a problem for everyone: people can afford concealed carry permits; people who have a spouse who can watch the kids so they can get off work to go get their firearm registered; someone who's lived their entire life in Lincoln and never has a problem with the prohibited person statutes. But it's a problem for a lot of people, and we ought to hear their voices. I want to talk a little bit about this notion of liability because I think it's an important point. The idea that LB68 broadens the scope of lawsuits that would in some way turn this to some plaintiff's haven for people to file suits against cities I think is totally incorrect, and let me give you a different example to kind of explain why I think it's incorrect. If we were to pass a state statute that said cities in Nebraska can no longer levy a sales tax, let's just say that's what it was and we said you can't do it. And the city of Lincoln or some other municipality said, nah, we're not going to listen to you; we're going to go ahead and do it anyway. We absolutely would want a mechanism to challenge those. That's not right. If they did as a statute directed, if they didn't levy a sales tax, they would never be sued. There would never be a problem. The same thing is true with LB68. The mechanism for relief is not triggered at all unless the cities do what they're told not to do. It's as simple as that. If they have an ordinance and they apply it as to gun ownership, they ought to be sued. And what it does is it makes it easier. You know, the people I'm talking about, the stories I've had, these are not people of means. They're not people who have the ability or the time to go hire attorneys. The one time Omaha's registration ordinance was challenged for being unconstitutional for being applied to a permanent resident, which it could not do, that portion was carved out. And that individual was an immigrant, not of means. It was supported by a fire (sic--firearms) rights supporting organization. It's right to give

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those people a mechanism to protect themselves. If the cities just follow the statute, there will never be a lawsuit. It's as simple as that. I do enjoy my back-and-forth with Senator Morfeld because I do think it's educational. And I do think he's wrong when it comes to the trespass statute. For one, we know how to repeal statutes, we know how to modify statutes. (Statute) 28-521 is not a city ordinance. Okay? If there's a city ordinance in Omaha or Lincoln, absolutely this would be gutted, completely agree. It's not. It's in the Nebraska state statutes. So if we wanted to pull that out and take away the city's ability to do it, we would know how to do that. We would amend that statute, we'd strike it, we'd do something to 28-521. Now Senator Morfeld discussed in detail that (28-)521 would nevertheless not be applicable because it would require a rule. I got to tell you, I have looked through all the sections of (28-)521, and there is nothing in here, colleagues, that I've seen--and I will ask Senator Morfeld when he comes back--that says that this can only be... [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR HILGERS: ...applied via a rule. There's nothing in here, colleagues. Individuals have the power to restrict their rights to property. Again, on that point, I'm willing to belt and suspenders that, if necessary. This, as I said at the beginning, is not intended to be an open Wild Wild West situation. There's also been a lot of...how much time do I have left, Mr. President? [LB68]

PRESIDENT FOLEY: About 20 seconds. [LB68]

SENATOR HILGERS: Okay. My next time at the mike, I'm going to speak in a little bit more detail about the public safety aspects of LB68. Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Quick. [LB68]

SENATOR QUICK: Thank you, Mr. President. And I just want to say I know I spoke on this last time and I just want to make sure everybody understands that I also am a gun owner and responsible gun owner. I have friends and family who are responsible gun owners. And I appreciate what they want to do with the bill as far as being able to have a uniform way of carrying guns across the state. The issue that I have with the bill and that actually the city of Grand Island would have with the bill is the part that would allow for a person to file a lawsuit. And as it states in the language, it says, "A person adversely affected by an ordinance, a measure, an enactment, a rule, or a policy adopted or enforced by a city or village that violates this section may file an action in a court of competent jurisdiction against the city or village for," and then it goes down to describe all those things that they can file for. You know, I've...actually, on the way back to Grand Island the other day, I talked to a constituent on the phone. They

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wanted me to support LB68. And I said, have you actually read the bill; do you know what's in there? And I said, do you understand there's a part in there that the city or county could be sued. And they said, no, they only read just a little bit of the first page and maybe just what other people told them. And I said, well, maybe you should read the bill and then get back to me and let me know what you think. They have not called me back yet. I also stopped in to talk to the city attorney of Grand Island. I talked to the mayor of Grand Island and the city administrator and talked to them about what this bill maybe could do, and they have had great concerns as well. I was wondering if...and I apologize to Senator Hilgers. I didn't tell him I was going to ask him a question. But I was wondering if I can ask if you would yield to a question. [LB68]

PRESIDENT FOLEY: Senator Hilgers, would you yield, please? [LB68]

SENATOR HILGERS: Absolutely. [LB68]

SENATOR QUICK: Do you know, can a person under this bill, if let's just say the city has no ordinance but if they did want one where they didn't want someone to bring a gun into a city council chambers, can someone just carry a gun in open carry into...under this law? Can they carry a gun into a city council meeting? [LB68]

SENATOR HILGERS: If LB68 passes? [LB68]

SENATOR QUICK: Yeah. [LB68]

SENATOR HILGERS: In my view, no. The answer would be no. But that's what I said, I am happy to clarify that with a clarifying amendment to make that clear. [LB68]

SENATOR QUICK: Okay. And what about like I worked at the power plant. We could not bring guns on to the power plant site. Now that's a public...it's not city hall, it's not, but it is owned by a public utility. [LB68]

SENATOR HILGERS: Uh-huh. [LB68]

SENATOR QUICK: And...but they don't allow guns on there. And it's not posted, but they would probably post it. Would they be...could they be sued? [LB68]

SENATOR HILGERS: In my view, no. [LB68]

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SENATOR QUICK: Yeah. Well, I don't...you know, it seems to me it conflicts with what the language says, but I don't know that there's any guarantees of that. So with that, I would like to see...the other concern I had is they carved out a section for Omaha. Now I know we've brought up the fact that maybe Lincoln maybe could fall into that, too. And I can tell you that Grand Island has gang violence as well. Their police officers are in danger at certain points and I think that they would want to make sure that they can provide for public safety in ways just like Omaha does and Lincoln does. And so I would...you know, I'm still opposed to this. I would like to see Senator Blood's amendment, AM865, if that would be possible at some point to see if that's something that we could bring into this that maybe helps the situation, because I understand what people are trying to do and they want to carry their guns across Nebraska without having recourse. But I want to make sure that we're not setting a precedent that's going to create a lot of consequences that we don't want to see. And I would yield the remainder of my time to Senator Morfeld. [LB68]

PRESIDENT FOLEY: Thank you, Senator Quick. Senator Morfeld, one minute. [LB68]

SENATOR MORFELD: Thank you, Mr. President. Thank you, Senator Quick. I want to respond to Senator Hilgers' statement earlier that this does not prohibit individuals from stating that you're trespassing. He's right. Individuals have the right on their private property to state whether or not someone is trespassing and regulate possession of firearms on their own private property. But that's not what this bill is regulating. This bill is regulating a governmental entity and we are prohibiting a rule, measure, or ordinance from going into effect with the possession of guns. And if you don't think that the court is going to interpret putting a sign on Pinnacle Bank Arena or the courthouse saying you can't have firearms in here, if you don't think that they're going to interpret that as a rule, a measure, or an ordinance--probably not an ordinance, definitely a rule or measure--you've got to be kidding me. And I'll get the plain meaning of a rule, measure, or ordinance the next time I speak. The interpretation that somehow the trespass statute is going to trump this more narrowly construed statute... [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR MORFELD: ...is false. Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Mr. Clerk. [LB68]

ASSISTANT CLERK: Mr. President, a priority motion: Senator Chambers would move to bracket the bill until June 2, 2017. [LB68]

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PRESIDENT FOLEY: Senator Chambers, you're recognized to open on your bracket motion. [LB68]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I understand that the NRA and their lobbyists, Jon Bruning and whoever he's got, they're going to try to say that amendments are going to be offered to clean up the bill. Well, you can vote cloture, but you're not going to have a chance to get to any amendments of any kind. I will see to that. And I'm going to show you some things that I think are so bad with this bill, I may be the one to bring a declaratory judgment action. When I said I would do that against an ordinance that the Omaha City Council passed to allow red light traffic cameras, they laughed at me. The city attorney laughed at me. He said he had looked at the constitution, considered the law carefully, studied what happened in other states, and I could get nowhere. And I just pointed out that they're dealing with me, not another state or somebody else. I filed my action and I won. The ordinance was declared unconstitutional. The city council rescinded it, which is what I sought in my declaratory judgment. But before I go into other things, I'd like to ask Senator Hilgers a question or two. [LB68]

PRESIDENT FOLEY: Senator Hilgers, will you yield please? [LB68]

SENATOR HILGERS: Absolutely. [LB68]

SENATOR CHAMBERS: Senator Hilgers, if I file a declaratory action and I'm allowed damages in that action, what damages, what actual damages can I claim if I file a suit under the language of this bill where I say, well, I was adversely affected? Tell me the actual damage that could be recovered. [LB68]

SENATOR HILGERS: Senator Chambers, it depends on the context of the situation. If, for instance, you were...the ordinance were enforced and you got something on you record and you lost your job, potentially the... [LB68]

SENATOR CHAMBERS: No, it's...then let me...it was not enforced against me. It's just on the books. And the city has declared no intent to enforce it, but it's there. Tell me the actual damage that I would suffer. [LB68]

SENATOR HILGERS: It would probably be fairly nominal, whatever the damages were--your time. [LB68]

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SENATOR CHAMBERS: And in addition to that, they allow consequential damages and you know what those are. And I won't going into a lot of time because I don't want to run out of time on that. Can you envision any consequential damages if there are no actual damages? [LB68]

SENATOR HILGERS: No. [LB68]

SENATOR CHAMBERS: Neither can I. I'm just trying to get some things into the record so you'll know I'm not playing fast and loose with the bill. There are things in this bill that will not apply. If I file my declaratory judgment action, I will tell you that this bill actually by its terms makes machine guns legal. On page 19, and I am going to eliminate the excess verbiage. And I hope Senator McDonnell listens because I think he's a man of law still, even though they may have pulled him to their side. On page 19, beginning in line 24: It shall be unlawful to transport or possess a machine gun unless it is unloaded and contained in any enclosed case or unloaded and broken down. Senator McDonnell is in favor of a bill that says if I have a machine gun in Omaha and it's in a closed case, it's legal. That's by state law. But it can't trump the federal law. But the state law contains what would have to be an unconstitutional provision. Do you know what laws are supreme in this country? The constitution, federal laws enacted pursuant to the constitution, and all treaties into which this country has entered, any state law or constitution to the contrary notwithstanding. You can pass an unconstitutional law. You can put an unconstitutional provision, which is what this is. When the lawsuit would be filed, you cannot prove any actual damages. And contrary to what may have been suggested, this bill says by its language anybody can be one of these adversely affected persons if you own a gun and if you're in that city for any purpose, which means if you're passing through that city to get from one place to the other, you are adversely affected during the time you were in that city. So you could bring this guy from Texas and he can drive through Omaha. Because the NRA wrote these bills, they've engineered lawsuits in other states against municipalities and counties, whatever the term is they used to designate the political subdivision. He drives through Omaha. The ordinance is on the books. Wasn't enforced, won't be enforced. But since he is, by definition, an adversely affected person, he can file a lawsuit against the city of Omaha by the terms of this bill. They're not going to change that. There are contradictions in this bill. This bill says that a city cannot regulate ammunition. The ammunition, in the definition of ammunition includes propellant powder, the powder used in a bullet to propel it. Cities are prohibited by the language in this bill from regulating ammunition. Yet, the existing law--and it's not amended out so it's a part of this bill--specifically allows the city to regulate and prohibit the transporting of gun powder. So the statute that prohibits it is the statute that authorizes it. It does both things. So the court is going to say which should we believe? Which should we enforce? The part that says the cities can prohibit and even arrest people for using fireworks, other combustibles, and explosives? The city can do that. But under the definition of ammunition, which is the...which the cities are prohibited from regulating, they cannot do those things without violating the very law that says they are specifically authorized to do it. Now, is the court going to try to untangle all that? I have another

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question I'd like to ask Senator Hilgers, the resident counsel for the discombobulated. (Laugh)  
[LB68]

PRESIDENT FOLEY: Senator Hilgers. [LB68]

SENATOR CHAMBERS: Senator Hilgers, this bill doesn't have a severability clause, does it?  
[LB68]

SENATOR HILGERS: Correct. [LB68]

SENATOR CHAMBERS: Thank you. Members of the Legislature, that clause alone will not save a bill which the clause will say, making it simple, anything that is found to be unconstitutional in this bill shall be stricken down without affecting whatever else remains in the bill. But the Nebraska Supreme Court has said that if that part which was stricken down as unconstitutional perform...form a basis for enacting the rest of it, then all of the law that was passed is struck down. That's Nebraska law. The NRA doesn't care about Nebraska law. NRA doesn't care about the citizens. I care about the law. I care about the citizens. I care about our process. Our process is being demeaned and abased by this piece of legislation, which I call trash legislation. The city of Omaha did not enter an unholy alliance with the NRA. That was the police union. That was the police, the police, not the city. The city is still against this bill. The letter that I got, the city council and the mayor are against this bill. That's the last information that I have from the city of Omaha. The police don't speak for Omaha. But I'd like to ask Senator Hilgers another question, if he'll answer. [LB68]

SENATOR HILGERS: Permanent...I'm permanently yielding to you, Senator Chambers. [LB68]

SENATOR CHAMBERS: Thank you. Just for the record, Senator Hilgers under...if this were to become law, this bill, forgetting everything else I said, what would be the minimum age at which somebody in Omaha could own a firearm? [LB68]

SENATOR HILGERS: State law is 18 years old. [LB68]

SENATOR CHAMBERS: So despite the police saying that...okay, that's all I need from you. Thank you. [LB68]

PRESIDENT FOLEY: One minute. [LB68]

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SENATOR CHAMBERS: The police were arguing that when you let these people younger than 21 buy these guns legally, then the gang-bangers are going to have these people buy the guns. They can buy 30 guns legally and then transmit and hand them out. And these 18-year-olds don't have records, so they will be legal purchasers of these firearms and they'll be misused in my community. And that's why the police would cut a deal like that. But they're finding out now that the shootings are bleeding over into the white community. This is a pernicious piece of legislation. That comment that I made is one of very few that I make about the negative impact on my community specifically. I think there are enough other major flaws in this bill to make it amenable to an attack in court. And even though I have other things to do with my time, I will... [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR CHAMBERS: Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Chambers. Continuing debate on LB68 and the pending motion, Senator Vargas. [LB68]

SENATOR VARGAS: Thank you very much, President. I wondered if Senator Hilgers would yield to a question. [LB68]

PRESIDENT FOLEY: Senator Hilgers, will you yield, please? [LB68]

SENATOR HILGERS: Absolutely. [LB68]

SENATOR VARGAS: Great. Thank you very much. So my question is, we're hearing a lot about these beginning conversations, negotiations. Can you talk to me a little bit about who are involved in these negotiations, who are the organizations, individuals? [LB68]

SENATOR HILGERS: Sure. So the...we've had conversations with a lot of individuals and a lot of entities, but the primary one that led to the compromise, Senator Vargas, is that...? [LB68]

SENATOR VARGAS: Yeah. [LB68]

SENATOR HILGERS: The primary entity with which we discussed these issues was the Omaha...the OPOA, Omaha Police Officers Association. They, in turn, had additional law enforcement groups in the greater Omaha metro area with whom they were discussing these

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issues. I don't know the full list. Senator McDonnell would likely know. But the point group that we discussed these with, but not the only one, was OPOA. [LB68]

SENATOR VARGAS: Were there any special interest groups part of this as well? [LB68]

SENATOR HILGERS: What do you mean by special interest groups? [LB68]

SENATOR VARGAS: Any groups that are representing different organizations or other individuals? I mean I'm looking at the list of individuals that are proponents and opponents. [LB68]

SENATOR HILGERS: Uh-huh. [LB68]

SENATOR VARGAS: There are different, I would say, special interest groups on both sides, either proponents or opponents. I was wondering if any of these individuals that have a stake in this were at these meetings. [LB68]

SENATOR HILGERS: Are you talking about on the other side or on my side? [LB68]

SENATOR VARGAS: Oh, on either side. [LB68]

SENATOR HILGERS: On either side, oh, we had representatives. We discussed this with the Nebraska Firearm Owners Association as well as the NRA. [LB68]

SENATOR VARGAS: Okay. Okay. Thank you very much. I appreciate that. And I asked this question because I want to, you know, I think when we come here and we're having this conversation and this is considered, you know, Senator Blood mentioned this is a wedge issue, that we actually have different stakeholder groups involved in the negotiations to ensure we have all broad perspectives. I appreciate, actually very much appreciate that the Omaha police officers' voice was included in this. I think that's an important perspective. I also would want to make sure that it sounds like at some point there was the county attorneys maybe or public defenders, I don't know what role they might have played. And I mention special interest groups because sometimes we say that in a negative pejorative way. I mean a group that is essentially representing different individuals. And we had both significant number of proponents and opponents for this and no neutral testimony. And making sure that these groups, some had a voice in the negotiation so that we can reconcile some of the issues. It still doesn't sit well with me that after the negotiations, we had some individuals come in support, but we still don't have

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my city, the city of Omaha, my city council people, other individuals. The League of Municipalities also, did they come? Were they involved in these negotiations? [LB68]

SENATOR HILGERS: (Microphone malfunction.) [LB68]

SENATOR VARGAS: Oh, sorry. Pardon. Would Senator Hilgers yield to a question? [LB68]

SENATOR HILGERS: Sure. Am I on the mike? Okay. What was the question? [LB68]

SENATOR VARGAS: The League of Municipalities, were they involved in these meetings as well? [LB68]

SENATOR HILGERS: They were involved with some conversations. But I want to be clear, they are opposed. [LB68]

SENATOR VARGAS: Okay. I want this to be on the record because I think it's important, especially knowing my constituency, is that the individuals that represent my city that have a stake in it are not in support of this bill. And given that, I still do stand against the LB68, in support of the amendment, the motion 70, because I'm still hearing that as a result of the policy conversations and negotiations that there isn't a step in the right direction that meets the conditions to try to get more people on board with this. And that's what we're trying to do, provide policy that gets more individuals on board and do the best that we can. It's not always a fifty-fifty comprise, as Senator Hilgers mentioned, but I want to make sure we're getting to a better place. The other thing I just wanted to make sure to call out is that still we're seeing the sheriff's department that is not in support of this, the city, city counsel. For me, one of the other pain points for this is that we're not seeing data driven pieces that are informing this policy or legislation unless--and I'll make sure to ask as a follow-up off the mike--as to what data pieces are we seeing that say that this is something that we need to immediately address. Oftentimes we are making policy decisions that are grounded in something that's happened and so many data points are telling us we need to make a change,... [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR VARGAS: ...and I'm not yet hearing that piece of an argument here. So I still stand against this. I appreciate everybody coming to the floor here to talk, and more people are coming in. I will yield the remainder my time to Senator Krist. Senator Krist. [LB68]

PRESIDENT FOLEY: Thank you, Senator Vargas. Senator Krist, a half minute. [LB68]

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SENATOR KRIST: Very quickly, the Supreme Court is now up to full speed again. I know you all know that. On their docket, one of the items that they intend to take up this year is concealed carry, open carry as it applies to out of the home and how that applies in terms of jurisdiction. So I would argue that the severability clause would be very important. And if the "Supremes" rule in a different way, we may be jumping ahead of ourselves on this issue. Thank you for your courtesy, Senator Vargas. [LB68]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Geist. [LB68]

SENATOR GEIST: Yes. Thank you, Mr. President. I stand in opposition to the motion 82 to bracket this bill, and stand in support of LB68. And with that, I will yield the rest of my time to Senator Hilgers. [LB68]

PRESIDENT FOLEY: Thank you, Senator Geist. Senator Hilgers, 4:45. [LB68]

SENATOR HILGERS: Thank you, Senator Geist. I appreciate the thoughtful comments. I know Senator Chambers is vehemently opposed, maybe even more aggressively opposed than vehemently opposed. But I do appreciate his comments as to the legislation. As I have said multiple times, there's no pride in ownership here. And even if we improve it via Senator Chambers' comments, I don't know if he'll mind too much, but I know he still remains opposed regardless of what we do. I wanted to talk a little bit about this public safety policy issue. And Senator Vargas brought it up, you know, what kind of data do we have, what kind of data do we have to support the impact of this law. And I think, as matter of first principle, we have enough data. We have anecdotal data that shows that people are making an impermissible choice between having a firearm that is constitutionally guaranteed to them under the state and federal constitutions, or breaking the law. One is too many when it comes to a constitutional right. Secondly, when we get data there's not a lot of studies on people who are making that choice. Not everyone is getting arrested. As we saw in all the examples that I shared last week, which, by the way, only came out when the publicity of LB68 came to the front. When this got into the papers and they understood what they were doing, then we started to hear stories. But the stories we heard were, time and again, people making this decision: Do I break the law and exercise my right to own a firearm, or do I not break the law and leave myself unprotected? We heard it time and again. So I think from a constitutional perspective, one time is too many, and we've heard a lot of stories, even if there's not a statistically published study. But I want to talk about the policy implications of this notion of public safety because I think it's at the core of some of this debate, and I do think it's very important. And on the one side, there is a very strong argument, in my view, that people who are lawful gun owners and who understand how to use a weapon and use it for defensive purposes can help drive down crime. I cited the statistics from the city of Chicago, and when they instituted their gun ban in 1983 they had about...I think it was between seven and

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eight homicide deaths by firearm per 100,000 people. They banned guns. That took away weapons from lawful individuals, lawful citizens. What happened? The murder rate skyrocketed. It skyrocketed. So from a starting place, having individuals being able to protect themselves I believe is a deterrent effect and helping to drive down crime. Now the opposite side of the spectrum is, well, if you allow too many guns in too many places at too many times, you can drive up...you can drive up crime. So how do we tease these out? How do we tease out which is more? Again, from a policy perspective, I think constitutionally I think that's undisputed. I think it's very clear the constitutional case. Then I cited many studies from last week that talks about that these laws of general application that just restrict possession may make us feel good. They may say, boy, we're doing something about gun crime, but they don't actually drive down gun crime. In fact, to the opposite, to the contrary, it can drive up gun crime. So throughout this debate, what we have asked individuals through this comprised process, through this discussion when we discuss with the police, we say, look we don't want to make our cities less safe. We don't want to make our municipalities more prone to gun violence. You're on the front lines. Tell us. Tell us. But don't do...don't...what we can't hear is just the general notion of, well, let's just restrict guns and then gun crime will sort of go down, because statistically it's shown to not be the case. [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR HILGERS: So show us what tools actually help you. And in the case of the city of Omaha, they came to us and showed us precisely what helped. Now, we've made that offer to other cities: Hey, what...? When they've come to us, we said, hey, look, you tell us what tools do you have and show us how they drive down public safety...or how they drive down gun violence. And the same case hasn't been made, colleagues, and I think that's very important. As we're thinking through the policy aspects of this, we have to think about what really does drive down gun crime. And is it the restricting lawful nonviolent gun owners, the single mother, the member of our armed forces, their ability to own a weapon? Is that what drives down gun crime? I don't think so. It's an old canard but I think it's true: The people who are breaking the law, the people who are ignoring our registration ordinance are our lawbreakers. The people who are committing violent crimes at our schools and the mass shootings are not people generally who are following the law when they obtain their firearm. They generally are not deterred by registration ordinances. [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR HILGERS: Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Clements. [LB68]

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SENATOR CLEMENTS: Thank you, Mr. President. I am rising in opposition to motion 82 but in support of LB68 and the amendment. I've had quite a few e-mails on this subject as well, and the great preponderance of them have been in support of this. I'd like to read one from a local farmer in my district. He says: Rob, I would like to have you support LB68 as it looks like it will level the playing field for those of us who are concerned about the difference among city and town ordinances regarding the legal transport of firearms. I've had a carry concealed permit for about eight years now, as I was threatened while serving on the board of directors of an international organization around that time. I never know how to be legal when I drive to Omaha, as it has its own regulations. I'm also hoping that each state will have a common reciprocity concerning the legal carry and transport of our firearms. The way some of the laws are now written, there's absolutely no way to defend myself, my family, or others if I have to lock up my firearm, break it down, or transport it in the car trunk. Criminals don't abide by laws in the first place, and the way the laws are now, the law-abiding citizen is made to feel like the criminal because of the current restrictions. Thank you for listening. Signed, Bob. Another letter I'd like to read is from the mayor of the city of Papillion, and he's right close to Omaha. He says: Senator Clements, I wanted to drop a quick note regarding you to encourage support of LB68. As you know, I'm a large proponent of local control. However, with firearm regulations, uniformly applied rules and regulations applied statewide is critically important. We expect and accept uniformity in a wide number of areas, from licensing requirements for professions to road signage to banking regulations to water quality, just as, for example, firearm regulations should be another. I have several practical examples of why LB68 should be supported, but I will just share one. It is an unreasonable requirement that lawful firearm transportation in one locality becomes unlawful just by crossing into another. As a state, we should have clear and simple implementation of firearm rules and regulations which are evenly and consistently applied across the state. It doesn't make sense that someone is legal in one town and by virtue of legally driving down a public road, crossing the border into another town, they become illegal. Subtle legal nuances that vary from one locale to another could take an action I do lawfully in Papillion and make that same action unlawful in another city or county. This is not reasonable. David Black, mayor, city of Papillion. And I agree with those points. We have accepted uniformity on a number of other statewide regulations and this is another one I believe is appropriate. I'd like to yield the rest of my time to Senator Hilgers. [LB68]

PRESIDENT FOLEY: Thank you, Senator Clements. Senator Hilgers, 1:30. [LB68]

SENATOR HILGERS: Thank you, Senator Clements. Thank you, Mr. President. With about a minute and a half, I want to discuss another issue that we've mentioned before but have not spent a lot of time on. And this implicates not just our Second Amendment and Article I rights to own a firearm. It also impacts our constitutional rights to due process, and that is Lincoln's prohibited person ordinances. As I've mentioned before, prohibited person is someone who cannot own a firearm. And in the city of Lincoln there are about 32, 32. There's a handful at the federal level,

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there's a handful at the state level. There's 32 in the city of Lincoln. Now, if you're in the city of Lincoln and you actually...and you get one of these charges, you more than likely will be advised that pleading guilty will result in the loss of your Second Amendment rights. But if you live anywhere else in the state of Nebraska and you have one of these charges, you will not get that notice. But the moment you move to Lincoln, you lose your rights. You lose your Second Amendment rights. That's not fair notice. That's not due process. We take it very seriously. If you're going to plead guilty to a felony and lose your Second Amendment rights, we tell you. You have to have a knowing waiver. You have to enter into that knowingly and intentionally and voluntarily. That does not happen with the city of Lincoln and the reason is the problem and what LB68 will solve is that those decisions ought to be made at the state level. That ought to be made through the committee process here in the Legislature where we can gather data, talk to experts. [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR HILGERS: Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Murante. [LB68]

SENATOR MURANTE: Thank you, Mr. President. Members, good afternoon. I rise in support of LB68 and the committee amendment and in opposition to both the bracket and the recommit motion. I will start with a question or two of Senator Hilgers. [LB68]

PRESIDENT FOLEY: Senator Hilgers, would you yield, please? [LB68]

SENATOR HILGERS: Absolutely. [LB68]

SENATOR MURANTE: Senator Hilgers, it was stated affirmatively on the floor of this Legislature, towards the beginning of the debate, that the attempted...the attempt to address the concern of Sarpy County citizens and citizens living in suburban Douglas County who do not live within the city limits of the city Omaha, one of the stated goals of this bill is that simply traveling into the city with a firearm, one of the stated goals was to make that permissible. It was stated on the floor that this bill, as it is currently constructed, does not do that. Is that your understanding? [LB68]

SENATOR HILGERS: No, it's not. [LB68]

SENATOR MURANTE: How so? [LB68]

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SENATOR HILGERS: The bill as under AM630 provides a safe transport provision. Now in the green copy, there is no restriction whatsoever, but in AM630, because of the restrictions in Omaha, there is included within it the ability to travel safely with your firearm without breaking the law. [LB68]

SENATOR MURANTE: This is important, because Senator Vargas asked for data points. I'll give you one. All 37,000 of my constituents live on the border of Omaha. The vast majority of those constituents travel to Omaha every single weekday. So unless LB68 with the committee amendment is adopted, we are putting them in a situation where by driving into the city of Omaha to go to work or to watch a baseball game, simply by being there, they're criminals if they have a firearm. That's wrong. Now, I've heard Senator Hilgers. Yes, he had negotiations and he took away a major source of opposition, but he has not eliminated all opposition. Colleagues, I would ask you to apply that standard to any bill that you have introduced this year, any controversial piece of legislation. If the standard is, have you eliminated all opposition to the bill, and if the answer is no we ought to vote no, that's an unrealistic standard to set. Senator Hilgers is a great negotiator, but he's not that good. I don't think that is a standard that we would apply to ourselves. And we are at the point right now where I'm hearing some opposition, some of which is practical in nature and not philosophical in nature. Is it okay to carry a gun into the Pinnacle Bank Arena? Senator Hilgers says under the bill the answer is still no. It's not his intent to legalize that, but he is willing to negotiate a compromise to make it clear that that's not his intent and to ensure that major public venues like that cannot have firearms in them. But one thing I know for sure: If you do not vote to invoke cloture we cannot make those clarifications. The only way that we can make those clarifications to satisfy your concerns is to invoke cloture, get this bill to Select File, and we can attach an amendment to satisfy those concerns. If you vote no, the bill is dead. There is nothing we can do. We have to come back next year. So if you are...to those who say they support the fundamental goal but they want some clarification, if you're sincere in that belief, vote to invoke cloture. Then we have time to work together. Senator Hilgers has said over and over and over again he will talk and work with anyone, anytime, anywhere to come up with support... [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR MURANTE: ...that does not undermine the fundamental purpose of LB68. And we could do that. We could solve those goals. It's been said we can't support this legislation because it invites lawsuit of municipalities. The only way municipalities would be under threat of lawsuit is if they openly disregard our state law. That's it. So if you have another remedy, I'm open to it, some sort of enforcement mechanism. I'm all ears. I'm sure Senator Hilgers is as well. But what do we do in the situation where a municipality would say the state Legislature has taken action, the Governor has signed the bill, and we just don't care, we're going to ignore it? There has to be

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some sort of mechanism for dealing with that. So I implore you, if you are sincere when you say you're open-minded, you want a compromise,... [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR MURANTE: ...you don't really hate the Second Amendment,... [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR MURANTE: ...then vote to invoke cloture and we'll figure it out. Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Murante. Senator Chambers. [LB68]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm going to read this for the record. On page 12, line 20 it starts. Then I'm going to drop down to line 20. So this is starting in line 20. Then I'll drop down to line 30: A city of the first class may regulate and prevent the transportation or storage of gun powder. The city is authorized specifically to do that. Then when you go to page 13, in line 22: Cities and villages do not have the power to regulate the transportation of ammunition. Then the definition of ammunition is on page 15: Ammunition means propellant powder. So there's the specific authorization of the cities to regulate gunpowder and the transportation of it. They can prohibit it. The definition of ammunition includes propellant or gunpowder. But then the bill prohibits the cities from regulating ammunition or gunpowder. So in the law right now, the city is specifically authorized to regulate gunpowder. In this law, in the committee amendment, cities are prohibited from regulating gunpowder. The definition of ammunition includes propellant powder, which is gunpowder. You're going to present something like that to the court. Let's say I file the declaratory judgment. The courts will say, as they have said, we will not read anything into a law that is not there; we will not read anything out of a law that is there. So when you have two diametrically opposite statements in the same law, the only thing the court can do is say this law is unconstitutional because it renders action both legal and illegal specifically. And then I'd mentioned some of those other items that I would bring forth in a declaratory judgment. And because I don't like to make idle threats, I'd like to be laughed at by the NRA. And I'd like Jon Bruning to tell the rest of you all, because he sees you all as suckers, don't listen to Ernie; yeah, he won some lawsuits back then; this is now. Well, Jon Bruning is paid to make fools out of you all. And I could write a list of those who are going to support this bill right now. If you should get cloture because you think amendments are going to be drafted, forget it, because I have enough priority amendments to make sure that on Select File, if it gets there, you'll not get a chance to offer any amendments. And you will be

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stuck with this contradictory bill. And when you get to Final Reading, the only way you can amend it is to bring it back for specific amendment. And if the amendment is adopted... [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR CHAMBERS: ...the bill doesn't immediately go back to Final Reading. It has to go through the process of the work that is done in the Bill Drafters Office. But because I'm strategizing, not just working tactically, I withdraw my pending motion to bracket the bill, which drops us back to my motion to recommit it to committee. So I'm withdrawing that bracket motion, Mr. President. [LB68]

PRESIDENT FOLEY: Without objection, motion 82 to bracket is withdrawn. Senator Riepe. [LB68]

SENATOR RIEPE: Mr. President and fellow colleagues, I stand in support of AM630 and LB68. I yield the balance of my time to Senator Hilgers as he teaches us the art of the deal. [LB68]

PRESIDENT FOLEY: Thank you, Senator Riepe. Senator Hilgers, 5:00. [LB68]

SENATOR HILGERS: Thank you. Thank you, Senator Riepe. And we have worked very hard to try to make a deal. And we have, in my view, a very good deal. And there's an old saying that says the best deals are the ones where both sides aren't happy, and I think that's absolutely true here. If you ask the Omaha police, sure, they're not jumping up and down supporting LB68 because they love it, and we're not jumping up and down because we think that the amendment is the best thing that we ever wanted. But in all good compromises comes pain, and so we did make a deal, Senator Riepe, and I think it's a good deal, and that's the deal that's in front of us today. I want to read another story from somebody that I received, another voice who wants to speak on this issue. And this is from Carol in Louisville: My daughter received a scholarship and planned to attend UNO. This would be the first time she lived away from home. We found her an apartment near campus and made all arrangements for her to move in a couple weeks before school started. As an 18-year-old young lady, her father and I were concerned about her living alone and decided to provide her a handgun for protection when she was in her apartment. Luckily we found out sooner than later that this was not legal in Omaha. Wherever else in the state of Nebraska we could ensure our daughter's safety and have peace of mind that, if she needed it, she'd have a way to defend herself, but not in Omaha. Because she wasn't yet 21, she couldn't legally have one. So we discussed it as a family. We decided the best thing would be for her to transfer to Peru State College. She's a smart girl with a great future ahead of her. While we were disappointed that she couldn't attend a great school like UNO, she and we felt her safety was more important. Colleagues, these stories don't make the front page of the news. They ought

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to, but they don't. People live in silence, some people don't know they're breaking the law; they're doing it anyway. Some people do know but they make their own decisions. They can't afford lawyers. They don't have time to make a big issue out of this. How many of you, besides Senator Chambers, has filed a lawsuit against a municipality or against the state? I'm willing to bet the answer is close to zero. These hardworking individuals who struggle to find the time for a concealed carry license permit, to get the training necessary so that they can go through the city of Omaha and not break the law, they're going to be filing lawsuits? That's the burden we're placing on our fellow citizens, colleagues. We've already done preemption in Nebraska. About ten years ago we passed the Concealed Carry Permit Act which allows licensed concealed carry holders, permitholders, to travel anywhere in the state. The cities cannot regulate concealed carry or those who possess concealed carry weapons. They can't. That's already in state law. We've already taken that away from the cities. I think by all accounts that's been a very successful law. We've already done part, we've already taken away part of the ability of cities to govern possession, and now we're doing the other part. Why should it be that only those who can afford a permit and afford the training should be able to exercise their Second Amendment rights? Why should that be the case? I submit it should not be. This is good policy for these individuals. Let's let them be heard. I think it has been said many times already but I want to repeat it, and I will probably repeat it two or three or four more times. [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR HILGERS: I think the over/under is probably three and a half. This does not expose cities to unnecessary liability. If they follow state law, which they should, they will not be sued. And if they are sued, that means they're not following state law. And if they are being sued, actually, this statute gives them a mechanism. Senator Chambers discussed a declaratory judgment action. Declaratory judgment action is something where you can ask the court to declare in a judgment--that's where the word...that's what it means--in a judgment that a law is unconstitutional. And you can do that, and the reason why...you could do that for unconstitutional laws. And the reason you could do that is because we don't want to have people have to have their constitutional rights infringed before they can bring a lawsuit, at least for what's called a facial challenge. We already allow that. Now if the city is just circumventing state law... [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR HILGERS: Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Friesen. [LB68]

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SENATOR FRIESEN: Thank you, Mr. Lieutenant Governor. I stand in support of LB68. When I've followed different handgun regulations and firearms regulations, I watched a little bit how Chicago does things. In the city of Chicago, what they would do is they would pass an ordinance that was definitely unconstitutional and then they would leave it in place until someone finally challenged it. And when they challenged it and lost, they would just pass another law that was obviously unconstitutional. And that's how they played the game. And so whoever had the most money there to challenge those laws, they were the ones that always had to step forward and challenge the law, take it through the system, which took a couple of years. And in the meantime, they had the ability to enforce unconstitutional laws. And so when I look at the ability for us to sue a municipality that, for instance, maintains those laws on the books, it's not a burden that they shouldn't bear. It's very easy for them to go in, clean up their rules and regs, laws, and make it so that they would not be subject to that lawsuit. If Senator Hilgers would take the rest of my time, I would yield the remainder of my time to Senator Hilgers. [LB68]

PRESIDENT FOLEY: Thank you, Senator Friesen. Senator Hilgers, 3:45. [LB68]

SENATOR HILGERS: Thank you, Mr. President. Thank you, Senator Friesen, for the time. I was talking about declaratory judgments and in the context...I'm glad Senator Morfeld is here because he understand this with the organization that he runs. It's very important when it comes to constitutional rights to be able to challenge statutes that are facially unconstitutional. You don't have to wait for your constitutional rights to be violated. You're able to have standing to go to a courtroom and challenge it. When the city...when it's a municipal ordinance that is not violating the constitution, per se, but it's violating LB68, if we didn't have this provision in statute, what would have to happen is we'd have to wait for somebody to have that ordinance applied against them and enforced against them. And that would likely mean that they are being arrested, they get a ticket, and that has all sorts of ancillary, downstream costs for that individual. Senator Chambers and I had a back-and-forth about actual damages and what kind of actual damages could you have. Well, if it's not a facial challenge and it's actually a challenge after the statute has been...the ordinance has been enforced against you, there could be significant actual damages. You could lose your job. That's pretty significant. If you are an employee at Offutt Air Force Base right now, there are certain charges you cannot have on your record or you lose your security clearance and you lose your job. If it's enforced against you, you get ticketed, you could have real, significant harm, tens of thousands of dollars potentially. Now if there's a facial challenge, in other words, you don't have to wait for it to be enforced against you, then you could go to court right away. Now, again, this should never happen. It should never happen. It should not happen. I will repeat it over and over again. The city should not enforce ordinances as to possession if the state takes away their power. But if they do, or they don't get them off the books, and they'll have time to do that, then a citizen ought to be able to sue. It's a similar mechanism that we have had for hundreds of years in this country for declaratory judgment actions, facial challenges to unconstitutional statutes. It is not an unheard of proposition, and in

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fact, it could save the cities and municipalities money because instead of dealing with a case with significant actual damages, out-of-pocket costs, there really is a far more nominal fee. And, frankly, it's something that ought to be cleared up with just a letter if they intend to do it. So I think that's incredibly important. And I've talked about the mechanism in that statute that allows membership organizations to support. Now it's been portrayed as, well, jeez, the last thing we just don't want to have is an NRA bill. We want...you know, this is going to allow the NRA just to go on a spree and they're just going to sue every municipality... [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR HILGERS: ...from the west part of...western part of the state to the eastern part of the state. It's not that, colleagues. It's not. There are organizations on all sorts of issues across the ideological spectrum who are there either as a primary part of their mission or just a part of their mission to support and defend people's rights. The ACLU is a perfect example. If you think that the NRA or the Nebraska Firearm Owners Association should be allowed to use their expertise to help people protect their Second Amendment rights, then you should think that the ACLU can help individuals protect their own rights. They're two sides of the same coin, colleagues. That provision is a common-sense provision that, frankly, ought never to be used. And I'd be shocked if it was ever used, because the cities would do the right thing if LB68 passed. Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Mr. Clerk. [LB68]

ASSISTANT CLERK: Mr. President, a priority motion: Senator Morfeld would move to bracket the bill until June 2. [LB68]

PRESIDENT FOLEY: Senator Morfeld, you're recognized to open on your bracket motion. [LB68]

SENATOR MORFELD: Thank you, Mr. President. Colleagues, I know that we're coming near the time to invoke cloture and I want to go through and summarize some of my concerns about this legislation and also respond to Senator Hilgers. First, this legislation goes far beyond the intended purpose of the legislation or the stated, purported purpose of this legislation which is to ensure that people traveling from one municipality or one jurisdiction to another can do so and transport their firearms safely and without any hindrance by local ordinances. That was the purported reason when this legislation was first introduced in the Judiciary Committee three years ago. That was one of the reasons why at the time I decided to support that legislation and forward it on. When I read into the bill more I realized, like many others, including our own county sheriff here, that this bill has ramifications and implications well beyond the transport of

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firearms across the state, well beyond. In fact, it takes away at least a dozen or so ordinances in the city of Lincoln. It will do the same in Omaha while maintaining a special ordinance for them that nobody else in the state gets to avail themselves of. We have gun crime in north Lincoln. We have gun crime in north Omaha. We have gun crime in Grand Island. We have gun crime in many other places in this state that have unique situations and different context than other parts of the state. As a gun owner, you have a heightened responsibility, not just you, I have a heightened responsibility as a gun owner to ensure that I'm following all laws. These laws are not overly burdensome. And if they are overly burdensome, you already have options. Number one, as a citizen, you can already challenge the constitutionality of a law if it's applied against you and you feel as though it's constitutional. That's the way our court system works. As a Legislature, if we feel as though an ordinance in the city of Lincoln is unreasonable, whether it be a prohibited person, as Senator Hilgers suggested, or otherwise, then we can introduce a law taking away the city's direct authority on that specific issue. What we shouldn't do is simply wipe all ability for cities to respond to unique situations in their municipality to deal with unique issues in their community. Now, Senator Clements read off a note from a constituent in his district and he noted that that person had a concealed carry permit. Senator Clements, they would still be able to conceal carry in the city of Omaha because that's in state law. It's already in state law. This bill doesn't make it any easier or any better for your constituent. That will be maintained in state law. That's already the case. They can already go into Omaha with their concealed carry permit. Senator Hilgers, in response to me getting up and saying, I don't know who's having a problem with this right now, there hasn't been any compelling stories, he talked about how he read from notes from single mothers, much like my own, military members and other individuals who want to have the right to bear arms. They already do. The single mother and Senator Geist who also noted that she feels more protected and safer with her firearm in her home, they still currently have the right to bear arms. I have the right to bear arms in my home and I do. Those individuals have the ability to do that now. And there is nothing about the stories that they read, and I was listening to Senator Hilgers a week or two ago, there's nothing in their stories that said that they weren't able, under our current statutory framework, to be able to do that. A single mother can have their firearm. A member of the armed forces can have their firearm unless, of course, there's a state statute or an applicable ordinance. And usually there's a good reason for those ordinances and usually there's a good reason for that state statute. And if there isn't a good reason for it, we can look at individual statutes and ordinances, and I'm willing to do that. I also want to talk a little bit about the possession side and the trespass a little bit more before we end today. Senator Hilgers has said on one hand he believes the trespass statute applies, and then on the other hand he also says, well, I'm willing to compromise on that on Select. And then we have Senator Chambers who says I'm not going to let anybody get to any amendments on Select. So even if there is a compromise amendment, Senator Chambers isn't going to let us get to it, and that's generally how he runs these things. And not only that, there is no way that a reasonable court is going to look at this and go, well, you know, the state Legislature passed a law specifically prohibiting cities and municipalities from passing

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ordinances, rules, or measures; otherwise, they can be sued right away. And the trespass statute, they can still apply that against somebody who is in possession of a gun. It makes no sense. On one hand we're saying specifically cities can't regulate the possession of firearms. On the other hand we're saying, well, you know there's a trespass statute, so you know that generalized trespass statute can apply. Well, unless there's an amendment to the bill that states that, that's not how a court is going to interpret the plain meaning of that legislation. And that's what the court goes to first; first, the plain meaning. And then they look at is there a more specific statute that represents the intent of the Legislature in specific instances such as gun possession, which, if we pass this bill, there will be. And then they're going to look at the trespass statute. And when they look at the trespass statute, you're only trespassing if you have violated some kind of notice or some kind of rule that either the private individual or, in this case, the city, who we just prohibited regulating the possession of firearms, that they violated. And Senator Hilgers has stated, well, you know, posting a sign up or something like that, that may not be an ordinance or rule. Well, I printed off the Merriam-Webster Dictionary definition of "rule": A prescribed guide for conduct or action. If posting a sign saying you can't bring in firearms into a public facility that you otherwise would have isn't a prescribed guide for conduct or action, then I don't know what is. That's a rule. That's a rule that somebody has prescribed, in this case, a governmental entity that is prohibited from regulating the possession of firearms. The trespass statutes would not apply. And if you look at the memo to Mayor Beutler from their police legal adviser that I had passed around by the pages earlier today, I think that there's some interesting points that they make and that inform what we're doing here. It states supporters of AM630 and LB68 argue that cities and counties can rely on state criminal trespass statutes as a mean of preventing the open carry of firearms into city-county buildings. Criminal trespass would not be an option for cities and counties if AM630 and LB68 passes. Currently, the city of Lincoln can lawfully adopt rules, regulations, ordinances, and/or take measures to prevent open carry of firearms into or on to governmental property. While criminal trespass is currently a mechanism to enforce legally valid ordinance, local ordinance, or rule, AM630 with LB68 strips cities and counties of the ability to enact said rule or ordinance in order for them to be in violation of the criminal... [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR MORFELD: ...trespass statute. Pardon me, Mr. President? [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR MORFELD: Thank you, Mr. President. Colleagues, I won't go on much longer because I know that we're getting close to the cloture vote. I am not opposed to gun possession. I own a firearm. I am in support of responsible policy that allows for local control to react to the varying circumstances of their locality or city or county. That is responsible. And maintaining

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that local control is critical because the reality in Ainsworth is a lot different than the reality in north Lincoln or north Omaha, and rightfully so. We come from different communities, different contexts. This is not responsible lawmaking. The responsible thing to do would be to pinpoint the local ordinances that we think are burdensome and without merit or value, and introduce legislation not allowing the localities to be able to enact those ordinances, not... [LB68]

PRESIDENT FOLEY: Time. [LB68]

SENATOR MORFELD: ...wiping them off all the books. [LB68]

PRESIDENT FOLEY: Time, Senator. [LB68]

SENATOR MORFELD: Thank you, Mr. President. [LB68]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Hughes. [LB68]

SENATOR HUGHES: Thank you, Mr. President. I'd like to yield my time to Senator Hilgers if he would like. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hughes. Senator Hilgers, 5:00. [LB68]

SENATOR HILGERS: Thank you, Mr. President. Thank you, Senator Hughes. Colleagues, again thank you for the debate on LB68 both last week and this week. I think it was informative and thoughtful and raised the profile of what I think is an underdiscussed but important, very important issue which are individuals are making...having to make a choice between breaking the law or exercising their right to bear arms that's guaranteed by our constitutions. You will all be the judge and the jury on this next vote. You will help determine whether or not this bill proceeds. And if I was in a courtroom and I was closing, one of the things I might do is weigh the arguments on either side. And on one side, the proponents of LB68 say we've got a constitutional right to bear arms, undisputed. People are making, having to make a choice between breaking the law or owning their weapon, undisputed. We have a patchwork of laws that are depriving people of due process, undisputed. It's a pretty strong case, colleagues. Now on the other side we've heard a number of different arguments in no particular order. We've heard, well, this is special legislation. It's not, colleagues. It's not an arbitrary class. It's not a closed class. It's not special legislation. We've heard that this will create lawsuit after lawsuit after lawsuit for the cities--not true. If the cities follow state law, there will not be one lawsuit. That is premised on the idea that they won't do what the Legislature says that they should do--not true. We've heard this will open up guns everywhere, anytime, for any purpose--also not true. Senator Morfeld and

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I have had the discussion regarding the impact of trespass. We didn't repeal that law. But I...and I don't have any problem with having a belt and suspenders approach and I do think we can get an amendment on Select File. The next argument has been, well, this will impact public safety. What evidence, I say? The answer is, well, it will affect public safety. This will be guns everywhere all the time. What evidence? Well, we don't really have any. What could you point to, to help me suggest that you're right, that we ought to tie in and depress our right to bear arms under the constitution? There's none. The only evidence that has been brought to us, brought to me is from the Omaha Police Department, and to their great credit, they have gone through in significant detail, both anecdotally and datawise, why they need certain tools to fight gang violence in Chicago...in Omaha. I'm sorry. So that's why that is in AM630. Colleagues, there has been a lot of hand waving, there's been a lot of conclusory arguments. And I would ask you to look at the evidence, look at what's before us, not the 10,000-foot discussions of, well, this will impact public safety, without evidence, or this is unconstitutional, without evidence. Look at the evidence. There are real people being impacted and having their Second Amendment rights taken away from them. We have real due process issues in the city of Lincoln. LB68 is a significant step in the right direction. It was formed through a very significant compromise--how this Legislature ought to operate: two sets of people coming from different sides on different issues, working together to come forward with something neither one of them really love but one they can be satisfied with. [LB68]

PRESIDENT FOLEY: One minute. [LB68]

SENATOR HILGERS: Thank you, Mr. President. LB68 is that compromise. It helps citizens in our state exercise their right to have a firearm, bear arms, that's guaranteed to them by both constitutions, while ensuring that where there is real evidence of public safety risk, that that is addressed. That's what this does. I urge you, there's going to be a motion for cloture here in a minute and I urge you to vote green on that motion. And if you're going to vote at all, I ask...or I ask you to vote. Please, don't be present, not voting. If you're going to filibuster this bill, if you're going to kill this bill by filibuster, vote no. But I ask you to not do that. Vote green. Let us get to Select File. Let us address some of these concerns and have a good bill for Nebraska citizens to move forward. So I urge you to vote green on the motion for cloture, red on the other motions, a green on AM630, and a green on the underlying bill, LB68. Thank you so much for the debate, colleagues. I'm very grateful for this discussion. [LB68]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Mr. Clerk, do you have a motion on the desk? [LB68]

ASSISTANT CLERK: I do, Mr. President. Senator Hilgers would move to invoke cloture, pursuant to Rule 7, Section 10. [LB68]

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PRESIDENT FOLEY: It's the ruling of the Chair that there has been a full and fair debate afforded to LB68. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB68]

ASSISTANT CLERK: 28 ayes, 1 nay to go under call, Mr. President. [LB68]

PRESIDENT FOLEY: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please the floor. The house is under call. Senators Morfeld, Bolz, Pansing Brooks, Wayne, please check in. Senator Brewer, please return to the Chamber and check in. Looking for Senator Bolz and Senator Brewer. Senator Bolz and Senator Brewer, the house is under call. Please return to the Chamber and record your presence. We're lacking Senator Bolz at this point. There's been a request for a roll call vote in regular order. Members, the first vote is a motion of cloture. Those in favor say aye; those opposed say nay. Mr. Clerk, roll call vote, please. [LB68]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 1025-1026.) Vote is 33 ayes, 8 nays, Mr. President. [LB68]

PRESIDENT FOLEY: Cloture is invoked. The next vote will be to take a vote on the Morfeld bracket motion. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk. [LB68]

ASSISTANT CLERK: 11 ayes, 31 nays on motion to bracket the bill, Mr. President. [LB68]

PRESIDENT FOLEY: The bracket motion is not adopted. The next vote is on Senator Chambers' motion to recommit the bill to committee. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB68]

ASSISTANT CLERK: 12 ayes, 30 nays on the motion to recommit, Mr. President. [LB68]

PRESIDENT FOLEY: The recommit motion is not adopted. The next vote is on the adoption of the committee amendment, AM630. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB68]

ASSISTANT CLERK: 33 ayes, 11 nays on the adoption of committee amendments. [LB68]

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PRESIDENT FOLEY: The committee amendments are adopted. Next vote is to advance LB68 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted? A record vote has been requested by Senator Murante. Record, Mr. Clerk. [LB68]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1026-1027.) Vote is 32 ayes, 12 nays on the motion to advance the bill, Mr. President. [LB68]

PRESIDENT FOLEY: LB68 advances. Pursuant to the Speaker's directive, we'll move back to the morning discussion. I raise the call. Mr. Clerk, when you're ready, you can announce the bill. [LB68]

ASSISTANT CLERK: Mr. President, next bill, LB158, introduced by Senator Pansing Brooks. (Read title.) The bill was considered by the Legislature this morning. At that time, there was consideration of amendment from Senator Pansing Brooks, AM996. That amendment failed. We are now considering a pending motion to reconsider the vote on the adoption of that amendment. [LB158]

PRESIDENT FOLEY: Thank you, Mr. Clerk. We'll proceed immediately to the discussion. Senator Morfeld. [LB158]

SENATOR MORFELD: Am I up next? [LB158]

PRESIDENT FOLEY: Yes, you're recognized, Senator Morfeld. [LB158]

SENATOR MORFELD: Thank you. Colleagues, I rise in support of Senator Krist's reconsideration and in support of Senator Pansing Brooks's bill. I wasn't able to speak on it this morning because I was ill and preparing for LB68. But I think this is a critical issue ensuring that juveniles have the right to counsel. And I heard a lot of the debate down in my office. I heard Senator Groene's comments and other individuals. But the bottom line is, is that our juvenile justice system often makes it so that juveniles barely have a chance to be successful citizens and adults at a very early age. And Senator Pansing Brooks's legislation allows for that representation and ensures that they have a constitutional right to representation and due process. Now, I know that there is some finagling over what the funding mechanism is or is not, but this bill deserves to go on to Select File. This bill deserves to give our young Nebraskans the ability to have fair representation in court, whether they're in our larger municipalities or whether they're in our more rural areas. And with that, I would yield the remainder of my time to Senator Pansing Brooks. [LB158]

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PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Pansing Brooks, 3:30. [LB158]

SENATOR PANSING BROOKS: Thank you, Senator Morfeld. And thank you, Mr. Lieutenant Governor. If you would please look...I know that everybody was talking through some of the discussion earlier, the juvenile legal defense report that the state of Nebraska paid \$250,000 for has an executive summary, which you have on your desk. The significant findings are that we...are excessive waiver of counsel. It says the right to counsel in delinquency proceedings is a constitutional right. Fundamental fairness requires that: defense counsel is appointed early in the youth's case; has a meaningful...the youth has a meaningful opportunity to consult with the attorney, and investigate and test the strength of the government's case; explain potential short- and long-term consequences of a conviction; review the sufficiency of the case prior to the court's accepting a plea agreement; and is afforded facilities, including interview rooms or other private areas in the courthouse to hold confidential client meetings regardless of the alleged offense. Youth who would not otherwise be able to vote, drink, marry, or enter into binding legal contracts should not be able to enter into plea agreements or navigate their cases without the assistance of counsel. Friends, I've worked hard to try to find a way not to have the taxpayers pay for this by not having the counties pay for this. They came in opposition, even though they were neutral last year, saying to me and to the committee that they feel that they have a moral obligation to make sure that kids have counsel and that there is an excessive waiver. And so then they came in and said that they have got to oppose this. So I worked hard to find another fee or another place to fund this. We found the court automation fee. And some of you have said, oh, well, this has nothing to do with automation. Well, last year we took judges' retirement out of there, so we've already opened that door wide and strong. So I just ask that you vote this bill forward. I will work with you on Select if somebody has a better fund or idea of how to go forward. And with that, I thank you, Mr. Lieutenant Governor. [LB158]

PRESIDENT FOLEY: Senator Pansing Brooks, I was distracted. Were you finished? [LB158]

SENATOR PANSING BROOKS: Yes. Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Baker. [LB158]

SENATOR BAKER: Excuse me, Mr. Lieutenant Governor, but my light was on from the previous bill. I'll turn the light off. [LB158]

PRESIDENT FOLEY: Thank you, Senator Baker. Senator Hansen. [LB158]

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SENATOR HANSEN: Thank you, Mr. President, and good afternoon, colleagues. I rise today in continued support of LB158, the Judiciary Committee amendment, and the Pansing Brooks amendment. So being that, I'm also in support of the Krist reconsideration motion to revive the Pansing Brooks amendment. I think we have great opportunity to ensure that our youth are well protected in the juvenile justice system in order to make sure they have the appropriate counsel at any time. I appreciate Senator Pansing Brooks's work to make sure that this fund is nonburdensome on the counties. I know that's been a critique in the past and I think the opportunity here with AM996 to take it from an existing cash fund, an existing cash fund that's paid for by court fees to create a new fund and (inaudible) going over. I personally do not think that the overall expense here...I know it won't that be high. I know there's been arguments made on the floor and I know there's others that are there, that by quickening the resolution of a juvenile court disposition, including with...which is possible with an attorney, could actually reduce county costs by every day that a youth is held in a detention center is drastically more expensive than multiple hours with an attorney. So there is some pros and cons there that, ultimately, by providing access to attorneys kind of expediting cases you end up on other retention fees spending less. So I think that while I appreciate all the concern that people have on this, I think AM996 is a great opportunity to make sure that we have a one-time issue of court fees in order to create a new fund to make sure that our juveniles are well accounted for. Going to kind of the fundamental principle in the bill--because I know we are going beyond a debate on whether or not how to pay for it, how best to pay for it--going to just the fundamental principle of the bill, we do...earlier debate it was kind of mentioned the absurdity that we wouldn't necessarily let a juvenile contract, you know, sign a contract to lease a car, but we will let them sign a contract with an attorney. And I agree that is weird and I agree that it's strange. But additionally, the third scenario that we also do with juveniles is we let them plead guilty to felonies. So if we are saying, no, no, no, they do not have the agency, they don't have the authority, they don't have the contract rights to contract with an attorney, why have we as a state said, okay, we won't allow you to contract with an attorney. We're worried about contract issues. We're worried about autonomy issues. But, by the way, you're allowed to make criminal decisions that will follow you for the rest of your life. You're allowed to plead guilty to a crime or you're allowed to, for budgetary reasons, not be allowed an effective defense to a crime. If we're worried about the opportunity for our young people, our teenagers, or frankly our preteens in instances, to make decisions for themselves, I have no idea why we would want to add more barriers to making sure they have effective counsel. We've had some of the stories, both by practitioners and people who've studied the issue who talked about kind of what happens in various instances, including many instances that happens in court where right to counsel is explained en masse to a group, a large group of people who, I might add, if you are a young person in court for some sort of criminal charge, you're not having a very good day and your attention to some speech the judge gives to 50 of you might not be the most effective use of your attention. So having some opportunities to explicitly go in, in each case and make sure they have the right to appointed counsel and the right to have an attorney is very important. Because we're

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seeing time and time again where we are dealing with issues, especially dealing with issues dealing with juveniles, that what can snowball and in many instances in some jurisdictions would be a simple mistake that, you know, a simple mistake on the schoolyard that the principal scolds you for a little bit. In other jurisdictions we're having problems where they're being charged criminally. And that's not just happening in our three largest counties. I was talking with a practitioner... [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR HANSEN: ...who "practitions." Thank you. I was talking with a practitioner who formerly practiced west of Lincoln and he was doing a story about that, about two best friends who, walking out of a high school, got into a fight about something or other, shoved and pushed each other and they both ended up charged with assault. These were 14-year-olds we are talking about. Now all of a sudden they, being charged with assault, have to navigate the judiciary system without a very clear access to an attorney. I think that's a problem LB158 is attempting to solve and I wholeheartedly support it and ask you do, too. Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Hansen. Senator Hughes. [LB158]

SENATOR HUGHES: Thank you, Mr. President. Good afternoon, colleagues. I wonder if Senator Schumacher would yield to some questions. [LB158]

PRESIDENT FOLEY: Senator Schumacher, would you yield, please? [LB158]

SENATOR SCHUMACHER: Yes, I will. [LB158]

SENATOR HUGHES: Thank you, Senator Schumacher. I guess I would like to share with the body the conversation we just had about LB158 and the issues of who is going to require us to make the decision that juveniles have court...make sure they have an attorney. [LB158]

SENATOR SCHUMACHER: Who is going to require us to do that? [LB158]

SENATOR HUGHES: Yeah. Who's going to...is there someone telling us that we need to or is this...we're just saying this is a good idea, let's do it? [LB158]

SENATOR SCHUMACHER: As I understand it, there's no federal court order, there's no state court order or case that will require to us do this. This is free and voluntary, would be free and

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voluntary on our part and the mandate and the value judgment would be coming from within the body. [LB158]

SENATOR HUGHES: So if we were to follow this logic a little farther, earlier in the day Senator Groene being questioned said that he would refuse an attorney. I mean, shouldn't we force an attorney on him because he's making a bad decision? [LB158]

SENATOR SCHUMACHER: Well, I think something ought to be forced on Senator Groene for sure. (Laughter) But if you carry the logic through, particularly with those people who are under 25 years old and have undeveloped brains, I think it's fairly arbitrary that we cut it off at 18 and not 25. And we've seen that...we've heard that moms and dads aren't with it enough in order to make a decision that really nobody sane would go into court without an attorney. I'm not sure we shouldn't just require an attorney to be appointed for everybody. It's a matter of money but we got plenty of that. [LB158]

SENATOR HUGHES: Okay. Thank you. The other strand that we were following was who's paying in Douglas, Lancaster, and Sarpy where we do have juvenile courts versus who's being paid or who's being forced to pay in, say, Platte or Lincoln or Perkins Counties? [LB158]

SENATOR SCHUMACHER: If I remember last year's discussion properly, the issue of whether or not Mom or the folks had to pay for the kids' attorney was responded to with the argument that in Douglas, Lancaster, and Sarpy County they really didn't bother trying to squeeze the money out of the folks; that the kid's were all appointed government attorneys. I can tell you in certainly my counties and in I would guess most counties where they don't have a government attorney on standby, they squeeze Mom and Dad for the money and those moms and dads are going to have to dig into their pocket, unlike what, if I remember right, is going on in the three counties that were selected out last year. [LB158]

SENATOR HUGHES: So it's pretty much just the property taxpayers in our three largest counties are having to foot the bill for all of the juvenile justice system? [LB158]

SENATOR SCHUMACHER: Right. And it's my understanding that under this law in the rest of the state where they're not voluntarily doing it that Mom and Dad, if they've got the means to do it, would have to pay. So we'd be discriminating against those moms and dads in counties that are not...don't have a staff of government attorneys waiting to go for work. [LB158]

SENATOR HUGHES: Okay. Thank you, Senator Schumacher. I appreciate you being willing to reiterate our discussion we had off the mike. Ladies and gentlemen, this bill is a solution in

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search of a problem. The problem is not there in greater Nebraska and no one is being denied access to counsel. No one is requiring that they be...no higher court is coming in... [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR HUGHES: ...and saying...requiring that they have to have counsel. It's available to them. And quite frankly, my judges in my district are very conscientious of making sure that juveniles, when they come to court, they know what their options are, regardless of whether Mom and Dad are there. These ladies and gentlemen who are appointed to the bench are doing a good job. And this is a slap in their face saying, no, you're not doing a good job. We know better than you do your profession of what needs to happen in your courtroom. That's overreach by the Legislature into the judicial and it's not a good idea. Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Hughes. Senator Crawford. [LB158]

SENATOR CRAWFORD: Question. [LB158]

PRESIDENT FOLEY: Thank you, Senator Crawford. Members, in view of the fact we extensively debated AM996 this morning with 14 speakers, another 5 this afternoon, we'll proceed with the call. Do I see five hands? I do. The question is, shall debate cease? Those in favor of ceasing debate vote aye; those opposed vote nay. Have you all voted who care to? There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB158]

ASSISTANT CLERK: 23 ayes, 5 nays to go under call. [LB158]

PRESIDENT FOLEY: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Hilgers, Morfeld, Geist, Wayne, Murante, Brewer, Groene, please check in. The house is under call. Senator Hansen, we're lacking Senators Hilgers, Wayne, and Murante. We can wait or proceed. We will wait. Senator Brewer, please return to the Chamber. Senator Brewer, please return to the Chamber. We have been authorized to proceed. Senator Hansen, will you accept call-in votes? He will. Mr. Clerk, when you're ready. Members, the question before the body is whether or not to call the question. And Senator Hansen has authorized call-in votes. [LB158]

ASSISTANT CLERK: Senator Hilgers voting yes. Senator Lindstrom voting yes. Senator Schumacher voting yes. [LB158]

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PRESIDENT FOLEY: Record, Mr. Clerk. [LB158]

ASSISTANT CLERK: 25 ayes, 10 nays, Mr. President. [LB158]

PRESIDENT FOLEY: The question has been called. Senator Krist, you're recognized to close on your reconsideration motion. [LB158]

SENATOR KRIST: Thank you, Mr. President. I think we should all follow Senator John Murante's suggestion from earlier today. If we believe in LB158 and the amendment, AM145, but we don't like the funding mechanism in AM996, we need to vote for reconsideration, yes. Vote for the amendment. Vote for AM145. Vote for LB158. Move it from General to Select and spend the time between now and then properly structuring the financial aspect, fiscally being responsible for this. If you don't, then what you're saying is you believe you can take care of your own and your kids do not need any kind of legal counsel. It's that simple. Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Krist. Members, the question before the body is the adoption of the reconsideration motion. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB158]

ASSISTANT CLERK: 27 ayes, 10 nays on the motion to reconsider, Mr. President. [LB158]

PRESIDENT FOLEY: The reconsideration motion is adopted. We're back to discussion on AM996. I raise the call. Senator Vargas. [LB158]

SENATOR VARGAS: Thank you very much, President. I rise in support of LB158 and the corresponding amendments. I just wanted to briefly give you my rationale as to why I want to make sure that we have due process for juveniles. And I've heard a lot of discussion today about different scenarios and situations. For me this is much more simple. We want to make sure we have due process for juveniles so we can do everything we can to support and protect them in many scenarios. I was actually really happy that in a testimony for my priority bill, LB428, in the hearing we had a public defender come in support of this bill stating specific instances where young women were...actually came, had truancy issues and because of the representation they had they were able to have their due process and actually get some of these considerations into place to take into account the real issues they're facing regarding preteen pregnancy. So I just want to read one piece of this testimony: When I was in the public defender's office I represented young women who had cases in juvenile court which were based on absences that occurred during their pregnancy or in the weeks following the birth of their child. They were expected to return to school one week after the birth of their child, which is not adequate time for recovery or

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for the necessary bonding with their child. Colleagues, it's clear that there is a need for support and advocacy for legal representation for juveniles. And in this case, it is very important that this individual was able to get the due process and representation so that there's another perspective and equal checks and balances. And I just want to stand in support of this bill and I'll yield the remainder of my time to Senator Pansing Brooks, if she will take it. [LB158 LB428]

PRESIDENT FOLEY: Thank you, Senator Vargas. Senator Pansing Brooks, 3:00. [LB158]

SENATOR PANSING BROOKS: Thank you. Thank you, Mr. Lieutenant Governor. Again, this is about trying to have some funding stream. I listened to all of you on the property taxes. If we don't have some fund to look at this, then it comes out of the property taxes. The counties are responsible. They're really responsible anyway. And I keep having all these discussions about why...what the bill is or what might have been. If people had been here, talking about what happened last year isn't what this bill is about. So I really appreciate Senator Hughes and Senator Schumacher trying to make up what they think it's about. First off, last year did not have any parents paying for it if they were able to. In this case, if a court deems that a parent is able to pay through an affidavit process, then the parent will pay for it. And that was one of the main considerations that people were upset about last year. Lancaster, Douglas, and Sarpy don't have the parents pay, because they think it is easier not to do that. That's fine. I had people speaking to me about the fact that it's important to have them pay if they can and so we added that to the bill. We also put in this trigger to say if there's a \$400,000 fund, then it's similar to what happened in LB605, last...or a couple years ago when there was a trigger to initiate the funding of LB605 so that counties weren't paying more money. And so the counties were saying, no, we can't afford LB605. We can't redo all of this, because it's going to cost us so much money. So they created a fund that had a trigger so that if they were actually charged more money, they would be able to come back, request reimbursement, and get money out of that fund. That's what I've said up here. We hear continually that the counties will not lose more money. And, by the way, people keep saying, oh, you can't...or Senator Groene is saying, you can't waive counsel; we're taking away the right to waive counsel. [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR PANSING BROOKS: No. All we are saying is, when you go into the court or before you go into the court you have to meet with an attorney so that they can explain to you what your rights are. A little kid does not understand, a teenager does not understand their rights. So being able to know what you are waiving is all that we're asking. They get to go in and waive it, Senator Groene. They get to go into the court and waive. But they get to go into the court knowledgeably to waive. And we continue to have these issues where we think, oh, we don't have to pay for kids for food. We don't have to pay for kids for right to an attorney. The reason

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that we don't have a mandate from the government is because these are little kids. This is a constitutional right. If the kids could think in their own mind, gosh, I got to sue somebody, because I didn't get this...I didn't get correct representation, we would have a process. And there are groups that are talking about going out to the counties, sitting in the courtroom and saying... [LB158]

PRESIDENT FOLEY: Time, Senator. That's time, Senator. [LB158]

SENATOR PANSING BROOKS: ...telling the kids to have...to not waive counsel. [LB158]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Mr. Clerk. [LB158]

ASSISTANT CLERK: Mr. President, priority motion: Senator Hughes would move to bracket the bill until June 2. [LB158]

PRESIDENT FOLEY: Senator Hughes, you're recognized to open on your bracket motion. [LB158]

SENATOR HUGHES: Thank you, Mr. President. Colleagues, we're getting down toward the end of the day here and I wanted to make sure we had ample opportunity, that I needed one more time to talk about this bill is a solution in search of a problem. This is not something that is needed outside of Lincoln, Sarpy, and Lancaster Counties. The judges we have are doing a good job. And I've talked to many of my colleagues who have said they have reached out to their county attorneys and their county judges to ask them, point blank, is this a problem in my county? And virtually everyone says it's not. This is overreach by this legislative body that wants to force something on the populace that's not necessary. So I would certainly urge you to vote green on my bracket motion. And with that, I would like to yield my time to Senator Albrecht. [LB158]

PRESIDENT FOLEY: Thank you, Senator Hughes. Senator Albrecht, almost 9:00. [LB158]

SENATOR ALBRECHT: Thank you very much, Lieutenant Governor and Senator Hughes. Boy, I feel like I finally got in the queue today. A couple things: I did come from Sarpy County, the big city where they had plenty of juveniles to get through the system. And I'm absolutely understanding of diversion programs and how they save money. They help families through a very difficult time. But when this bill came up...you know you can certainly agree that this is a great concept and it's the right thing to do, until the amendments start getting thrown at these bills. And at that point...this morning when the judge said, not out of...the Chief Justice, excuse

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me, Heavican said, not out of my fund. And then now we're searching to find the money. And no matter whether we get \$200,000, \$400,000, my concern is for my district. When I get into a situation like this and it's unclear to me exactly how they feel, I make that call to my district. I contacted my Dakota County judge and they said they are not being strained by this right now. They move everything through the system. They always ask the parents and the child if they'd like representation. They don't believe that this is an issue for them. So I'm Dakota, Thurston, and Wayne. Wayne called back this afternoon and basically said, in his opinion it's not needed. An unfunded mandate on a rural community if they don't have the funding, they're not interested in that; they like it just the way it is. If there's a serious concern, counsel will be appointed by presiding judge, depending on the severity of the case. Certainly, if everybody had the ability to have these diversion programs...maybe this is something that we sit down and we find out if all 93 counties are in the same shape as the big and large cities are. When it comes to retaining counsel in the rural areas and we have to call on somebody outside of the area, we do have to pay more money to get them to drive to northeast Nebraska from the big city so...if there's not enough counsel in our district. So, again, in visiting with some folks on the floor that could be \$170, \$180 dollars an hour versus in the city, in the big cities, it could be \$60 or \$70 dollars an hour. So those funds are spread out pretty thin if you're only looking for \$400,000. So, I would be not in support of this at this time, especially for the rural areas who are letting us know loud and clear it's not needed in our rural communities. Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Senator Bostelman. [LB158]

SENATOR BOSTELMAN: Thank you, Mr. President. I, too, have talked with county attorneys, attorney in my area and they feel that there's some questions that yet need to be resolved as far as access to legal counsel in the areas, how this would cause them to potentially increase costs to the local counties, county commissioners, because they're going to have to hire people from out of area, which they do already. And so right now I have questions on that and I would be opposed to LB158. And I would like to give the rest of my time to Senator Hughes. [LB158]

PRESIDENT FOLEY: Thank you, Senator Bostelman. Senator Hughes, 4:15. [LB158]

SENATOR HUGHES: Thank you, Mr. President. Thank you, Senator Bostelman. Would Senator Schumacher yield to a question again, please? [LB158]

PRESIDENT FOLEY: Senator Schumacher, would you yield, please? [LB158]

SENATOR SCHUMACHER: Yes, I would. [LB158]

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SENATOR HUGHES: Thank you, Senator Schumacher. I guess I would like to continue on with our discussion that we have off the mike about in this bill when it talks about who is being charged or who has to pay for the juvenile attorney and we had that discussion about the parent and the guardian. [LB158]

SENATOR SCHUMACHER: The bill requires if they appoint a guardian as a result of this process that...or, excuse me, an attorney that the parent or guardian has got to pay. I think it's a bit unusual because usually guardians are not liable for the expenses of their ward unless it's from the ward's money. But the way the bill is written, it looks like the guardian has to pay out of their own pocket, not out of money of the kid, assuming he has any money. And to have a parent or in this case a guardian have to pay out of their own pocket for something that is given free in the three or maybe more counties than that is highly discriminatory. And it's one of the reasons we last year were convinced that we could settle this issue by saying, okay, those three big counties that have government attorneys on stand-by and are able to provide cost-free counseling to everybody, that we went down that road. [LB158]

SENATOR HUGHES: Thank you, Senator Schumacher. There's just a lot of things that work in our urban areas that don't work in more rural areas and this is one of those things. So, I don't like being the one to fight a bill like this. Senator Pansing Brooks has done a good job. She and I have talked a lot about this. We have talked a long time about this. Shortly after she introduced the bill she came to me and talked to me about it. And at that point I says, Senator Pansing Brooks, I think I'm still going to be opposed to this bill, but I need to read it. And she did make some changes that made it better. But ultimately, to me, it is something that is not needed in greater Nebraska. And it's not about that we don't like our kids. We love our kids just at much as anybody else in the state. And it's not that we want to throw them at the mercy of the court. We want to make sure that when they do go to court, they have the tools necessary. But quite frankly, the judges that we deal with in greater Nebraska are doing a good job of making sure that when our youth are there and are charged with a crime, that they understand exactly what's going on and what their options are. There's no question about that in my mind. So the need for this bill just is not there. Thank you, Mr. President. [LB158]

PRESIDENT FOLEY: Thank you, Senator Hughes. Senator Groene. [LB158]

SENATOR GROENE: Thank you, Mr. President. It's pretty clear that Senator Pansing Brooks did a good job talking to everybody. That's what we are supposed to do about our bills, talk to everybody ahead of time. But there was some miscommunication that the judges...I mean, not the judges, but the Supreme Court Chief Justice Heavican, he did like the bill. But there must have been some communication when he told...when Senator Pansing Brooks told everybody that apparently he agreed to let them raid his funds. That was pretty clear now that the judge did

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not agree to that. And we have a duty to make sure if we give those funds to the court, if we take them away it should go through the appropriations process where the entity for that branch of government has a chance to testify and defend the use of those funds without this body taking them away. There's a purpose for those funds in AM996. And we've heard talk about cost efficiency and cost savings because of assigning everybody a lawyer and things are sped up. Well, let me tell you, IT, improving IT capabilities--which the Supreme Court plans to use with these funds--saves a lot more money, a lot more. Speeds up communication. We all know about recordkeeping. So we are taking the money, claiming we are doing something to save money, and eliminating a bigger savings by using that money for the purpose that the Supreme Court wishes. That should be a nonstarter on AM996, what I just said. That should be a nonstarter. So then we fall back on the counties and the local taxpayer funding this. I've researched a little information back home in Lincoln County. We're a pretty good-sized county. We've got a lot of troubles, youth, like everybody in a blue-collar town. In the last two years, in the last two years, as far back as I could find, any child removed from the home was assigned an attorney. There was never a case where an attorney was not assigned to that juvenile. So statements were made here that we got to protect these kids they remove from the home and they're not assigned an attorney. I would like to see somebody document in an entire state of Nebraska where a judge did not assign an attorney or make sure that child had an attorney if they were removed from the home. I doubt you can find a case. The system works. We pay attorneys \$100 an hour for when they are appointed, not \$65. Senator Pansing Brooks said again...and addressed me said, they can deny counsel. No, they can't, because they already have counsel because we forced them to have it and we forced the taxpayer to pay for that counsel or the parents. Counsel is counsel. Once you have it, once you take some advice, once a fee is charged counsel is given. You cannot deny counsel when you already have counsel. You can reject present counsel and fire your counsel, but we are saying you have to have counsel. We are forcing it on the child. We are forcing it on the parents. We are taking their constitutional rights away to make that decision... [LB158]

PRESIDENT FOLEY: One minute. [LB158]

SENATOR GROENE: ...to make that decision "themselves" if they want counsel or not. We keep hearing about rights. You are taking a right away. There's a difference between rights we defend here and mandates. We are mandating that the counties take the rights away from citizens to either accept counsel or turn it down because we are forcing them to have it. And I'm not an attorney, but I can read the constitution. Anyway, turn it down. Let's end this thing. We don't need it. Straw men are being put up so that some attorneys can have jobs. The system works. Thank you. [LB158]

PRESIDENT FOLEY: Thank you, Senator Groene. Senator Friesen. [LB158]

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SENATOR FRIESEN: Thank you, Mr. Lieutenant Governor. I stand in support of the motion to bracket. Last year when we discussed this bill I didn't see the need for it then. The county attorneys I've talked to still don't see the need for it. They look at the situation and it's being handled the way it is now, and so when I look at the different...whether it's parental rights or whether you're going to look at a who pays for this or whether it's mandatory or not mandatory, we're stepping into an area where I just don't think it's needed. Judges, I think, even if I was going in front of the judge and I wanted to represent myself and he didn't think I was fit to do that, he would appoint me counsel. Judges have that discretion. If a juvenile comes in front of them and he obviously is going to plead to something that's going to have long-term consequences, removal from the home, I don't think there's a judge out there in our area that would do that. They use discretion. We talked a lot about discretion early in the year. We talked...when mandatory minimums...we wanted to take them off, we wanted to give the judges discretion. Here we give the judge discretion. If a juvenile comes before him and he feels he's not capable and he needs representation...first of all, they're asked to start with. They're given that opportunity whether they can pay for it or not. They're given that opportunity to accept free counsel. And if they decline it and a judge would look at the case and say, hey, man, you really messed up and I don't think I'm going to let you come here and just represent yourself; this is too big a case. They'd do the same thing with me. If I come in there and I plead to something and he looks at me and I'm not capable of making that decision, they're going to appoint me counsel. And so when I look at this again I...the more I look at it the more it interferes with the parental rights and responsibilities. I can go back and give a personal testimony of being in juvenile court, but I don't think I need to. But, again, I think parents need that responsibility, they need to be there. The judges have that discretion. We know that they can exercise that authority. They can do it with adults, they can do it otherwise. And again, when it comes down to who pays for it, are we going to make guardians foot the bill? Parents? That, I'm okay with. But again, then they have to go through the process of determining if they have the ability to pay. And if they choose not to even look at that, like they're doing, ignoring it in other areas currently, no one will end up paying the bill except the taxpayers. So, again, stand in opposition and favor of motion to bracket. Thank you, Mr. Lieutenant Governor. [LB158]

PRESIDENT FOLEY: Thank you, Senator Friesen. Items for the record, Mr. Clerk? [LB158]

ASSISTANT CLERK: Thank you, Mr. President. Amendments to be printed: Senator McDonnell, LB72; Senator Stinner, LB233; Senator Chambers to LB68; and Senator Kolterman to LB415. (Legislative Journal pages 1027-1030.) [LB72 LB233 LB68 LB415]

In addition, Mr. President, priority motion: Senator Geist would move to adjourn until Thursday, April 13, 9:00 a.m.

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PRESIDENT FOLEY: Members, you've heard the motion to adjourn. Those in favor say aye. Those opposed say nay. We are adjourned.