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Transcriber's Office

Government, Military and Veterans Affairs Committee
February 09, 2017

[LB280 LB661]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 9, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB280 and LB661. Senators present: John Murante, Chairperson; Tom Brewer, Vice Chairperson; Carol Blood; Tom Briese; Joni Craighead; Mike Hilgers; John Lowe; and Justin Wayne. Senators absent: None.

SENATOR MURANTE: (Recorder malfunction) ...Military and Veterans Affairs Committee. My name is John Murante; I'm the state senator for District 49 which includes Gretna and northwest Sarpy County and I am the Chairman of this committee. We are here today for the purposes of conducting two public hearings. We'll be taking the bills up in the order on which they appear on the agenda outside of this room. If you wish to testify for either of the matters before us, we ask that you fill out one of these green sheets of paper; they're located on either side of the room. If you are here and wish to state your support or opposition for either of the matters before us but do not wish to testify, we ask that you fill in one of these sign-in sheets and state your support or opposition. If you do testify, we ask that you begin by stating and spelling your name for the record which is very important for our transcribers' office. The order of proceedings is that the introducer will be permitted initial remarks, then we will listen to proponent testimony, followed by opponent testimony, and then neutral testimony, and then the introducer will be given an opportunity to close. We ask that you listen very carefully and try not to be repetitive. In the Government Committee we do use the light system. Each testifier is permitted four minutes to speak. When the yellow light comes on, we ask that you begin concluding your remarks. When the red light comes on, we ask that you close your remarks and we'll open the committee up for any questions they may have of you. At this time I would like to remind everyone to turn off or silence any cell phones or other electronic devices. If you do have a prepared statement, an exhibit, or anything you would like distributed to the committee, we ask that you provide our page with 12 copies. If you do not have 12 copies, that's fine, just provide them to the page and he will make copies for you. And our page for the day is Joe Gruber. Joe is from Omaha, Nebraska. And we'll begin with the introduction of our members. To the far left is Sherry Shaffer. Sherry is the Government Committee clerk. To her right is State Senator Carol Blood. Senator Blood represents Bellevue. To her right, Senator Joni Craighead; Senator Craighead represents Omaha. To my left, Senator Justin Wayne; Senator Wayne also represents Omaha and he will be with us shortly. To my right is Andrew La Grone. Mr. La Grone is the Government Committee's legal counsel. To his right is State Senator Tom Brewer from Gordon, Nebraska. Senator Brewer is the Vice Chairman of this committee. To his right, Senator Mike Hilgers. Senator Hilgers represents Lincoln, Nebraska. To his right, Senator Tom Briese. Senator Briese represents Albion. And to the far right, Senator John Lowe; Senator Lowe represents Kearney. And that concludes our formalities. Senator Crawford, welcome back to your Committee on Government, Military, and Veterans Affairs.

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SENATOR CRAWFORD: Thank you. Yeah, I haven't been here all year until today. [LB280]

SENATOR MURANTE: We've missed you desperately. [LB280]

SENATOR CRAWFORD: (Exhibit 1) Oh, I've missed being here. Thank you. Good afternoon, Chairman Murante and members of the Government, Military and Veterans Affairs Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District, the Bellevue, Offutt, and eastern Sarpy County. And I'm honored to be here today to introduce LB280 for your consideration. LB280 provides that victims of trafficking qualify as program participants under our existing Address Confidentiality Act. The Address Confidentiality Program was created in 2003 through legislation sponsored by Senator DiAnna Schimek. The purpose of the program is to provide victims of abuse, stalking, and sexual assault with a substitute address that they can use when interacting with state and local agencies. The program also provides them with a new mailing address to ensure their actual mailing address remains confidential and does not enter the public record. This program is critical in ensuring the safety of many victims. When victims and survivors move to a new address that is unknown to their abuser, the Address Confidentiality Program ensures that they can fill out any necessary applications with government departments, register to vote, and receive mail without fear that their address will become searchable to the public. Currently, the language in the Address Confidentiality Act states that the program participants must be a victim of abuse, sexual assault, or stalking. LB108(sic-LB280) ensures that human trafficking victims in our state will also have access to this important protection. In recent years, Nebraska and the Legislature have taken major steps to improve our programs and services that we have available for victims of trafficking. This is critical concerning 40 to 50 new trafficking victims are identified each year in our state. Even more concerning in a study from the Office of Attorney General's Nebraska Human Trafficking Task Force, 84 percent of the service providers believe that they were not able to meet the needs of survivors of human trafficking. LB108(sic-LB280) ensures that nonprofits and other centers in our state, specifically providing services to trafficking victims, can be designated by the Secretary of State as facilitators of this Address Confidentiality Program. LB108 (sic-LB280) also allows us to build on an existing program in order to improve services that are available to these victims. It's also important to note that some victims of human trafficking also experience sexual assault or abuse and may therefore qualify for the program already. But this is not always the case, so LB108 (sic-LB280) explicitly states that victims of human trafficking, including those who are victims of debt bondage and labor trafficking can also utilize the Address Confidentiality Program. And you'll note we use our statutory definition of trafficking in statute already. During the process of drafting this bill, I've had various conversations with the Secretary of State and his staff. When the Address Confidentiality Program was first created, \$20,000 was appropriated to the Secretary of State's Administrative Cash Fund to make...for the initial materials such as the fliers and applications. Since then, the Secretary of State's Office has been absorbing the cost associated with the original Address

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Confidentiality Program. Since this program is maintained by their office without an ongoing appropriation, we worked with the Secretary of State to make sure they can continue to do so, even with the new program participants that could be enrolled as a result of LB108 (sic-LB280). It was determined that allowing the secretary's office to utilize their UCC Cash Fund to support the ongoing cost would allow them to continue administrating the program without new General Funds appropriations. And for that reason I've drafted an amendment that includes permissive language that I would ask the committee to consider. That improves the sustainability of the existing program as well as allows them to add the trafficking victims. Following my testimony, you'll hear from Salvation Army and the Women's Center for Advancement who provides services to victims of human trafficking in our state and they will speak to the importance of ensuring that trafficking victims have access to the Address Confidentiality Program. Victims of trafficking have experienced immense amount of trauma. LB108 (sic-LB280) may be able to provide a small piece of comfort and safety for these victims knowing their address will remain confidential. I appreciate your attention to this issue and will be happy to answer questions now and/or closing. [LB280]

SENATOR MURANTE: All right, thank you very much. Senator Craighead. [LB280]

SENATOR CRAIGHEAD: Thank you for introducing this. I have one question. Does this bill include only trafficking victims? [LB280]

SENATOR CRAWFORD: So, the bill itself adds trafficking victims to the Address Confidentiality Program. So it exists already for victims of sexual abuse or stalking. And it's "trafficking" as defined in statute. [LB280]

SENATOR CRAIGHEAD: Does this include...here would be an example, let's say we have a situation where we have an abusive situation, wife leaves and she purchases a new home and that is public record. Does that include her to keep her address out of the public? [LB280]

SENATOR CRAWFORD: So it is working with the Secretary of State to keep those addresses out of the public in terms of interaction with the government, mailing, those kinds of uses of the address. [LB280]

SENATOR CRAIGHEAD: But would this...does this bill then also keep like stalkers and abusers away from these people? [LB280]

SENATOR CRAWFORD: Well, it is to protect the address. I mean, this is really about protecting the confidentiality of the address. [LB280]

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SENATOR CRAIGHEAD: Okay. [LB280]

SENATOR CRAWFORD: And making sure that they have a way to receive mail, and have a way to vote and do the other things you need an address for while protecting that address. [LB280]

SENATOR CRAIGHEAD: Okay. Thank you. [LB280]

SENATOR MURANTE: Senator Blood. [LB280]

SENATOR BLOOD: We're, obviously, aware that not all human trafficking relates to the sex trade. [LB280]

SENATOR CRAWFORD: Right. [LB280]

SENATOR BLOOD: But knowing that the average age of a teenager that enters the sex trade is 12 to 14 years of age. And if they are fortunate enough to get out of the sex trade and be helped, we find that the vast majority of them have been sexually abused as children, and it's important for us to find a way to stop this cycle because so many are later sought after by the person who put them into the trafficking, into the sex trade; so do you feel this will be...sorry this is a long question... [LB280]

SENATOR CRAWFORD: That's all right. [LB280]

SENATOR BLOOD: ...do you feel this will be an effective tool to help prevent that cycle where they are tracking these people down and trying to find them and drag them back into the trade? [LB280]

SENATOR CRAWFORD: So I think as one important part of that strategy...and the people behind me might be able to answer more about how it fits into the larger strategy, but definitely it's designed to make it harder for someone to find a former trafficking victim... [LB280]

SENATOR BLOOD: Right. [LB280]

SENATOR CRAWFORD: Right, and to try to recruit them and so the idea is to help them if...especially, you know, if they're...to help the victims who are trying to get out and turn their life around to make sure that they can have a way to keep their address confidential so they aren't getting recruited or...it's harder for someone to find them. [LB280]

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SENATOR BLOOD: It is, it is a cycle where they're constantly being sought because they become a possession and no longer a person unfortunately. And so the second question I would have is that...I have a very vivid memory when I was younger, much younger, in '79-80 in the Omaha area, and my father who speaks fluent Czech was helping somebody who had been brought to the United States, several young men, had been brought by the Russian Mafia to the United States, promised fairer wages, promised they could send money back home, and the first thing that happened when they came to the United States was their passports were taken and of course they became slave laborers. So to think this is a new problem, it's not. So this would also apply to people that were brought over here if they needed to seek refuge, if they were foreign. I know with all that's going on at the federal level, would they also be protected by a bill like this? [LB280]

SENATOR CRAWFORD: So it includes the definition of trafficking victim; and that's in Section 28-830, so that you can look at it in detail, see all the details, but I won't read that entire section. But it does include labor trafficking, which I assume that would be part of what you're talking about, somebody is recruited for labor and then turns into a person who is...maintained and required to perform labor regardless of any initial agreement by the other person to perform such type of service. So, there's a list of about 13...16 kinds of trafficking definitions. So it includes labor trafficking, includes debt bondage trafficking, it includes sex trafficking, and so you can see if that specific situation is in that list of 16. But I think it includes many of those kinds of conditions where a person finds them self in that vulnerable situation. Financial harm, extortion is in the list. [LB280]

SENATOR BLOOD: Right. [LB280]

SENATOR CRAWFORD: So I imagine that includes that situation. [LB280]

SENATOR BLOOD: Well done. [LB280]

SENATOR CRAWFORD: That's already in statute. [LB280]

SENATOR MURANTE: Any additional questions? Seeing none, thank you very much for your opening. [LB280]

SENATOR CRAWFORD: Thank you. [LB280]

SENATOR MURANTE: We'll proceed to proponent testimony on LB280. Are there any proponents? How many proponents do we have on LB280? Thank you. Welcome. [LB280]

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KAREN BOWLING: (Exhibits 2 and 3) Thank you. Thank you for the opportunity to come before you, Senator Murante and committee members. I am Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, and I serve as executive director of Nebraska Family Alliance. LB280 is supported by NFA and we appreciate the work of Senator Crawford, because we encourage Nebraska to join other states which have made additional provisions to add trafficking victims to their Address Confidentiality Program, known as ACP. Currently, ten states include trafficking victims in their ACP. And you will see the document that I've attached. I want to stop, I know the testifiers coming after me will give you more data, but I want to tell a story that's a true story and eight years ago our organization was introduced to this whole issue of trafficking. And I think we viewed it as a global issue, that minors were being trafficked from various nations, but it is in our own back door. Actually, the Lincoln Journal reported today the nine arrests here in our city. But it really entered where I understood this really is in our own back door. When I had a mother come visit me in my office and this mom attends the same church that I attend and her daughter had just graduated from Southwest High School here in the city and had received a full ride to Southeast Community College. She was a gifted young girl. She had a career ahead of her in music. And unfortunately, a trafficker spotted her and began to coerce her and promise her if she would join him she could propel her music career. Ended up being trafficked in which I didn't know exist called "The Loop" which is the I-80 corridor. Unfortunately for this young woman, she was a minor at the time and then turned 19 and so the whole legal system made it complicated to get her out. But coming along this woman for about a year and a half eventually was able to come out. But why I think this piece of legislation is so important, she feared for her life, she feared for her family. The trafficker had threatened to kill her mom and all of her siblings. So we were able to secure a treatment for her, but she didn't even want to be in Lincoln, Nebraska, and actually went to a different state. So I can give lots of data, but I feel that is important to be heard today because the victims deserve additional protection. Anything that we can do to provide them a hope, a future, and to let them know that as Nebraskans they are people of dignity, they are people of value, and we need to provide them everything that we can so they can have a life and a future. Thank you. [LB280]

SENATOR MURANTE: Thank you. Are there any questions? Seeing none, thank you very much for your testimony, much appreciate it. [LB280]

KAREN BOWLING: Thank you. [LB280]

SENATOR MURANTE: Additional proponent testimony to LB280? Welcome. [LB280]

FEDERICO VICENTE: (Exhibits 4 and 5) Welcome. Thank you. Good afternoon, Honorable Chair, members of the Government, Military and Veteran Affairs Committee. I am Federico Tomas Vicente, F-e-d-e-r-i-c-o T-o-m-a-s V-i-c-e-n-t-e. I'm the committee and community

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outreach coordinator for the Salvation Army's Fight to End Trafficking, also known as SAFE-T. It is a privilege to be able to address the committee in support of LB280 on behalf of the Salvation Army and the Nebraska Human Trafficking Task Force. The Salvation Army partners with the Nebraska Attorney General's Office as co-coordinators of the Nebraska Human Trafficking Task Force and through our SAFE-T program we serve as the lead state's survivor service coordinator, as you can see in the pamphlets that will be given to you. Through engaging on a cadre of local community providers, we strive to provide comprehensive services which ensure that physical safety of the survivors is paramount. As such, we strongly support passage of this bill which will benefit those we serve in the most critical area of personal safety. Because of the insidious nature of trafficking, including psychological, emotional, and physical control of the survivor by the trafficker, escape from the trafficker does not diminish the real and/or perceived fear of being found. By specifically including references to trafficking, enactment of LB280 will increase the possibility of survivors utilizing the Address Confidentiality Program. Safety trafficking specialists have protocols to provide protection and maintain confidentiality in regards to address of the survivors. Whereas, service providers in general may not have similar protocols or be aware that such program exists, we provide specialized training as well. This training will incorporate the Address Confidentiality Program. SAFE-T also supports the creation of the Human Trafficking Victims Assistance Funds. Typically, the needs of survivors are many and complex with very limited resources available to address those needs. The proposed fund will provide yet another needed source of assistance for victims/survivors struggling to recapture their lives after escape from the trafficker. The Salvation Army SAFE-T program urges the passage of LB280. Thank you. [LB280]

SENATOR MURANTE: Thank you. Are there any questions? Senator Blood. [LB280]

SENATOR BLOOD: You may have said this and I missed it, how many do you serve over, say, a 12-month period? [LB280]

FEDERICO VICENTE: It depends on the region. Right now in Omaha, we have currently eight victims that are being serviced. [LB280]

SENATOR BLOOD: But you serve statewide? [LB280]

FEDERICO VICENTE: Yes, statewide. Actually, if you can see in your pamphlets, we're divided into four regions and each specialist is, basically, specialized on the resources that are in those regions and around the state. So, if a person is...a victim is located in Grand Island, our Grand Island specialist will go there and will go to any of the surrounding counties. [LB280]

SENATOR BLOOD: Thank you. [LB280]

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SENATOR MURANTE: Thank you, Senator Blood. Any additional questions? Seeing none, thank you very much for your testimony. [LB280]

FEDERICO VICENTE: Thank you. [LB280]

SENATOR MURANTE: Welcome. [LB280]

AMY HOLMES: (Exhibit 6) Hi, everyone. Thank you for having me. My name is Amy Holmes, A-m-y H-o-l-m-e-s and I'm the program administrator for the Women Center for Advancement, or the WCA in Omaha. I want to thank you all for listening to our testimony today and thank Senator Crawford and her staff for their hard work on this important bill and for her continued support of victims of domestic violence and sexual assault. She's been a real champion and we appreciate that. I am here to testify on behalf of the WCA today and in support of LB280. I will not read the entirety of what's happening here in the letter, but I did want to offer you this information. I know that specific information on data and trafficking as it really happens in Nebraska is kind of hard to come by, so hopefully there's some useful information in the letter. If you have any questions or need additional information, please feel free to contact me. My contact information is in the signature line at the end of the letter there. But I will highlight a few things. To tell you a little bit about the WCA, we serve victims of domestic violence, sexual assault, stalking, and trafficking in the Douglas County area. We are growing. Our human trafficking program actually in collaboration with the Salvation Army with youth emergency services and with the women's fund in Omaha and so we anticipate that we will get better at serving this population and we will serve more victims. But as Senator Crawford mentioned, we would definitely put ourselves in the category of those providers that do not feel totally equipped to service this population adequately. It is a population that has very complex needs and we're just simply not there yet; but we hope to be. At the WCA, we offer advocacy. We have a 24-hour hotline available in both English and Spanish. We have self sufficiency services that helps folks learn to maintain safety and stability long term. We have career development services. We have a clothing donation closet. We offer crisis counseling. We have legal services that provide representation for immigration and family law matters. We have an active prevention education program that's going on in our community. And I also want to tell you a little bit about the military specific services that we offer. We're really proud to have four veterans on staff that offer direct services to clients in a variety of capacities. We do a lot with veterans and their families as they're transitioning from military life to civilian life. We also offer specific treatment through counseling for those who have experienced military trauma and PTSD. We have trauma-sensitive yoga classes as part of our veterans program. And this year, we're very proud to offer meditation classes as a part of our veterans program as well. And all of these services that I have mentioned are provided at no cost. So we're also very proud of that. We served 4,271 unduplicated clients in 2016. Interestingly, only 22 of those identified themselves as victims of trafficking. Based on the nature of the crime and how the dynamic of this particular victimization works, I would say

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that's very under-reported. Victims of trafficking rarely self identify. Normally, they're coming to us because of something else that has happened related to domestic violence or sexual assault. I think as we become better at screening and identifying these victims, we may see that number increase. We are one of the designated programs in the Omaha area that can provide assistance with the Address Confidentiality Program. We assisted 66 clients in 2015, and then 94 last year. So not a lot, given our entire population of clients that we're serving. But I can tell you that those clients that have utilized the program find it very, very beneficial. We've heard nothing but positive comments and it makes a really big difference for those people that are trying to move on with the lives and trying to stay safe. I can tell you the program works very, very simply. We help the client fill out a series of forms; we submit those to the Secretary of State's Office. And from everything we've heard from there, Secretary of State's staff handles it very swiftly and efficiently and there are no problems moving forward. I could just finish up here real quick. I think that I will not repeat why this program is so important, but I do recognize that without this assistance, trafficking victims may not be able to weave through all of the other complexities that we've talked about. So absolutely essential to add them to this particular program and we appreciate you considering that. Any questions? [LB280]

SENATOR MURANTE: All right. Thank you very much for your testimony. Are there any questions? Senator Blood. [LB280]

SENATOR BLOOD: So it's my understanding and it may not be correct, and I'm hoping you can answer this. Don't many of these traffickers are transient by nature and so really don't have an address that they can call home when they start working with these agencies? And so not only is the importance of having this address a way to protect them, but it's always a way for them to start getting service. [LB280]

AMY HOLMES: The victims? [LB280]

SENATOR BLOOD: Right. [LB280]

AMY HOLMES: Sure. And housing is one of the many unmet needs, maybe one of the main unmet needs of those victims that we're serving. So yeah, just to get an address in the first place would be a great step. And that's one of, I think, the biggest challenges we face is we really need to act quickly when we come into contact with someone who is facing all of these challenges because they don't have any place to stay put while we find out and figure out a way to help them. We need to have a way to get them safe, in a safe location, usually or many times offer medically safe detox, have food, clothing, shelter, the whole gamut available. And then for sure to be able to keep that location confidential will be key. [LB280]

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SENATOR BLOOD: Do you have the same type of safe housing available for these types of victims as you would say a victim of domestic violence? Or is it complicated now that they're experiencing a different type of violence or different type of victimization? [LB280]

AMY HOLMES: I'd say that our housing options for all of the clients that we serve are somewhat limited, but for trafficking victims there are additional complications. It usually just isn't safe to put them even in a shelter with an undisclosed location. [LB280]

SENATOR BLOOD: Right. [LB280]

AMY HOLMES: It simply doesn't work. We have offered hotel, motel stays. Again, not usually safe because they're usually located. We do have a provider that just started a specific...a facility that's specific for this particular population and provides residential services. I believe they have eight beds. So it's a start. [LB280]

SENATOR BLOOD: Right. [LB280]

AMY HOLMES: But it does take a really specialized service delivery model for sure. [LB280]

SENATOR BLOOD: Thank you. [LB280]

SENATOR MURANTE: Thank you, Senator Blood. Any additional questions? Seeing none, thank you very much for your testimony. Is there additional proponent testimony to LB280? Any additional proponents? Is there any opposition testimony to LB280? Is there any neutral testimony? Welcome back. [LB280]

COLLEEN BYELICK: (Exhibits 7 and 8) Thank you. Chairperson Murante, members of the committee, my name is Colleen Byelick, it's C-o-l-l-e-e-n B-y-e-l-i-c-k, I'm the general counsel and chief deputy for the Secretary of State's Office here in a neutral capacity with respect to LB280 on behalf of Secretary of State, John Gale. We've kind of heard about the program. I'm passing out a brochure about the program so I won't reiterate that. We've kind of heard about the initial funding and the lack of further funding for the program. I did want to tell you, currently we have 219 participants. So this is a relatively small program within our office. Our involvement is registering the participants, providing a substitute address for them to use, answering questions from other state agencies or centers regarding the program. We forward mail to the participants on a daily basis so that is one of our ongoing expenses is staff and personnel and the cost of mailing for this program. We did ask Senator Crawford, with respect to the amendment, if she would consider transferring the funding source to the Uniform

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Commercial Cash Fund simply because we feel that that fund is better suited to sustain the ongoing costs. Our concern with the program is just what is this look like in terms of expanding the program. Initial conversations that we've had, you know, this may be an increase of five to ten users. If that's the case, then we can get funding established with the UCC Cash Fund. We think that's something that we can handle. If this is a huge unknown population and a huge increase to the program, then we would be concerned about funding. We also have learned that there's possible federal funds available. And so we're going to explore that as well as a source of funding, but we're just in the initial stages on that. We definitely applaud Senator Crawford for her efforts in this area and for coming and talking with our office. She wanted to learn about the program; she understood our concerns, so we really appreciate that. And, you know, we're...if we're looking at kind of a small expansion of this program, that's something we feel we can facilitate with the amendment. That's kind of where we're at, at this point. I'd be happy to answer any questions you may have. [LB280]

SENATOR MURANTE: Thank you very much for your testimony. Senator Blood. [LB280]

SENATOR BLOOD: Thank you, Senator Murante. I noted that you said, and it's also in your notes that you have 219 participants, the majority of which are children. [LB280]

COLLEEN BYELICK: Right. [LB280]

SENATOR BLOOD: And so the question I ask is are the majority of children because those are the most vulnerable or because they are consistently the ones most likely to be victimized? [LB280]

COLLEEN BYELICK: I don't know that we truly know because since the purchase of (inaudible) to a victim assistance center, we're a little bit removed from those kind of initial conversations; which I think is appropriate because we're not trained counselors, we don't have social worker or case workers on our staff. So I think they're going to the right location for the services. I think at times to keep the entire family safe, if you're talking about a domestic violence situation, and then you need to keep the children safe as well, you have to enroll all of those individuals as part of the program to keep that family unit safe. So I think some of the children in the program are not necessarily, maybe victims themselves, but associated in a family where someone has been victimized. [LB280]

SENATOR BLOOD: If they're in a family where there's domestic violence, they're also victims, not to correct you, but... [LB280]

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COLLEEN BYELICK: True, true. [LB280]

SENATOR BLOOD: Because the cycle of violence creates a victim on everybody involved. [LB280]

COLLEEN BYELICK: Sure. [LB280]

SENATOR BLOOD: And I didn't mean that to be rude. [LB280]

COLLEEN BYELICK: Right, no, I didn't take it that way. [LB280]

SENATOR BLOOD: I meant it as a clarification. So can you tell me if the majority are children indeed then 75 percent? [LB280]

COLLEEN BYELICK: I think the numbers were 130 or so were children. [LB280]

SENATOR BLOOD: Okay. [LB280]

COLLEEN BYELICK: I think 90 were women; and the remaining were men. [LB280]

SENATOR BLOOD: All right. Thank you very much. [LB280]

COLLEEN BYELICK: Okay, thank you. [LB280]

SENATOR MURANTE: Thank you, Senator Blood. Any additional questions? Seeing none, thank you very much for your testimony. [LB280]

COLLEEN BYELICK: Thank you. [LB280]

SENATOR MURANTE: Is there any additional neutral testimony on LB280? Seeing none, Senator Crawford. [LB280]

SENATOR CRAWFORD: Thank you, committee members. With LB280 and the amendment, we will make sure that our Address Confidentiality Program that exists is sustainable financially and will also be adding trafficking victims in our state as individuals who are able to use the program. And that's a very worthwhile goal and it's something that we can do. As you've heard,

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this is a fairly small program, but a very critical program for the people who are served by the program. And so I think it's important to make sure that it's sustainable and important to add our trafficking victims. And so you should have the amendment from us. And if you have any other questions, I'm happy to try and answer those now. [LB280]

SENATOR MURANTE: (Exhibit 9) Thank you, Senator Crawford. Are there any final questions? Seeing none; before we close the hearing, I do have a letter of support of LB280 from Bri McLarty (Huppert) of Nebraskans for Civic Reform. And that closes our hearing on LB280. Thank you very much, Senator Crawford, much appreciate it. [LB280]

SENATOR CRAWFORD: Thank you. [LB280]

SENATOR MURANTE: We'll proceed to our next item on the agenda, LB661. Senator Kuehn, welcome to your Committee on Government, Military and Veterans Affairs. [LB661]

SENATOR KUEHN: (Exhibits 1 and 2) Thank you. Good afternoon, Chairman Murante and members of the Government, Military and Veterans Affairs Committee. For the record, my name is John Kuehn, J-o-h-n K-u-e-h-n, and I represent the 38th Legislative District which comprises seven counties in south-central Nebraska. I'm here today to introduce LB661 to your committee for consideration. LB661 creates a new section in public records law making the identity of any person or entity that manufactures, supplies, compounds, or prescribes the substances, medical supplies, or medical equipment utilized to perform a lethal injection confidential. Known as a shield law, the law protects individuals involved in the manufacturing of drugs used in lethal injections from harassment and threats. The integrity of the drugs and the transparency of the execution process is maintained as the identity of the drug and the laboratory analysis of the drug are still publicly available. Only the identity of the individual or the entity would remain confidential. I want to be clear from the outset of today's public hearing that LB661 is written specifically only to address public records statutes found in Section 84-712. It does not impact the judicial application, the sentencing, or court processes regarding the death penalty. It does not amend the criminal code. It does protect private citizens from undue harassment. It does not change the duties and responsibilities of the state. Last November, the people of Nebraska spoke overwhelmingly when they passed Referendum 426 which preserved the death penalty as a punishment for the most heinous of crimes. Following the referendum petition that successfully gathered over 143,000 signatures in 90 days, 61 percent of the voters and a majority of the voters in 92 of 93 Nebraska counties voted to reverse the 2015 legislative repeal of the death penalty. In doing so they sent a clear message to Nebraska lawmakers regarding capital punishment. A frequent claim of death penalty opponents is that the system for carrying out the death penalty is broken beyond repair. It is now the responsibility of the elected officials and state agencies, us, to act in accordance with the will of the people and address the functional problems with the death

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penalty. One of the most significant impediments to a functional system of capital punishment in Nebraska is the inability to acquire anesthetic drugs administered to produce unconsciousness during lethal injection. These drugs are commercially unavailable as a result of political activism by death penalty opponents and public harassment of companies and individuals that manufacture the drug. Due to the shortages, many states have had to turn to specialized compounding pharmacists to formulate individual drug dosages. In several cases, those compounding pharmacies have even ceased production of these medications due to public harassment. Some states, like Nebraska, have unsuccessfully turned to imported anesthetics to obtain supplies. I do want to take a moment and some time to explain to this committee the very real human cost of activist harassment against those who produce drugs that may be used in a lethal injection. This is a key element that I want this committee and I want the people of Nebraska to understand. Death penalty opponents have successfully eliminated sodium thiopental, an anesthetic induction agent routinely used in lethal injection, from the U.S. market to protect the lives of convicted death row inmates. Sodium thiopental is a safe, effective, and FDA-approved anesthetic agent that is considered a mainstay of modern anesthesia. Throughout the developing regions of the world, due to its affordability, its stability, and its safety, sodium thiopental is in many cases the only viable option for anesthesia. Protests led the last U.S. manufacturer of sodium thiopental to cease commercial production of the drug in 2009. Sandoz, a subsidiary of Novartis, manufactures the drug in Europe but the company has banned its importation into the United States to prevent its use of lethal injections due to activist protests. The unavailability of sodium thiopental in the United States has prompted the American Society of Anesthesiologists to send written appeals to the FDA to aid the importation of sodium thiopental stating, quote, a dangerous reduction in the availability of anesthesia induction medications, unquote, and that, quote, the safety of American patients is now in jeopardy, unquote. Furthermore, the Society of Anesthesiologists stated, quote, it is an unfortunate irony that many more lives will be lost or put in jeopardy as a result of not having drug available for its legitimate medical use, unquote. The list of approved effective anesthesia induction agents is relatively small and each drug has its uses and its contraindications. To illustrate my point of the very real effects of this harassment and protest, propofol, the anesthetic drug that is frequently substituted for anesthesia due to the lack of sodium thiopental, is not indicated for primary and sole use in pregnant, geriatric, cardiovascular, or neurological surgical patients because it causes a dangerous drop in blood pressure and respiratory depression in newborns. In order to be used, because sodium thiopental is not available, a second class of drugs called pressors are required to counteract the negative effects of propofol. Propofol itself has experienced production shortages leaving U.S. physicians with less-than-optimal options for safely anesthetizing patients. I cannot overstate the absurdity or the magnitude of the social injustice that has been created by an anesthetic shortage due to those who wish to protect death row inmates in exchange for vulnerable lives around the world who are in need of safe medical care. Sodium thiopental is just the beginning. As states who utilize lethal injection implement alternative protocols using different drugs, it has become a very real reality and possibility that harassment will lead to

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shortages of additional medications including, midazolam, propofol, and other safe, approved, and effective anesthetic and sedative drugs. We've already seen this potential as Missouri has withdrawn its plan to utilize propofol after the manufacturer of the drug threatened to stop selling the drug in the United States. Fifty million doses of propofol are used annually in the United States as an anesthetic agent. I'm going to reiterate: Needed and appropriate medical anesthetics are not available due to harassment of medical providers. How many medical patients will suffer, have less-than-optimal surgical and medical care, or die to protect convicted death row inmates? Of the 31 states that currently have lethal injection as a method of execution, 15 have a shield law in place to protect individuals involved in the manufacture of drugs used in lethal injection from harassment and threats. The United States Supreme Court has stated that since execution by lethal injection is legal, states must be allowed some manner to carry it out in an execution. Disclosing the identity of suppliers subjects them to the very real risk of harm, violence, and harassment that would prevent the state from obtaining compounds needed to perform state obligations. The Georgia State Supreme Court validated the Georgia shield law which stated the case most effectively. So rather than try to paraphrase, I want to quote it to you directly. The high court in Georgia stated, quote, the reasons for offering such privacy are obvious, including avoiding the risk of harassment or some other form of retaliation from persons related to the prisons or from others in the community who might disapprove of the execution as well as simply offering those willing to participate whatever comfort or peace of mind that anonymity may offer. Although the identity of the executioner who actually inflicts death upon the prisoner is the most obvious party in need of protection, we believe the same logic applies to the persons and entities involved in making the preparations for the execution, including those involved in procuring execution drugs. Second, without the confidentiality offered to execution participants by the statute, as a record and case law show, there is a significant risk that persons and entities necessary to the execution would become unwilling to participate, unquote. I remain a steadfast advocacy for transparency in government, especially the votes and actions of public officials. Private citizens, however, have a right to protection from undue harassment and threats for carrying out their jobs as private citizens. Pharmacists and other private entities involved in this process have not voluntarily pursued public office. They should remain private. Additionally, Nebraska state law has identified a number of privacy provisions in public records law to protect private citizens and their companies in their interactions with state government. These include the constituents who correspond with our offices here in the Legislature, companies that receive tax incentives from the state, entities that receive state dollars in matching funds through Nebraska Innovation Campus, and others, as well as trade and proprietary information. Let's think about this in perspective. If we as a state aggregate company data to protect the identity of corporations receiving tax breaks so they are not put at a competitive disadvantage, it is perfectly reasonable to protect the identity of private professionals through the course of doing their private jobs. I have a couple of handouts for the committee to provide some visualization, one that includes the states that have existing shield law; another, some excerpts that include a number of court rulings by the United States Supreme

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Court and other state supreme courts concerning privacy and open records. These two handouts also include excerpts from the Georgia State Supreme court which has upheld the language very similar to LB661 with regard to privacy. As you move into the testimony this afternoon and as the committee reflects upon LB661, this bill presents one fundamental issue and that issue is this: What is the compelling interest to know the individual who supplies the drug provided in a lethal injection? If all other information including the drug, its composition, its analysis is provided to the convicted and to the public to provide oversight and to scrutinize and provide the integrity of the compound in the process, in what value to the state or the public is the name? The identity provides no material value to the convicted or the public and certainly does not justify the harassment and retaliation of a private citizen. With that, I thank you for your consideration and attention this afternoon and welcome any questions the committee may have. [LB661]

SENATOR MURANTE: Thank you, Senator Kuehn. Senator Blood. [LB661]

SENATOR BLOOD: Thank you, Senator Murante. I actually have several questions. [LB661]

SENATOR KUEHN: That's okay, great. [LB661]

SENATOR BLOOD: I hope you can help me clarify it. [LB661]

SENATOR KUEHN: You bet. [LB661]

SENATOR BLOOD: Great article in the Lincoln Journal Star, by the way. [LB661]

SENATOR KUEHN: Thank you. [LB661]

SENATOR BLOOD: You said it today and you said it in the story that...and by the way, in my district, overwhelmingly they were in support of the death penalty. So that's the area I'm coming from. You said that the death penalty was broken beyond repair. Are there specific steps that we can take to make it workable? I'm still curious, what exactly is broken? [LB661]

SENATOR KUEHN: Well, in response to that, what I was referring to is a number of claims that were made during the debate of the repeal initiative two years ago. That was one of the claims that was made was that the repeal should occur because the death penalty itself was not functioning due to the lack of a successful execution in the state of Nebraska. So I was not making an assertion of that claim. I was repeating a claim that others had made. It would then be...it is my belief and why I'm here today that there are very pragmatic steps that we can take as

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a state to ensure that the system works functionally in the best way to protect both the rights of the public, manifest and represent the interests of the state, as well as ensure and guarantee that the transparency and due process of the convicted. [LB661]

SENATOR BLOOD: Do you know if Nebraska has a mandated backup method of execution like many states have? [LB661]

SENATOR KUEHN: There are some changes which have made to the protocol and I'm not well versed in that. I believe that Director Frakes and others will be testifying, can maybe give you those kinds of issues. I think one of the challenges in addressing this protocol is how we develop a system that is responsive to an ever-changing pharmaceutical environment, whether it is the actual drugs used in the protocol or not, whether even the availability of those compounds. So this is specifically just addressing that one piece of a much larger process. [LB661]

SENATOR BLOOD: And it's interesting you brought up protocol because I did look up to see what our protocol was and prior to, I think, the 24th of January our protocol took approximately 8.4 minutes for the lethal injection protocol. As you mentioned, the sodium thiopental which depresses the nervous system and then the...now you're a doctor and I'm not so. [LB661]

SENATOR KUEHN: Pancuronium bromide. [LB661]

SENATOR BLOOD: Pancuronium bromide. [LB661]

SENATOR KUEHN: Yes. [LB661]

SENATOR BLOOD: Which is a relaxant, takes about another 40-45 seconds to induce paralysis and respiratory arrest. [LB661]

SENATOR KUEHN: Yes, it's actually a paralytic. Yes. [LB661]

SENATOR BLOOD: And then potassium chloride that stops the heart in about 30 seconds, unless of course there's an error in the IV line insertions. And then it starts again. So the protocol which I thought was interesting--and since you said the prison system is here, maybe they can clarify that for me--it really didn't talk about the protocol as much as the steps that we take as to who's involved in the steps now. So do you know if it's anticipated that we'll be using the same protocol when it comes to the injection protocol, or is that up in the air? [LB661]

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SENATOR KUEHN: I'm going to leave that up for Corrections. That's not something to which I can provide absolutely factual testimony and I don't want to misrepresent anything. So I'm going to leave that question that you have, if possible, for someone who may be much more well versed and able to give you accurate information with regard to that change. Yes. [LB661]

SENATOR BLOOD: All right. A couple more questions. I'm sorry. [LB661]

SENATOR KUEHN: Okay, no problem. No worries. [LB661]

SENATOR BLOOD: I'm just learning so much. That's the nice thing about being a freshman senator. [LB661]

SENATOR KUEHN: No, I appreciate your diligence in addressing this issue. [LB661]

SENATOR BLOOD: Does Nebraska currently use compounding pharmacies? [LB661]

SENATOR KUEHN: Compounding pharmacies are available in the state of Nebraska for a wide variety of uses. That's one of the challenges in just modern pharmacy is that there are a number of specialty drugs which are not commercially available, as well as the preparation and formulation of the drug. So the utilization of compounding pharmacies continues to be an ever-evolving issue in just production of pharmaceuticals in general. [LB661]

SENATOR BLOOD: I've actually utilized one before. It takes days to get something done. It's horrible. And then one of the things I found in my research, and I'm hoping you can comment on this, Ohio was stopped by the courts from using the second and third drugs in their protocol. And I know they've had issues in courts in reference to the public records. In fact, Missouri, last month a judge ruled that the state knowingly violated public records laws by refusing to disclose the supplies of lethal injection drugs. And so far the state has not appealed. Where is Nebraska at in having concerns that if indeed this were to go to court, where would we be sitting at? [LB661]

SENATOR KUEHN: Yeah, and I think the challenge here and this is why it's important to deliberate and why as I looked at this bill and legislation, I looked specifically at language that had gone through a court test. So you'll look very similar...if you look, LB661 is written very similar with language to the Georgia law which has gone through the Georgia State Supreme Court. Now each of the 15 states that have shield laws have been in different stages of court challenge at some point. Some have been unchallenged. Others have different regulations in terms of whether or not they provide, for example, open access to the drug itself or to the testing

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of the drug or what may or may not be redacted. So it's not really an apples-to-apples comparison to compare LB661 to the Missouri law. I'd have to look up specifically the differences in language. But different language in different state laws are going to provide different levels of access. What you'll notice is this strictly regulates the identity of the individual, not access to the name of the drug or analysis of the drug. [LB661]

SENATOR BLOOD: Right. Wasn't the...and again, I've read so much information, since we have more time on the floor to do things like this recently, wasn't the Georgia case though just like 5-4? I mean it just made it by like one vote? [LB661]

SENATOR KUEHN: There was...there were, I believe, two dissenting votes in the Georgia case, yes. And it had a whole number of issues. And again, I'm not an attorney nor am I going to pretend to be one. [LB661]

SENATOR BLOOD: Nor I. [LB661]

SENATOR KUEHN: So I can give you the opinion, you can certainly read it if you would like. [LB661]

SENATOR BLOOD: All right. Thank you for answering all of my questions. [LB661]

SENATOR KUEHN: Yes, Senator Blood. [LB661]

SENATOR MURANTE: Thank you, Senator Blood. Senator Hilgers. [LB661]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Senator Kuehn. Two questions if you don't mind. One is a clarification as to what you said and I was hoping maybe you could elaborate on it. A casual observer might think that the reason...the concern...or why individuals may want this through a FOIA request--it's distinct from a judicial application as you mentioned--would be to put pressure on the supplier not to just to do one thing, which is not sell to the state for purposes of lethal injection. What I thought I heard you say was that the impact has been broader than that. In other words, it's not just limiting the sale to the state, but in fact, manufacturers and vendors are ceasing to manufacture for sale in the United States. [LB661]

SENATOR KUEHN: Correct. [LB661]

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SENATOR HILGERS: So can you confirm that's right. And then secondly, can you elaborate a little bit more on that in terms of the history and how many...maybe how suppliers have been lost or what the markets look like it because it sounded from your quote that it's been a pretty significant change. [LB661]

SENATOR KUEHN: Yeah, absolutely and I appreciate that opportunity for clarification. Let's say, for example, sodium thiopental. So sodium thiopental is not a drug that is under patent. So the compound and the way to manufacture it is certainly freely available and any company that wishes to do so can manufacture it. The challenge becomes twofold. One, outside of individual compounding pharmacies, large-scale pharmaceutical manufacturing is a highly regulated process and a highly cost-intensive process in terms of when a major manufacturer chooses to produce the drug. So, for example, with sodium thiopental, the last domestic supply, meaning made here in the United States, ceased producing it in 2009. And part of that was just widespread harassment of the company itself for continuing to produce the drugs. And part of the challenge is when you're talking about a major manufacturer, once they produce the drug and it enters into the supply chain they have little control over where it goes in terms of between individuals who have the license and authorization to use and obtain the drug. So major companies have backed off which has left simply compounding pharmacies. And what we've seen is that even compounding pharmacies which are licensed and able to produce sodium thiopental have backed off in terms of fear of their identity being disclosed. And it's a situation which has happened in Texas and other states where suppliers have simply said I'm not going to produce the medication, and I'm not going to make it available. And so because of that lack of a commercial source, there just simply isn't enough of sodium thiopental to be available. And I think the Missouri example tells us exactly what the potential is going forward with propofol. When the governor of Missouri placed propofol within the Missouri protocol, immediately the manufacturer, which is a European company, said if the state of Missouri utilizes propofol in its protocol it would withdraw propofol from the U.S. market. That's huge. We're talking about 50 million doses annually of propofol. And quite frankly the absence of sodium thiopental as an induction agent, we don't have a lot left to utilize safely for anesthesia other than propofol. And I don't think given what we've seen with sodium thiopental, what happened in the state of Missouri with the threats over propofol, it is not at all unreasonable to follow this out through its extension. If we have states now that start utilizing midazolam which is the drug in the one-drug protocol, what happens if we have companies just simply say it's not worth the headache for harassment anymore and we're not going to sell domestic supply of midazolam? Midazolam is the...the trade name is Versed. If you've ever had outpatient surgery or anything like that, you've probably had midazolam. And we have a cascade effect that has a very real social justice impact on the availability of these medications. And we must ensure that the individuals who manufacture this drug in a private setting--and these again are safe, FDA-approved pharmaceuticals--are not driven out of business by unreasonable harassment and threats. [LB661]

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SENATOR HILGERS: Thank you for that explanation. The second question I had, and it was at the beginning of your testimony, just to clarify again, you mention that this is limited to the FOIA, public records requests but that it doesn't impact the judicial application. In other words, if...the prisoner can still, through legal means, identify the manufacturer of the drugs used in the...can you elaborate on that? [LB661]

SENATOR KUEHN: Well, I mean, the prisoner itself, the convicted would not have access to the identity of the manufacturer. It would not preclude them from having access to what the compound is. So they would not be permitted...be prohibited from identifying that it was sodium thiopental or propofol. It would not prevent them from having full access to laboratory analysis or independent laboratory analysis. It simply protects the identity of the individual or entity who manufactured it, which different states have approached that with a more broad brush. Others have gone more precise. And LB661 is very refined and very strategic in that element. [LB661]

SENATOR HILGERS: Okay. Thank you. [LB661]

SENATOR MURANTE: Thank you. Senator Briese. [LB661]

SENATOR BRIESE: Thank you, Senator Murante, and thank you for being here, Senator Kuehn. I do notice that 84-712.05 is generally the exceptions, listed exceptions to the Public Records Act and this is put in a different section of statute. Any particular reason why it's in a different section? [LB661]

SENATOR KUEHN: Yeah, the exceptions was getting incredibly long and when you start listing it with other exceptions and if you've taken a look at those exceptions, there's a little bit of everything and it's kind of a hodgepodge. So placing it in 84-712.07 simply ensured that it wouldn't create confusion as to whether or not it applied the same way as does our phone records in our legislative offices. So it's the same section of public records, but it just isolated itself so there wasn't any potential for misinterpretation about whether it related to some of the other FOIA requests. And you'll notice in the section which it is inserted, directly above that is the federal exceptions area. So there is an area that includes what federal contracts and federal information is accepted. So it's just placed right there to avoid that potential confusion or misinterpretation. [LB661]

SENATOR BRIESE: Okay. Thank you. [LB661]

SENATOR MURANTE: Thank you, Senator Briese. Senator Wayne then Senator Blood. [LB661]

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SENATOR WAYNE: So you stated that part of this is to protect manufacturers from harassment, but isn't it also true that most of the companies, roughly over 20 other American or European companies who manufacture these types of products have refused to do business for moral and business reasons as cited with Pfizer? [LB661]

SENATOR KUEHN: Right, and they the option to do so. I mean an individual company has the right to choose not to produce the product. The complication here, however, is that companies that, such as a compounding pharmacy or a smaller pharmaceutical company may choose to do so but does not because of the threats and harassment. So while I certainly respect the right of other companies to choose not to produce it, there are companies which also have the option to choose to do so if they wish and they should be free of harassment if they do. [LB661]

SENATOR WAYNE: But the conclusion we were drawing from your testimony is that part of the reason many of these drugs have dwindled down is because of the harassment, when in fact many of them have dwindled down because they choose not to be in the business of executions. [LB661]

SENATOR KUEHN: Absolutely. And they choose not to be in the business, in many cases, domestically because of political pressure placed by activist groups, starting primarily in Europe. So, yeah, it's certainly some of them do, many of them have. But as we know in the market, there exists and continues to be a strong demand and requirement, for example, for sodium thiopental. If it was available, I know a number of practitioners, for example, just so you know it's a veterinarian aesthetic as well. And I have used it early in my career when it was available. And so certainly the market demand still exists for sodium thiopental. There just simply is not a company willing to withstand the public and political pressure to produce it. So while I certainly respect Pfizer and any other multinational who chooses not to produce it, I also think that has to be weighed against the right and option of a domestic company who chooses to produce it and to meet that legitimate market demand without undue harassment. [LB661]

SENATOR WAYNE: So could it be that the demand of the market is telling the government that they don't want to participate, not necessarily what you're saying though? [LB661]

SENATOR KUEHN: The demand of the market would be practitioners and I think the American Society of Anesthesiology stated very clearly what the demand is within the medical community for safe and effective sodium thiopental. It's why they appealed and have pleaded with the FDA to ensure a...and secure a pipeline and a supply of these compounds for a legitimate medical use. [LB661]

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SENATOR WAYNE: So along those lines, would you be open to the idea to making sure that in the regs or protocol that the state identifies to the company what their purpose is for using this protocol or this compound for the product? [LB661]

SENATOR KUEHN: Well, certainly that becomes an issue of the rules and regs which is...would be found under administrative code in terms of who is obtaining that. Now certainly to obtain the compound is still required under DEA regulations, you have to have someone with a DEA license, you still have to have an individual utilize that with prescriptions. So in order to obtain a controlled substance, the chain of custody still has to be documented. So it would be...I can't think of a single instance in which, for example, a compounding pharmacy would be able to sell a compound to an individual or to have it obtained without the ultimate legal licensure and process for the ultimate intent to be available. [LB661]

SENATOR WAYNE: So you're saying that a company would automatically know that their compound is going to be used for lethal injections? [LB661]

SENATOR KUEHN: If the state of Nebraska Department of Corrections contacted a compounding pharmacy to legally obtain a dose of sodium thiopental and had the appropriate paperwork, the fate of those drugs would be obvious and the compounding pharmacy has the ability to ask what their intent is. [LB661]

SENATOR WAYNE: And do you think an inmate, or anybody, not just an inmate, anybody has the right to know what goes into their body? [LB661]

SENATOR KUEHN: I think they have a right to know the compound and they have a right to know and assure its purity. And LB661 does absolutely nothing to change that fundamental piece of knowledge. They have the right to know the identity of the drug. They have the right to know its laboratory analysis and its purity. And that's unchanged in this law. [LB661]

SENATOR WAYNE: But underneath your scenario, do you...I guess, do you ever see a scenario in which because the market is shrinking, according to you, and maybe it shrunk so much that if a compound or if a drug is used it would be readily identifiable of who it was? [LB661]

SENATOR KUEHN: There's always that possibility and I think I think we've already seen that happen. We've seen... [LB661]

SENATOR WAYNE: So then... [LB661]

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SENATOR KUEHN: We've seen media outlets who have...who have tried to obtain and under...make allegations or suspicions about the identity of that compounding pharmacy and I think that's additionally a danger. And again, if you have compounding pharmacists that are concerned about producing sodium thiopental for legitimate use--let's say I as a veterinarian decided that I really wanted to use sodium thiopental effectively as an anesthetic agent and I called compound pharmacy X and ordered sodium thiopental for legitimate use--I think there's a very real and it's what we see happening that they simply won't produce it out of fear that someone will assume that that's going to a lethal injection and potentially create additional harassment and threats to their business or even individuals in their family. So I think we have to be ever mindful about the greater impact of this activism on businesses' ability to conduct their business. [LB661]

SENATOR WAYNE: That didn't answer my question. So because of the shrinking market and the ability of a product to be able to be linked back, underneath this, wouldn't that inmate in this case still not be able to information that there was only one person producing that? [LB661]

SENATOR KUEHN: Unable to find what information? [LB661]

SENATOR WAYNE: Unable to get the actual compound... [LB661]

SENATOR KUEHN: Why? [LB661]

SENATOR WAYNE: ...or actual products. [LB661]

SENATOR KUEHN: There is nothing that would restrict them. I mean that the compound would be identified. A laboratory analysis would be available. My...the very crux of LB661 is what if...if the compound name is known, which it certainly can be, if the compound analysis is known, what difference does it make if Joe Smith from the compound pharmacy X was the source versus Joe Jones from compound pharmacy Y. They still have free available access to the drug name and to the drug analysis. [LB661]

SENATOR WAYNE: But if the market is so limited, doesn't that defeat the purpose of...if there's only three people producing it then you're going to know it's one of the three, right? [LB661]

SENATOR KUEHN: Well, hopefully if shield laws are in place we will have more than three in the marketplace. And I think that's exactly my point. There's a greater human cost here to reducing and shrinking a marketplace to only three sources. [LB661]

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SENATOR WAYNE: No more questions at this time. [LB661]

SENATOR MURANTE: All right. Senator Blood. [LB661]

SENATOR BLOOD: Last question, I promise. [LB661]

SENATOR KUEHN: No problem. [LB661]

SENATOR BLOOD: Thank you, Senator Murante. Senator, in 2011, early 2011, you may not know the answer to this, but hearing some of the questions that I've have heard, we obtained sodium thiopental from India early in that year. And apparently, and again, I just read all this information this morning so I may have my numbers wrong, but I think it was enough to utilize on several hundred people. And then later in the year we received yet another supply that only could kill like a hundred...excuse me, could be utilized on like a hundred people from a Swiss company. And the Swiss company asked for those drugs back. Was that because they were getting harassed? [LB661]

SENATOR KUEHN: Part of it, and I don't know the specifics about that situation. But remember, one of the challenges...and sorry if this is a walk through international pharmacy shipment that government doesn't really want to know, but when you start talking about moving controlled substances across international borders it becomes a considerable regulatory issue. So one of the challenges, and this is exactly what LB661 hopes to avoid, is a dependence on foreign sources. I mean if there is no domestic source of sodium thiopental and the state has a responsibility to carry out the obligation given to it by the people of Nebraska, it's incumbent upon the state to follow through on its laws. And if the only source of sodium thiopental is an international source, then that creates a whole nother side of complications such as what we've seen in the 2011 case. So the intention would be to avoid those complications by having a domestically produced, domestically supervised, domestically licensed source that would thereby avoid all of these international complications and things that we've seen that quite frankly is less than ideal in what's happened over the course of the last several years with the death penalty. [LB661]

SENATOR BLOOD: What is the shelf life of something like that? I mean it seems like in a year if you get enough to utilize it on several hundred people all in one year, is it that it only has a shelf life of six months? [LB661]

SENATOR KUEHN: As just a point of process, every drug is going to have its own individual shelf life. And you know, compounded drugs, for example, may have an expiration date of only

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60 days or 90 days. With LB661 and the idea of utilizing a domestic compounding source is that the drugs can be compounded as needed and avoids this...the reason for procuring large quantities of drugs internationally at one point in time is because it's such a complicated process and because it's such a time-consuming process and such a highly regulated process. So by utilizing a domestic source through, say, a compounding pharmacy or domestically produced source you dramatically narrow the time line and you have the ability to ensure, again, that the drugs obtained are safe, are within the time line of their expiration date, and manufactured and produced under U.S. standards. And I think that that is a key element to keep in mind as we're ensuring that this process is fair and is transparent. [LB661]

SENATOR BLOOD: Thank you. [LB661]

SENATOR KUEHN: Thank you. [LB661]

SENATOR MURANTE: Thank you, Senator Blood. Senator Wayne. [LB661]

SENATOR WAYNE: Last question. So we mentioned harassment of companies. You don't have to do it today. You can follow up with me later, but when...can you point to specific companies that have been harassed. [LB661]

SENATOR KUEHN: I'm going to give you a very real and very personal one, Senator Wayne. I will tell you that I am glad today that my parents are gone on vacation. I am glad that my mother and father are currently out of the country and don't have access to social media. I'm not producing sodium thiopental. I'm advocating a policy that is strongly upheld by the people of Nebraska. And if you saw and read the things that I have seen and read in the last week regarding simply carrying this bill, I don't need to provide an example of what happens to a company or a compounding pharmacist if they're producing the drugs. I know firsthand exactly what kind of harassment can take place when you advocate on this issue. So I can certainly look and I can find evidence, but I will tell you directly that it's not just the companies who experience this kind of harassment. [LB661]

SENATOR WAYNE: But there's a difference. We signed up for public office. [LB661]

SENATOR KUEHN: Absolutely I did... [LB661]

SENATOR WAYNE: And that's what we're here to do. [LB661]

SENATOR KUEHN: ...but I will also tell you that my family did not. [LB661]

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SENATOR WAYNE: And I respect that. And coming from Omaha dealing with the issues I dealt with, we've all been threatened. But if we base a policy decision off of harassing companies, I want to be able to point, if you want me to support this, that here are some concrete examples of companies who have been harassed and have shut their doors or we've lost jobs. [LB661]

SENATOR KUEHN: But there's some compounding pharmacies. We'll get you in touch specifically with them to provide that information. [LB661]

SENATOR WAYNE: Thank you. [LB661]

SENATOR KUEHN: You bet. [LB661]

SENATOR MURANTE: Thank you, Senator Wayne. Senator Lowe. [LB661]

SENATOR LOWE: You have said that sodium thiopental...did I say that right? [LB661]

SENATOR KUEHN: Yep, you did. [LB661]

SENATOR LOWE: I'm pretty much ignorant here. [LB661]

SENATOR KUEHN: No, that's good. [LB661]

SENATOR LOWE: ...is used in other applications across the medical field and it's not manufactured here in the United States. [LB661]

SENATOR KUEHN: Correct. Commercially. [LB661]

SENATOR LOWE: Commercially. If we would pass the shield law like this, would this make it easier for pharmacies or whoever sells to the medical field to be able to acquire it because now we do not have to go through international laws and regulations and...? [LB661]

SENATOR KUEHN: I think so, and that's ultimately the hope is that we have to start looking at ensuring that we have domestic supplies of critical anesthetic agents. And will this suddenly open the floodgates and make sodium thiopental available? No. Will it take a step in the direction of hopefully increasing companies willing to produce that? Potentially. And given the value that sodium thiopental has as a medical agent and the value it has in providing safe anesthetic care, it would be my hope that we could take every step possible to meet that demand. [LB661]

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SENATOR MURANTE: Thank you, Senator Lowe. Any final questions? Seeing none, thank you very much for your opening. [LB661]

SENATOR KUEHN: Thank you. [LB661]

SENATOR MURANTE: And we will proceed to proponent testimony on LB661, proponents. Welcome. [LB661]

BOB EVNEN: Mr. Chairman, members of the committee, my name is Bob Evnen, B-o-b E-v-n-e-n. I'm an attorney in Lincoln and I am one of the cofounders of Nebraskans for the Death Penalty. I will be uncharacteristically brief. There's a long history of protecting the identity of those involved in execution protocols. The reasonableness of such protection has just been articulated to you quite well I thought by Senator Kuehn, but it's immediately obvious to anyone who brings the slightest bit of thought to that question. Nevertheless, you'll hear objections today to this bill. But the objections really have nothing to do with so-called transparency, which is a transparency that would endanger people. Those who voice objection don't really object to the protection that this bill would provide. What they object to is the death penalty. But that issue has been resolved in our state and decisively so. More than 61 percent of Nebraskans who voted in a high-turnout election this past November voted to keep the death penalty. And that's true in the legislative districts that each of...that you represent. More than 60 percent of the citizens of the districts that you represent in total voted to keep the death penalty. So Nebraskans have spoken and they expect the Legislature now to act to enable the state to carry out capital punishment in those few cases where it's warranted. They expect the Legislature to stop listening to the obstructionists and to heed instead the wishes of the overwhelming majority of the citizens of our state. And so I urge you to do so by voting this bill out of committee and on to the floor and I very much appreciate your time this afternoon. [LB661]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thanks for coming down today. Much appreciated. Additional proponent testimony. Welcome back. [LB661]

SCOTT FRAKES: (Exhibit 3) Thank you. Good afternoon, Chairperson Murante, members of the Government, Military and Veterans Affairs Committee. My name is Scott Frakes, F-r-a-k-e-s, and I'm the Director of the Nebraska Department of Correctional Services. And I'm here today to provide testimony in support of LB661. I thank Senator Kuehn for introducing LB661 and for supporting agencies to fulfill their obligation to implement the laws enacted by the people of Nebraska. LB661 provides that records containing information which could lead to the identity of any person or entity that manufactures, supplies, compounds, or prescribes any substance, medical equipment, or medical supplies utilized to perform a lethal injection shall be

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confidential and protected from disclosure under the Public Records Act. This legislation protects suppliers from harassment or other public pressure as a result of providing lethal injection drugs or other substances for use in an execution. The Legislature has previously recognized the importance of confidentiality to the execution process when it adopted 83-165 (sic) which protects medical professionals who participate in an execution from actions against their license. Section 83-166 (sic) also prohibits disclosure under the Public Records Act of the identity of members of the execution team. LB661 is a reasonable extension of these privacy protections to the suppliers who provide drugs, medical supplies, or equipment for use in an execution. LB661 does not prohibit disclosure of information regarding the manufacturer or supplier of lethal injection drugs to other agencies with a legitimate need for the information. The bill only prohibits disclosure of the information under the Public Records Act. The current execution protocol requires any drugs received by the department to be tested. The identity of the manufacturer or supplier is not needed to determine the authenticity or quality of the substances used in the execution process. Death penalty opponents have publicly attacked and pressured manufacturers and suppliers of drugs used to carry out the death penalty. The result is that several of the drugs commonly used to carry out executions, including those used in Nebraska's previous three-drug protocol, are no longer available. I, as the Director of the Department of Correctional Services, have a legal obligation to enforce sentences as ordered by the courts. I'm testifying in support of LB661 because it removes barriers to carrying out that obligation. The citizens have spoken clearly that they want the death penalty to remain in Nebraska. I firmly believe this bill is needed to remove a tool that death penalty opponents will continue to use to frustrate and stymie the will of the voters. Thank you and I'll answer any questions. [LB661]

SENATOR MURANTE: Thank you very much for your testimony. Senator Craighead. [LB661]

SENATOR CRAIGHEAD: Thank you. Thank you, Director Frakes, for being here. How do you test these drugs? [LB661]

SCOTT FRAKES: We work with the Nebraska State Patrol. They have a testing lab. That's who we've used in the past. [LB661]

SENATOR MURANTE: Thank you. Senator Blood. [LB661]

SENATOR BLOOD: Thank you, Senator Murante. Director Frakes, you touched briefly on the three-drug protocol which I talked about earlier with the senator. And I'm confused after reading the press release about what the new protocol is. What is the new protocol? [LB661]

SCOTT FRAKES: The new protocol provides more flexibility and allows me to identify, working with professionals, the appropriate substance to carry out the execution. And that could

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be a single- or multiple-drug protocol. And so at this point we've removed the three drugs with specifically named drug approach and opened it up to make sure that we can find a substance or substances that are effective that meet legal standards and would allow me to carry out the sentence. [LB661]

SENATOR BLOOD: So it could change from inmate to inmate based on what methodology was available or what could have been...have made in a compound pharmacy is what you're telling if I hear you correctly. [LB661]

SCOTT FRAKES: There is that potential over time (inaudible)... [LB661]

SENATOR BLOOD: Is that the intent? [LB661]

SCOTT FRAKES: I don't know that that was the...I wouldn't say that was the specific intent. The intent was to make sure that we had the most flexibility to find a substance that would allow us to carry out the sentence, or substances. [LB661]

SENATOR BLOOD: Do you know if Nebraska has a mandated backup method of execution, or is it just lethal injection? [LB661]

SCOTT FRAKES: Just lethal injection. [LB661]

SENATOR BLOOD: All right. Thank you. [LB661]

SENATOR MURANTE: Thank you, Senator Blood. Senator Briese. [LB661]

SENATOR BRIESE: Thank you, Senator. Thank you for being here, Director. Does your protocol require the release to the inmate of dosing information? [LB661]

SCOTT FRAKES: No longer try to speak from memory on subjects like this. It requires the determination of the substance or substances, quantity, and if more than one substance to be employed. So that's the information that's provided. And I would say that quantity would speak to dosage. [LB661]

SENATOR BRIESE: I would too. You bet. Thank you. And is it fair to say that our ability to carry out the death penalty with lethal injection hinges on the shield law? [LB661]

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SCOTT FRAKES: Those states that are successfully carrying out executions today I believe all have shield laws to my knowledge. [LB661]

SENATOR MURANTE: Thank you, Senator Briese. [LB661]

SENATOR BRIESE: Thank you. [LB661]

SENATOR MURANTE: Any additional questions? Senator Wayne. [LB661]

SENATOR WAYNE: Those states that are currently...that have shield laws and are currently carrying out executions, do you know if they're using straw man purchases? [LB661]

SCOTT FRAKES: I'm not sure that I'm...I don't... [LB661]

SENATOR WAYNE: Where you use a compounding pharmaceutical so the original origin or the manufacturer doesn't necessarily know that it's being compounded for executions? [LB661]

SCOTT FRAKES: I do not know. [LB661]

SENATOR WAYNE: Do you know what they're doing? [LB661]

SCOTT FRAKES: Not in any detail, no, because it's...all of this information is protected very closely by each of the states. [LB661]

SENATOR WAYNE: So each state is kind of on their own figuring out how to do executions? [LB661]

SCOTT FRAKES: Yes. [LB661]

SENATOR WAYNE: So how...walk me through the procurement process then. If...of...if this were to pass, walk me through a procurement process of how you would obtain these drugs. [LB661]

SCOTT FRAKES: In the past? [LB661]

SENATOR WAYNE: Or if this would pass, how would you do it? [LB661]

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SCOTT FRAKES: If this would pass, oh, okay. I would look for information on manufacturers and suppliers of drugs. I would then begin the process to reach out to each of those and see if there is an interest in engaging in further conversation. I would share the information of what the purpose of the use of the drugs was for. That's where the conversation should start. And if there was an interest, we would schedule a meeting, appropriate state purchasing processes, which I do have special processes that are allowed under the protocol. And then we would...the next part of that conversation would be around the different options, deciding what was the best option in terms of which substance to use. Would it be a single- or multiple-drug protocol? And so at this point, the beginning of the process would be being able to reach out and have those conversations with people and know that that information was protected. [LB661]

SENATOR WAYNE: And how would that process differ than what has happened in the past? [LB661]

SCOTT FRAKES: Well, I only have my experience and that was being contacted by someone who offered the product that appeared to meet our needs and entering into an agreement to purchase that drug. And I'm sorry, with one exception, there was a supply available of potassium chloride--I hope I got that right. That was purchased in May or June, I think, of 2015 and that was just through a wholesaler provider. [LB661]

SENATOR WAYNE: And did we inform those companies that what it would be used for? [LB661]

SCOTT FRAKES: In the case of the potassium chloride, no, they were not informed on the front end. [LB661]

SENATOR WAYNE: Did we ever inform? [LB661]

SCOTT FRAKES: We did have conversation after the fact, yes. [LB661]

SENATOR WAYNE: And do we still have that product or did they ask that their product to come back? [LB661]

SCOTT FRAKES: There was a request to return it and, yes, we still do have that. I still have that product. [LB661]

SENATOR WAYNE: So the concern I have from a transparency standpoint is that we're...my concern is around are we being transparent to the manufacturer. And nothing in this bill is giving

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me that assurances. And testimony that I'm getting today isn't reassuring either, just to be very direct. So I would like to figure out with the sponsoring...and you to figure out how we can build that confidence to make sure that at least the manufacturer is having the option to know what their product is being used for. If I recall, one of them said that if I had to make a choice between losing business or losing my conscious, I choose the former, and that's because they didn't know what they were getting into as it relates to the state of Nebraska. So are you open to that of working together and figuring out how we can do this? [LB661]

SCOTT FRAKES: Yes. [LB661]

SENATOR WAYNE: Thank you. [LB661]

SCOTT FRAKES: I would like that opportunity. Thank you. [LB661]

SENATOR WAYNE: Thank you. [LB661]

SENATOR MURANTE: Senator Hilgers. [LB661]

SENATOR HILGERS: Thank you, Mr. Chairman. Along the lines of the questions that Senator Wayne had, and I'm not going to try to name the drug, I'll butcher the name. But when you purchase them are they purchased generally through a broker or directly with the manufacturer? [LB661]

SCOTT FRAKES: My experience was, in both cases, with a broker. I think...not to say that there is the potential for a manufacturer to be a supplying source, although I think that becomes less and less likely given all of the circumstances. [LB661]

SENATOR HILGERS: And I assume these aren't the types of drugs you would just...couldn't purchase on-line. I mean you've got to... [LB661]

SCOTT FRAKES: No. [LB661]

SENATOR HILGERS: And then would be there be any other purpose for the Department of Corrections to purchase this drug or these drugs other than for use in executions? [LB661]

SCOTT FRAKES: It would depend on what the substance is. So I don't believe we had any medical use for sodium thiopental either time in the last few years, last couple three years

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anyway. But we certainly had a use for potassium chloride. It was a stock drug carried. Pancuronium bromide, probably not either because we don't do surgeries and don't do the kind of activities that would make use of that drug. [LB661]

SENATOR HILGERS: So if it was sodium...the sodium drug, it would be a fair inference for...if the seller knew that the buyer was the Department of Corrections, for instance, and it was that particular drug, it would be a reasonable inference that that's what the purpose would be. [LB661]

SCOTT FRAKES: Yes. [LB661]

SENATOR HILGERS: Okay. Thank you. [LB661]

SCOTT FRAKES: Yes. [LB661]

SENATOR MURANTE: I want to follow up with the point that you made. In your view, practically speaking, not legally speaking but practically speaking, do you believe that the death penalty could be used through lethal injection in the state of Nebraska without the passage of LB661? [LB661]

SCOTT FRAKES: I think it will be very difficult. But until I've spoken to every possible source to see, I can't definitively say that it's not possible. [LB661]

SENATOR MURANTE: Okay. Up to this point have you had any success obtaining protocols with the law as it is? [LB661]

SCOTT FRAKES: Well, I was not...I was able to locate sources but was not able to complete the purchase and delivery process. [LB661]

SENATOR MURANTE: So Nebraska has been functionally incapable of actually utilizing the death penalty for at least 20-some-odd years, is that correct? [LB661]

SCOTT FRAKES: I believe there was a point in time where there was the necessary drugs, but before it was possible to complete all the other processes that are required because there again has to be notification and the death warrant and the other pieces. Something happened that did not allow that, but it was a very short window of time, three or four years ago, probably about three years ago. [LB661]

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SENATOR MURANTE: And as of today, do you currently have the resources that you need to perform lethal injection? [LB661]

SCOTT FRAKES: No. [LB661]

SENATOR MURANTE: And do you believe that LB661 will increase your ability to obtain what is necessary to perform the death penalty? [LB661]

SCOTT FRAKES: I absolutely do. [LB661]

SENATOR MURANTE: Okay. Thank you. Senator Blood. [LB661]

SENATOR BLOOD: Thank you, Senator Murante. And, Director Frakes, I wouldn't be in your seat for anything right now. I know the questions you're being asked are not easy and... [LB661]

SCOTT FRAKES: How come people say that all the time? (Laughter) [LB661]

SENATOR BLOOD: Because I know this is the very least of what's on your plate right now, so thank you for answering all the hard questions today. You have quite an illustrious career. Have long have you been in corrections? [LB661]

SCOTT FRAKES: Well into my 35th year. [LB661]

SENATOR BLOOD: Okay. How many lawsuits do you think you've been involved in the 35 years? And just a guesstimate. [LB661]

SCOTT FRAKES: I've been asked this question more than once, so more than 50, less than 500. I... [LB661]

SENATOR BLOOD: Sounds right. So I don't know if you heard me earlier and here's one of the concerns I have because I definitely hear what you're saying to Senator Murante. And you hear me keep asking this question about, is there a backup method of execution because I know there's a lot of states, especially the states that have a tendency to execute frequently--I don't know if that's the right phrasing, but execute on a regular basis--have a backup method of execution because of issues like this. But one of the concerns that I have is that, yes, indeed Georgia went to court and they managed to get through the court system and continue to use a similar process, if not the same process. But Ohio and Missouri, and Missouri was just last

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month, you know, a judge ruled again last month that the state knowingly violated public records laws by refusing to disclose the supplies of lethal injection drugs. And the state hasn't appealed. And I know that policy is different from state to state, but one of my concerns is that--and I know we have a bunch of lawyers sitting here in the gallery so I apologize in advance and not to mention at least one on our committee...two on our committee, but unnecessary lawsuits cost taxpayer dollars. I'm concerned based on what I'm seeing that we're going to get involved in some lawsuits whether we pass this...if we pass this then there's going to be people going to court. And is that going to ultimately cost taxpayer money, and if the resolution isn't LB661 but having an alternative method of execution? So I'm kind of putting multiple questions out there and I apologize for that. I think out loud. It's a bad habit. But I'm concerned about lawsuits and I'm concerned why we don't have a backup method of execution if we're prevented from utilizing our method of execution because we can't get what we need. Was that a long enough question for you to answer? (Laugh) [LB661]

SCOTT FRAKES: Well, I'll start by saying we know that there is a long, long history of litigation around the death penalty. [LB661]

SENATOR BLOOD: Absolutely. [LB661]

SCOTT FRAKES: Long, long, including a Supreme Court decision in the '70s that ended it for a short period of time. So that is part of the equation. At the same time, there's few things that I can think of that are more profound in this conversation that we're having in terms of sentencing someone to and carrying out that sentence of death. So I want a system that ensures that rights of the victim are protected and that the rights of the accused are protected and that when we talk about this most extreme sentence of all sentences, that that person's rights are fully protected. So I think we just have to acknowledge that litigation is part of the process. And that is why, as you look across the nation, in most cases, unless the defendant accepts the sentence and says I have no appeal, I do not want to appeal, and I want the sentence carried out and that happens occasionally, but in most cases a fair amount of time happens between sentencing and actually carrying out the sentence... [LB661]

SENATOR BLOOD: Right. [LB661]

SCOTT FRAKES: ...because there is a lot of litigation. So the shorter answer would be we have to accept that litigation is going to be part of this process no matter how we approach it. If we were to collectively, as the citizens of Nebraska, decide that an alternative method was where we should go, there are other states that either have that or are currently considering some alternative methods. We can expect litigation as well. No matter which approach we use there will be a litigation factor. [LB661]

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SENATOR BLOOD: Thank you. [LB661]

SENATOR MURANTE: Thank you. Senator Wayne. [LB661]

SENATOR WAYNE: One last question. So Senator...Chairman Murante was asking you questions about talking to people and you said you talked to other...so far you have talked to people but have not really been successful in obtaining new or current drugs. What...are they citing harassment as a reason? Are they citing ethical and moral obligations of their businesses? [LB661]

SCOTT FRAKES: In the limited conversations that I've had, in the past I've had one individual and then the company that provided the potassium chloride expressed concern that they didn't feel that...they didn't feel they were adequately notified and that they did not want their product used for that purpose. That was that. And then the one conversation that I've had, a person said that they had moral obligations...moral objections, I'm sorry, to being involved in that process. So it was a personal decision. [LB661]

SENATOR WAYNE: So is your testimony today that you haven't had anybody rejected based off of harassment? [LB661]

SCOTT FRAKES: No, but nor have I began to actively pursue looking for someone that would be able to work with me. [LB661]

SENATOR WAYNE: Thank you. [LB661]

SENATOR MURANTE: Thank you, Senator Wayne. Senator Lowe. [LB661]

SENATOR LOWE: Thank you for what you do. And you have one of the toughest jobs in the state. [LB661]

SCOTT FRAKES: Thank you. [LB661]

SENATOR LOWE: Is it in your opinion that if we passed a shield law, companies that would not have contacted you or would not have answered your phone calls or for some reason were not in the lineup to distribute one of these drugs that...like my friend the senator over here will not pronounce their name or cannot because I cannot either, would they be more open to be in

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contact with you, do you believe, because there is a shield law and they would then be protected for some other reason? [LB661]

SCOTT FRAKES: I do believe so. [LB661]

SENATOR LOWE: Whether it's moral or not. [LB661]

SCOTT FRAKES: Yes, I do believe so. [LB661]

SENATOR LOWE: Okay. And to get back to Senator Blood's question about a backup use of execution, do you believe the state should have a backup use of execution just for this purpose, that we cannot agree on the use of a drug or something like that? [LB661]

SCOTT FRAKES: What I believe is that the state should a method that is humane, effective, legal, that's been reviewed and is supported by the experts that can speak to this. And if that's the case, then there's not a need for multiple choices. There should just be one way. I think that...I think that's...really that is my answer. It's we just need to have one way and the right way and be able to use it. Prior to, I'm not sure of the dates--2006, 2007, 2008, somewhere--that the Nebraska Supreme Court ruled and eliminated the use of the electric chair here in Nebraska. And at that point that's when the state went to the lethal injection. And the protocol at that point was created. And at that point in time it was consistent with practices across the country. And the protocol was modeled I believe after some protocols in some other states. They have been recognized and reviewed by the courts and appear to be the correct and effective way to move forward. But this is an issue that is not going to stop evolving. That is the other challenge. I don't know that we solve anything if we add more options to the equation. [LB661]

SENATOR LOWE: Okay. Thank you. [LB661]

SENATOR MURANTE: Thank you, Senator Lowe. Any final questions? Seeing none, thank you very much for your testimony. [LB661]

SCOTT FRAKES: Thank you. [LB661]

SENATOR MURANTE: Mr. Edwards. [LB661]

ROD EDWARDS: Chairman Murante. [LB661]

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SENATOR MURANTE: Welcome to your Committee on Government, Military and Veterans Affairs. [LB661]

ROD EDWARDS: (Exhibit 4) Thank you. Chairman Murante and members of the committee, I am Rod Edwards, R-o-d E-d-w-a-r-d-s. I'm a member of the Nebraskans for the Death Penalty board and in 2015 I was state field director for the effort that gathered petition signatures to place the repeal of LB268 on the ballot. That effort that included more than 300 volunteers from Nebraska gathered over 160,000 total signatures, over 143,000 valid signatures, from Nebraskans who wanted to have their voices heard, Nebraskans who wanted a say after the Legislature eliminated the death penalty. This past November, Nebraska voters soundly spoke when by a margin of 61 percent to 39 percent they voted to repeal LB268, thus reinstating the death penalty in Nebraska. During that effort to gather signatures I traveled throughout the state. My experiences left me with two valuable impressions. First, Nebraskans wanted the death penalty as a punishment for the most heinous of crimes. The second impression was that Nebraskans wanted a fix to make the death penalty work again. Recently, we've heard here the protocol has changed to make it easier to buy...to obtain the appropriate drugs to carry out executions. LB661 is another measure that will help do what Nebraskans told me on the road they wanted us to do. LB661 will help make the death penalty in Nebraska work again. Members of the committee, Nebraska voters have spoken. I'm here today to urge you to support LB661. Let Nebraskans know that you have heard them. Thank you for allowing me time to speak and I would be happy to answer any questions. [LB661]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you for coming down today. [LB661]

ROD EDWARDS: Thank you. [LB661]

SENATOR MURANTE: Additional proponent testimony. Welcome. [LB661]

RICK EBERHARDT: (Exhibit 5) Welcome...thank you. Thank you, Senator Murante and Senators, for hearing me today. Senators, my name is Rick Eberhardt and I currently serve as the Pierce County Sheriff. I have come here today as a proponent of LB661. My involvement in the death penalty started during the early rounds of the debate on LB268. During that time, the family of Evonne Tuttle and myself walked the halls of this Capitol building. We talked to senators in their offices and later pulled senators off the floor, and shared our stories and beliefs. And later we saw things happen here that we thought were not possible. As that bill advanced in the Legislature, an amendment to LB268 was attached to that bill. That amendment would have allowed the people of the state of Nebraska to decide the death penalty issue. Members of the Nebraska Legislature voted to stop the people from having a vote. On May 27, 2015 the day of

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the final vote on LB268, after the vote was announced, I saw people stand up in the balcony and cheer and clap and celebrate. I saw senators hug each other, give arm bars, fist bumps, and smile on the Legislative Floor. I then went out into the foyer of the Capitol. I saw people hugging and crying and being so happy that murders, rapists, and people that torture, were let off death row. That is what I saw, but what I felt was sad for the people that lost loved ones, that don't get to hug their kids, that didn't get to see them sing at a Christmas concert, didn't get to walk their daughter down the aisle. Who was there to talk for them? The law enforcement officers that investigated the crimes who had to look through horrible, horrible things that nobody should ever see; the prosecutors that took time away from being at home, working in the office late at night getting prepared; the jury that was pulled off the street that shouldn't have to witness those things, see those things, hear those things, but they did, and along with the judges made tough decisions. And it was all taken away with a push of a button. I saw our leaders and people celebrate on the tears and sorrows of the victims and their families. It was truly a sad, sad day. After that, 166,692 Nebraskans signed petitions that they, the people...stating that they, the people of Nebraska, wanted to decide this important issue. Anti-death penalty groups came from far and wide, spent millions and millions of dollars. They flew in individuals from all over the country, and some senators traveled all over the United States giving speeches to anti-death penalty groups on how they did away with the death penalty in Nebraska. Some went as far away as Rome. Millions were spent on personnel, TV, and radio. But in the end it was the fathers, the mothers, the grandpas, the grandmas, the brothers, the sisters that stepped into a voting booth on November 8, 2016, and by a margin of approximately 174,000 votes stated that Nebraska is a death penalty state. In doing so they issued a work order to you, our state leaders, to find a workable way to carry out these sentences in a timely and humane way. There are those here today that will have different beliefs on this difficult issue. I understand that and respect their opinion. Some will talk about executions that were carried out in other states. They will claim that those executed suffered. Senators, I am here to assure you that their suffering is pale in comparison to the victims and the families of the people on death row, pale in comparison. I suggest you model our laws after states that carry out death sentences and if cloaking the source of the drugs is necessary, so be it. I feel that if this is not done, suppliers and participants will be hounded in the media and courts for their participation in an execution. I am here to remind you today of who the real victims are. Please remember, they were real people that cried out when their lives were taken from them. Please hear them now: 3-year-old Adam Gomez, 12-year-old Amber Harris, 13-year-old Latara Chandler, 7-year-old Tramar Chandler, 15-year-old Heather Guerrero, Reuel Van Ness, Maynard Helgeland, Timothy Donohue, Edward Hall, Jo Mausbach, Lisa Bryant, Lola Elwood, Samuel Sun, Evonne Tuttle, and many friends and family. I would like to thank you for giving me this opportunity to testify today. And please remember that the people of the state of Nebraska have spoken on this issue. And I'm just an old sheriff from a small county. I made a promise to a 75-year-old mom and grandma and I made a promise to my county commissioner because his niece was murdered in the bank robbery in Norfolk. I made a promise that I was going to see this thing through. And I've kept my word and I want you to keep

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your word, too, because the people have spoken. This is important. There are people watching you. This is not...I'm not here to celebrate. This should not be a celebration. It has been celebrated, things have been celebrated in this Capitol. This is about...not about vengeance. This is about justice. And I thank you all for this opportunity. If you have any questions, I'd be free to answer. [LB661]

SENATOR MURANTE: Thank you, Mr. Eberhardt. And let me just say I was on the Floor of the Legislature that day and expressions by members either in the committee or on the floor of support or opposition is traditionally condemned across the board because we want to feel all people welcome...we want all people of all opinions to feel welcome. And what happened on the floor that day was truly shameful. [LB661]

RICK EBERHARDT: That was...with a 75-year-old woman to watch that. Sorry. [LB661]

SENATOR MURANTE: Are there any questions? Seeing none, thank you very much. [LB661]

RICK EBERHARDT: Thank you. [LB661]

SENATOR MURANTE: Are there additional proponents wishing to speak on LB661? Seeing none, opposition testimony? Always good to have you back in the Government, Military and Veterans Affairs Committee. [LB661]

ALAN PETERSON: Thank you, Senator Murante. I've always had the greatest of courtesy in this committee. [LB661]

SENATOR MURANTE: And we all enjoy having you. [LB661]

ALAN PETERSON: (Exhibit 6) I am Alan Peterson. I better spell that, A-l-a-n P-e-t-e-r-s-o-n. I'm here representing only myself today. I previously have been a lobbyist and a practicing trial attorney for 50 years representing the news media, and the last few years ACLU, and sometimes the University of Nebraska, and a variety. But I was appointed in 1988 to represent a death row inmate and continue to do so. I haven't done it by harassment. I have done it by the legal process. Many lawsuits have been filed: some successful, some not. Today though I'm not here for any of those previous clients. I'm here for myself just as a loyal citizen of this state and an opponent of the death penalty. But I'm not going to broaden this narrow issue, which is in this bill, to the death penalty question. We did that two years ago. This is a narrow issue. In 1979, this Legislature passed a comprehensive public records law. It's found at 84-712 and several statutes that follow that. And there have been a few amendments but basically that law, which I was

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privileged to be asked by one of the senators to help draft along with the State Patrol, that's been our law with some amendments on various subjects. But it's our basic law on public records. The key part of that is that all citizens of this state and others interested in its activities are entitled to view and even make copies of records in whatever form. And there is one very specific section on the purchase of things by the state of Nebraska. That's 84-712.01(3) which says in essence all purchases, invoices, matters of contract, matters of the financial affairs, the fiscal affairs of our state are public. And the provision is to be liberally construed. There have been some exceptions made, most have been fought over, not all them. But that's fine. It is this committee's duty to take a look to see if LB661 should create another exception to the transparency of our state government. I don't think so. Recently a proposed protocol, as the Director stated, was proposed and it was modified after being heard before the citizens. Originally it called for the director to be able to protect the confidentiality and there was indication that the idea was that the supplier of the product would be considered part of the execution team. Missouri has had the same theory and that's been thrown out as a subterfuge. But there are states that have shield laws for this, no doubt about it. However, they don't have this provision of the exceptionally important fact that the citizens have a right to see all purchases and all the records of them. That's always been the law. How far does it go back? Into the period of 1850s in the Territorial Laws of Nebraska, you can find the roots of our public records law and that concept of the publicness of every purchase state government makes has always been the rule. So my time...my red light is on and that's fine. I ask that this aberration from transparency not be accepted. There is no reason to take the drastic step that's called for here. Thank you. [LB661]

SENATOR MURANTE: Thank you very much for your testimony. I have a couple of questions. [LB661]

ALAN PETERSON: Yes. [LB661]

SENATOR MURANTE: And really, Senator Kuehn asked the question in his opening that pretty much comes up every single time we have a public records bill in this committee, which is to say what is the compelling reason to keep information from the public? If we're going to create an exception to the Public Records Act, what is the compelling reason to do so? Senator Kuehn has brought forward the state's inability to procure the necessary drugs for us to enforce Nebraska state law. My question for you is, and it really was the question that came up, which is what is then the compelling interest for the citizens of Nebraska to know the name of the company that the state of Nebraska purchased the drugs from? [LB661]

ALAN PETERSON: The manner by which the state of Nebraska enforces the most heavy, serious, final penalty in criminal law, the death sentence, the manner and method and all the details are entitled to be known by the press and public. A compelling reason takes a special note

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in litigation. And I've had to do litigation not because I wanted to. I got appointed to do it for the last 30-some years on death penalty. In court, federal court is where most of the death penalty cases go. The discovery process is going to very likely disclose all such information. Nebraska can't bind the federal government or the federal agencies and all the records...all the tracks that are made that can be obtained by discovery by subpoena or request for records, those are still going to be there in federal court. This isn't going to stop that. So the compelling reason is don't sacrifice along with the person who's being killed the transparency of state government. That's really a sacrifice. [LB661]

SENATOR MURANTE: Okay. Thank you. Senator Hilgers. [LB661]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Mr. Peterson, for being here. [LB661]

ALAN PETERSON: Yes, Senator. [LB661]

SENATOR HILGERS: It's nice to talk to somebody who actually played a role in drafting some of these statutes we're discussing today. So one of the...I could see...I take your point as to the public's right to know how the state...what the state purchases and I could come up with a whole number of really important reasons why that should be subject to public records laws. [LB661]

ALAN PETERSON: Yes. [LB661]

SENATOR HILGERS: What I'm hearing from Senator Kuehn is that there isn't the same reason to get the actual name of the manufacturer as opposed to the compound and the like. And that really the only purpose maybe historically or have been used in other states is for the harassment of the supplier. And so I guess my question to you is, what other purpose would there be, again, not...that's distinct from the compounding agent... [LB661]

ALAN PETERSON: Yes, yes. [LB661]

SENATOR HILGERS: ...which I understand the importance of knowing that certainly for the inmate. What purpose would there be to know, besides harassment, to know the name of the supplier? [LB661]

ALAN PETERSON: I truly object to the term "harassment." What that really means is people get sued. And because of the seriousness of the crime being involved, lawyers have a duty to take every nonsuspicious defense (inaudible) and find out all the information. They have to. We have

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to, everything we can and then it may be that the indication of who it is, it may be a thief. It may be a crooked company and the state of Nebraska may not want to deal with such. The recent history of the attempted purchase from overseas fell flat and Director Frakes is not to blame. I'm sure of that. He's a fine gentleman. However, frankly, the pushing through of that through a very, very shady operation was ugly. And it was the fact of who it was that was partly important. And their history was looked into. So that kind of discovery is essential. [LB661]

SENATOR HILGERS: Well, let me follow up with that. [LB661]

ALAN PETERSON: Sure. [LB661]

SENATOR HILGERS: Because I think that's a good point. And I take your disagreement with the word "harassment." So I understand that. [LB661]

ALAN PETERSON: Yes. [LB661]

SENATOR HILGERS: But I would say...and I'm an attorney as well and I understand for my clients I have an obligation. So if I represent an inmate, for instance, I absolutely would have, I think, a legal duty, certainly if something happened after the fact but even potentially beforehand to make sure that the supplier of the goods, you know, there wasn't any negligence in that process. But I have an avenue to do that which would be, as you mentioned, through the courts. And into the courts process there are such things as protective orders that would keep information provided in discovery confidential from public disclosure. So I guess what I hear you saying, and correct me if I'm wrong, what I hear you saying is that a lawyer would have an obligation to pursue this information for good purposes and I take that. [LB661]

ALAN PETERSON: Yes. [LB661]

SENATOR HILGERS: But isn't there a process already in place for lawyers to obtain that information, in other words, through the discovery process through the courts and not through a public records request? [LB661]

ALAN PETERSON: Yes, there is. They're called subpoenas of any witness, anybody who has relevant information or information that may lead to relevant information has a duty to supply that on subpoena. The court may issue a protective order and have the same argument we're having today as to whether or not that should be released to the public. The court may go one way; it may go the other. But, Senator Hilgers, I appreciate your sophisticated question. The problem is there are other avenues, yes, available. So how can Director Frakes or Jeff Beaty, his

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assistant, or anybody, how can they promise confidentiality under that situation? You can't do it. [LB661]

SENATOR HILGERS: But I agree with you, Mr. Peterson. I actually do agree with what you just said. And what I...my view is and how you just framed that actually is very nice in a way because in the court system through subpoenas or litigation or the discovery process, generally, you have a very narrowly tailored purpose that is a good purpose. You're trying to find information as it relates to a legal claims and there's a system in place for that. This does not...this is separate. This is dealing with public disclosure requirements...public records request, not litigation or subpoenas. And those...and what I haven't heard yet is a purpose...and I'm not necessarily...I'm not saying it's your responsibility to tell me this. What I'm struggling to find is a purpose through...for that information, through that vehicle of obtaining the information, the public records request as distinct from a subpoena or litigation or discovery which I take...I agree with you completely. [LB661]

ALAN PETERSON: Yeah, yeah. [LB661]

SENATOR HILGERS: Through this process, what is the purpose there outside of finding the name of the company to maybe not harass them but to boycott them or put commercial pressure on them? [LB661]

ALAN PETERSON: It may be that the outfit selling the material is so shady, and I just use that word because there's a lot worse that I could use, but so shady that this state if it knew that, if the public knew it would say, no, no, don't deal with them, just as in this incident that occurred in the last two or three years with the attempted illegal, illegal procurement from India. The...it was found to be an illegal violation of the law. So that source may be a factor in whether or not the state should be dealing with them, and the citizens have a right to judge. [LB661]

SENATOR HILGERS: May I ask another follow up, Mr. Chairman? [LB661]

SENATOR MURANTE: Go ahead. [LB661]

SENATOR HILGERS: I have not had the opportunity represent someone on death row as you have, so I would...this is...I would like to lean on your knowledge and experience because you've done it. Would someone who's representing an inmate on death row have...otherwise have the legal tools, not having to rely on the public records request, to do exactly what you just said. In other words, for your client could you find the identity of the supplier through legal means-- subpoena, discovery, the like--so you could identify exactly what you just said. [LB661]

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ALAN PETERSON: Maybe, and it's going to be up to the federal judge. However, probably, and I can give an instance. In Arizona just this last year and up to a decision that took place this month, a university legal clinic using lawyers and students and faculty sued the state of Arizona corrections department for all kinds of what they call black hood legislation where the executioner gets a black hood and nobody gets to find out. The court held that the plaintiffs could go forward and do discovery to find out everything about the procedure, including the drugs, the procurement presumably. The state tried to get the case dismissed and the court said no. Under the First Amendment there may be a free speech right to access to that government information. That's just one instance, but yeah, lawyers have a chance and part of it is publicizing of what they find out. [LB661]

SENATOR HILGERS: Thank you very much. I truly appreciate your answering these questions you're discussing with me. [LB661]

ALAN PETERSON: Thank you, Senator Hilgers. [LB661]

SENATOR HILGERS: Thank you, sir. [LB661]

SENATOR MURANTE: Thank you, Senator Hilgers. Senator Lowe. [LB661]

SENATOR LOWE: Thank you, Chairman Murante, and thank you, Mr. Peterson, for testifying today. [LB661]

ALAN PETERSON: Yes. [LB661]

SENATOR LOWE: Last week we heard testimony in favor of LB624 which is the protection of police officers, their information from public record, to keep them safe and to keep their names from being publicized. [LB661]

ALAN PETERSON: Yes. [LB661]

SENATOR LOWE: For the safety of their families and for the safety of themselves. [LB661]

ALAN PETERSON: Yes. [LB661]

SENATOR LOWE: Is this different from that, do you believe, because it is for the safety from harassment--and sorry about word "harassment"--and the protection of the families? [LB661]

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ALAN PETERSON: Yes, I don't quite understand the parallel. I don't have a problem. I think, was that to make it legal to remove the name or address of the officers involved... [LB661]

SENATOR LOWE: Yes. [LB661]

ALAN PETERSON: ...is that what that bill was about? [LB661]

SENATOR LOWE: To protect the officers and their families. [LB661]

ALAN PETERSON: Yes, yes. That form of the law enforcement protection, I frankly have no problem with that. In this case, however, we have, number one, a state of Nebraska statute of 150 years approximately duration that says in specific the state's purchases, that provision of publicness is to be liberally construed, which really means exceptionally public records. This aberration from that would protect against showing that purchase information under this bill. So it's much more drastic and I don't think has an excellent reasoning behind it of what you've just described to me in LB624. That's a rambling answer, I apologize. But I think they're quite different. [LB661]

SENATOR LOWE: Well, mine was a rambling question, so I think we're even. [LB661]

ALAN PETERSON: Okay, sir. Thank you, sir. []

SENATOR MURANTE: Senator Briese has a question on energy infrastructure I think coming next. (Laughter) [LB661]

SENATOR BRIESE: Thank you, Senator. And thank you for being here, Mr. Peterson. [LB661]

ALAN PETERSON: Yes, sir. [LB661]

SENATOR BRIESE: You're saying this bill conflicts with 84-712.01(3), correct? [LB661]

ALAN PETERSON: Well, it's not so much...well, yes, it conflicts with it. That's the one that says all purchases by the state are the citizens' business especially. Yes. [LB661]

SENATOR BRIESE: And so we could fix that in this bill by saying simply notwithstanding any other provisions of the law, here we are. [LB661]

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ALAN PETERSON: Well, you can fix it. Yes, you can override it with this bill. However, you're throwing away the policy that's being expressed in that. [LB661]

SENATOR BRIESE: Okay. Thank you. [LB661]

ALAN PETERSON: Thank you, Senator Briese. [LB661]

SENATOR MURANTE: Thank you, Senator Briese. Senator Wayne. [LB661]

SENATOR WAYNE: Based on your experience as an attorney, is it...(inaudible) way more expensive to go through the process Senator Hilgers outlines of suing in federal court, going through the discovery process, and all those billable hours, versus simply sending a FOIA request of what's being used. Which one is more expensive from somebody who has represented people on death row? [LB661]

ALAN PETERSON: It's obviously much cheaper and easier to get a public record. You just request it and under the law the public agency has four days to respond. Or it can get more time, much easier. In court, this would be one of a hundred issues that have to be handled. And just getting to court is difficult and expensive, frequently done free or at a very reduced rate by lawyers like me as I have. But it's the duty of the lawyer to do everything necessary to help the client. [LB661]

SENATOR WAYNE: Thank you. [LB661]

ALAN PETERSON: Yes, sir. [LB661]

SENATOR MURANTE: Thank you, Senator Wayne. Seeing no additional questions, thanks for coming down. Always informative. Thank you. [LB661]

ALAN PETERSON: Thank you, Senator. [LB661]

SENATOR MURANTE: Additional opposition testimony to LB661. Welcome. [LB661]

MARY BOSCHULT: (Exhibit 7) Good afternoon. My name is Mary Boschult, M-a-r-y B-o-s-c-h-u-l-t, and I represent the League of Women Voters of Lincoln and Lancaster County. And I'm here to address a couple of issues surrounding LB661. First, we want to express our opposition to the changes proposed to make the records related to the identity of the person or entity that

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manufactures, supplies, compounds, or prescribes the substance or substances, medical supplies, or medical equipment used to perform a lethal injection. And this bill proposes to make them confidential and exempt from disclosure pursuant to the public records laws. The League believes that if you are killing individuals in the name of the people of the state, the people of the state have the right to know the source of the products that would be used in their name. This bill creates a lack of openness and accountability to the public about the generation of the lethal injection used in the execution process. If you're acting on behalf of the people, the people have a right to know what you are doing and how you are doing it. Our League remains opposed to the death penalty in Nebraska and we believe the state of Nebraska should not be executing or threatening to execute its own people. Almost all developed countries of the world have already abolished the death penalty. So the League of Women Voters is a nonpartisan organization that encourages informed and active participation in government. Thank you. [LB661]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thanks for coming down today. Much appreciated. Oh, I'm sorry. Did you have a question, Senator Hilgers? [LB661]

SENATOR HILGERS: No, I did not. [LB661]

SENATOR MURANTE: All right, he just answered his own question apparently. He's very intelligent. Additional opposition testimony. Welcome. [LB661]

ELLE HANSEN: Good afternoon, Senator Murante and members of the Military and Government Affairs Committee. My name is Elle Hansen, E-l-l-e H-a-n-s-e-n. First, I'm going to address the rationale why the public needs to know the provider and compounder of lethal injection drugs. Our state Department of Corrections Director just sat at this table moments ago and told us in regard to a question from Senator Blood that in 2011 a Swiss company was asked to provide drugs to Nebraska to use in the execution protocol. He admitted that the state was not forthcoming about the rationale behind why those drugs were being procured. The company then asked that the drugs be returned and it's already been admitted that the state refused to return those drugs because they were misled by Nebraska. Now if you guys are okay with our state having a reputation of misleading people and then not returning things when they're asked to, I guess I would question why anyone would sit here in representation of our state because that puts a mar on the state of Nebraska and we deserve better from our representation than that. Additionally, I'm hearing the word "harassment" tossed around repeatedly. Ladies and gentlemen, harassment is a crime. Now had the introducer of this bill actually introduced into the record instances where he and his family or even perhaps--I mean I assume he and his family are not compounding pharmacists--but instances where compounding pharmacists are presently being harassed in anticipation of this. I guess I would give a little bit more weight to that. But

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harassment is a crime for remedies for which can be pursued, such as protection from harassment orders, police reports, and criminal charges, yet we see evidence of none of the above which leads me to believe that this is similar to the 2015 attempt to procure drugs from a vendor by the name of Chris Harris doing business as Harris Pharma from Salt Lake City, India. Come to find out Mr. Harris doesn't even compound the product himself. And these are concerns that citizens such as myself do take interest in. These are the reasons why I want to know who it was. Additionally, sodium thiopental is not exclusively the only drug you can't get anymore. This summer my right ear decided to perforate twice and it was really infected before then. Back when I was little we used to be able to get this substance. It was a benzocaine ear drop, and I tell you what, those little drops are magic. This summer the emergency room prescribed me benzocaine ear drops. Do you know, I called every pharmacy I could in the city. I think I went down the entire list. They don't carry them anymore. Same with a medication called Phenergan. Anybody ever get sick and have to take that when they were little? They've ceased to manufacture it. They've replaced it with a substance called Zofran it's equally decent. It doesn't repress respiration and central nervous system as much. But I'd also like to point out sometimes...my point is sometimes drugs just stop being carried. I'd also like to point out the 2015 attempts to receive those drugs from India, despite the state of Nebraska and Pete Ricketts and Scott Frakes being told by the FDA and the DEA that it is illegal to import those substances, they attempted to have those drugs shipped anyway. And in response U.S Attorney Debra Gilg, for this district, sent a letter or made a public statement that if those drugs enter the country that that would constitute, I believe, a felony violation of the law. So what we have is an attempted felony and two individuals who are currently elected...elected and appointed, respectively, that are not sitting in prison today. So I think maybe we should probably just count our blessings on that one. I mean that would really put a black eye on our state. It was irresponsible. I would definitely call that a shady dealing as well. Additionally, I'd like to respond to a backup protocol. My ear problems are only a small list of problems of medical problems that I deal with. Can I finish? I'll be quick. [LB661]

SENATOR MURANTE: Yeah. [LB661]

ELLE HANSEN: Thank you...deal with on a daily basis. At the emergency room at our Level I trauma center at Bryan West, twice in the past three months they have tried to set an IV in me. They've tried setting an IV in my foot. And you guys have about the same amount of medical training that an individual with the Department of Corrections would be setting an IV would be setting. Would any of you like to try right now? I'll let you try. They couldn't get blood from me. They couldn't even draw ABG type blood which is blood that's taken out of an artery. So the execution team, under the new protocol, would not even have to pass a test after what little training they receive. And so making sure and pulling out all the stops to make sure that the drugs that we're going to use to kill our citizens are credible and that they're not coming from places like Salt Lake City, India, where the person involved doesn't even compound drugs I think

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is probably an important thing for Nebraskans. However, I do see this setting up a quick situation where about ten individuals who are sitting on death row may have their conviction...or their sentence overturned on appeal. So if you want to proceed in that manner that's going to harm the families. But you're within your purview to do so. Thank you. [LB661]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thank you for coming down today. Welcome. [LB661]

RON MEYER: (Exhibit 8) Good afternoon, Senator Murante and members of the committee. My name is Ron Meyer, R-o-n M-e-y-e-r, and I'm here representing Nebraskans for Peace and Veterans for Peace in opposition to LB661. I think...we believe that there is no need for secrecy when a democratically...a democratic government has determined to take the life of a human being. If we legislate secrecy into the death penalty process then in essence we are stooping to the same level of cowardice that is exhibited by the convicted murderers. During this past election campaign, especially to members of this body, there was much rhetoric by those who were supported by our Governor that we needed the government to be more transparent. Unfortunately much of the rhetoric was just to make this body more partisan. If transparency is the aim of this legislative body, then this bill should have no place in the debate process. As a lifelong Nebraskan, I would like to think we are better people than what this proposed legislation perceives us to be. I urge you to not allow this bill to move out of this committee. Thank you. [LB661]

SENATOR MURANTE: And thank you. Are there any questions? Seeing none, thank you for coming down today. Welcome. [LB661]

SPIKE EICKHOLT: (Exhibit 9) Thank you. Chairman Murante and members of the committee, my name is Spike Eickholt, first name S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska. I do have a written statement. I'd ask that that be made part of the record, please. I'm not going to read from it. I'm just going to summarize some points and maybe respond to some of the things that were discussed earlier. Generally, nothing good in government happens in secret. This is perhaps a narrow inroad on the Public Records Act, but it does deal with the Department of Corrections and you heard Director Frakes speak to that earlier. No other department in recent time, or perhaps maybe even in the history the state, has been subject to more scrutiny, scandal, embarrassment than the Department of Corrections--everything from prison overcrowding to miscalculation of sentences to escapes and a riot in May of 2015. This is something that the people of Nebraska, this agency is an agency, that the people of Nebraska are entitled to observe in public. And when we're talking about the most extreme exercise of state power and the most extreme exercise of power at the Department of Corrections in executing a person or inmates, that is something the public is entitled to know. Some people have asked

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earlier what is the harm, if you will, or what is the danger or why do we need to know the identity of the producer or compounder or provider of these drugs? For one, you heard...and we know who Chris Harris is. If this bill had been law, if it had been upheld, we might never know about that scam, if you will, that we fell for where Chris Harris...and again, I don't fault personally Director Frakes for that. He was desperate to perhaps get these drugs. There was some pressure for him to do that. And he fell for something via e-mail and we sent \$54,000 overseas for nothing. The public would never know about that. That is one reason right there. The public generally, according to open records like you heard Mr. Peterson say, are entitled to know where the money goes for purchasing things that the government buys. There is a more basic reason why the public deserves to know this. And this...I think I would take issue to what Senator Kuehn explained about harassment. The public's displeasure or dissatisfaction or "uncomfortness" ...or discomfort, I should say, with the government trafficking and dealing with certain industries that traffic in death is not the same as harassment. The people in this state deserve to know where the money goes. And for instance, if you could imagine a scenario where the state were contracting with an abortion drug provider and spending money on that, somehow shielding that because people might object to it and the taxpayers may not like it and may somehow harass or express their displeasure with that company is just...it inverts the public's right to know government activities on its head. What Senator Blood asked earlier, passing this bill is going to trigger more legal arguments. If you are an attorney and you bring an Eighth Amendment challenge, you are entitled arguably to the identity of who manufactured these drugs because it's not just knowing what drugs are, but you want to know who made them? Who compounded them? What sort of experience do you have? Where else have you practiced besides whatever state you work now? Have you ever been in any sort of trouble with compounding or manufacturing the drugs that you have? You have a right to know that. Now like Senator Hilgers says, if it's done in a court capacity there could be protected orders. That's different than a FOIA request. But the things that we've been talking about here today are the very things that are going to be litigated. And just like Senator Wayne asked and Senator Blood asked, this is going to be costly. It's not going to bring any sort of finality or acceleration to the death penalty. It's going to bring a whole nother wave of litigation. And finally, we would argue as senator...Mr. Peterson explained earlier that this likely won't...this is meant to...essentially it's meant to assure these companies and these compounders that they can operate...you can operate in secret. You're not going to get embarrassed. You're not going to get harassed. You can sell to us. But whether it's a court room or other open records request or other authorities under Nebraska law, those things won't be kept secret. Thank you. So we urge the committee not to advance the bill. [LB661]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions?
Senator Hilgers. [LB661]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Mr. Eickholt, for your testimony and your comments today. I had a couple questions. One is Director Frakes, I don't know if you

heard during his testimony but he cited a couple different statutes pursuant to which we already make certain aspects the execution process secret, specifically the identity of the execution team or the ability of those to challenge doctors who may be part of that execution process, challenge, make attacks on their medical license. How is this...how do you see...or why do you see that this is not just a natural extension of those statutes that we already have? [LB661]

SPIKE EICKHOLT: I think it's different because in those earlier narrow exceptions you're dealing with people who are simply doing their job in a very private capacity but happen to work for a government agency. And the Open Records Act, if you will, presumes that government records are open and the narrow exception is for those persons' private personnel records. It's a little different when you work as a private company and you willingly engage in something where you are...if you're a compounding pharmacy and you're selling this kind of thing, you know what your market is. You know who your customers are. You, for lack of a better term, sort of assume that risk. You expect to be involved in litigation. You expect to be dealing with state corrections officials. And that is different. And in a FOIA request you can learn the identity of companies, maybe get some sort of records, but you're not able to obtain personal private information--where people may live and that sort of thing. And it's similar to what Senator Lowe asked before about that LB624 that it's a little different because that does not make...if I could just pivot to what Senator Lowe asked before, that bill that Senator Wishart has does not make those officers' home addresses confidential. It simply does not allow the local entity to provide those on-line for easy access. In other words, citizens can still find out where officers live. They just can't do it anonymously via the Internet. [LB661]

SENATOR HILGERS: I appreciate that. My second question is this discussion of harassment. And I understand there's some ambiguity whether we're talking about actual legal harassment that would require protective order. You know, the way that I'm using it is just sort of, you know, commercial pressure, political pressure, on companies not to do things. Now what I hear from Senator Kuehn is that without these shield laws it's not just the pressure, which is one thing to me, but it's that the pressure is causing companies to cease selling it writ large. In other words, people who are unconnected to the execution process--hospitals, anesthesiologists--are unable to purchase these drugs. So one answer to that is to say, well, Senator Kuehn, we just disagree factually. That impact is not what you're saying. And Senator Wayne had some questions along those lines. But assume with me for a second that that factual premise is true. In other words, without these shield laws other...Nebraskans, other people in other states will lack these drugs. If that is true, again, assuming with me that it's true... [LB661]

SPIKE EICKHOLT: Right. [LB661]

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SENATOR HILGERS: ...would you still take the position that...again, would you still be in opposition to the shield law? [LB661]

SPIKE EICKHOLT: Yes, because Senator Kuehn admitted himself that passing this bill is not going to make sodium thiopental available. The reason that sodium thiopental is not available we would submit is because the companies that ship, manufacture, and sell the stuff in America are not assured that their product won't end up being used in execution. That's a little bit different, I would submit, than the public having concerns about that and expressed. I mean there's a fundamental concern. We are opposed to the death penalty. We're opposed to the means of carrying out the death penalty. So it's not just narrowed to the type of drug that's available. [LB661]

SENATOR HILGERS: Thank you. [LB661]

SENATOR MURANTE: Thank you. Senator Lowe. [LB661]

SENATOR LOWE: To get back on the point you just stated, you talked about the companies that were shipping it overseas. If this shield law comes into effect, do you think that would open up a chance for a company here in the United States to do it that would be okay with its use? [LB661]

SPIKE EICKHOLT: They could certainly try. But I still think they have to deal with the FDA. If it's coming from overseas, they have to deal with the DEA. And that's the problem that we had before when we bought it without this law from Chris Harris overseas. It was sent here pursuant to the e-mailed contract, if you will. It never was delivered here. In other words, I don't think this bill is going to make it (inaudible). [LB661]

SENATOR LOWE: But sodium thiopental is being used now for anesthesiology here in the United States now. [LB661]

SPIKE EICKHOLT: If I remember what Senator Kuehn said, I think that is not necessarily. They use propofol instead. But I'm not certain about that. And they might be. I mean I see what you're saying. If it is shipped in this country, it's being assured that it's not being used in execution because my understanding the manufacturer does not want it to be as senator...Director Frakes testified earlier. Some of the providers do have moral qualms about that. [LB661]

SENATOR LOWE: Okay. Thank you. [LB661]

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SENATOR MURANTE: Thank you. Any final questions? Seeing none, thank you very much for your testimony. Welcome. [LB661]

MIRIAM THIMM KELLE: (Exhibit 10) Hi. Members of the committee, I'm Miriam Thimm Kelle, M-i-r-i-a-m T-h-i-m-m K-e-l-l-e, and I'm the sister of James Thimm who died at the end of three days of torture, the details of which are still upsetting to me and my family. And currently I rise up opposed to LB661. As James died in the secrecy of the hog shed in rural Rulo, Nebraska, I feel this bill is setting up secrecy in the way it should not happen in the way Nebraska is executing its prisoners. I further believe the last thing murder victims' family members need is a botched execution. Recently in Alabama, this is an example of just that that happened there. There is another case of Romell Broom in Illinois where IV access was not obtained. After 2 hours of attempting, he was placed back in his cell. I have seen pictures of prisoners who have had up to 30 attempts of IVs, to start the IV before the access was obtained. The process is not outlined by medical staff. It can, however, benefit by public review. And that includes the medications and who's selling the medications. Policies can be flawed and it's up to us to continue to make sure that when we're in the public that we are checking those policies. Even the volunteers on the death squad do not know the impact it will have on their lives. Ron McAndrew, former warden of Florida also has reported to have PTSD after he voluntarily assisted in executions. But, the key to the process is having current practices of venous dilatation and new and changing drug practices available for our guards to use, as well as the new medications and where they came from. And we need not to have any more botched executions for our murder victims' family members to endure. Please consider that when we impact lives upon them. We are...lack of a sensitivity in this state with murder victims' family members. We need to change how we look at them. I recently visited the Nebraska Museum. And I was not expecting it but I found a series of pictures of Charles Starkweather. Not present was the names of the 11 who died at his hand. When we were outside, a little boy was saying I want to go to the children's museum and his mom said, no, let's go to the museum, not knowing that they're going to see those kind of pictures. But he is immortalized there. Where are the obituaries of those whose lives were cut tragically short? Where are the victims? I ask you not to put them in the background, on the back shelf. And put us on the front, and not Charles Starkweather or Michael Ryan in the front. I want to further add, because I have more time, that I'm a nurse. I work at BSDC. I work with the very drugs you're talking about. I've experienced the shortages of the drugs that we needed to help our individuals that are developmentally disabled, or Versed that we use for seizures. Propofol we were using for anesthesia and there was a shortage at one time because of the very policies of the companies thinking they were selling to the state of Nebraska. So if you have any questions you can address those to me and I gladly take them. [LB661]

SENATOR MURANTE: Thank you very much for your testimony. Senator Blood. [LB661]

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SENATOR BLOOD: Thank you, Senator Murante. I'm sorry for the loss of your brother. I'm very familiar with that situation. [LB661]

MIRIAM THIMM KELLE: Thank you. [LB661]

SENATOR BLOOD: It was a horrible way to die. But I'm a little confused by the testimony. So you're not in favor of the secrecy. You're speaking opposed to that. [LB661]

MIRIAM THIMM KELLE: Right, I'm speaking of the secrecy, what would happen if we don't...if we get a drug that isn't good and we don't realize that there's testing. But we do three checks when we give meds at BSDC. You know, and we're doing maybe one lab check. You know, are we sure about those drugs? And that's what I'm basically saying and outlining some other factors that we need to get read into the record. [LB661]

SENATOR BLOOD: And you actually, although it has nothing to do with today's bill, you brought up actually a really valid point in reference to the protocol. I'm one of those people that just to get a blood draw at the office I can usually count on eight, nine, ten pokes. [LB661]

MIRIAM THIMM KELLE: Right. [LB661]

SENATOR BLOOD: Same with IVs, I'm just one of those fortunate people that have really deep veins. And there are those new blue lights, which I hope they get in Nebraska really soon, that find the veins so maybe that needs to be added to the protocol. So I thought that was a really valid bit of information that you shared. [LB661]

MIRIAM THIMM KELLE: Well, and there's the temperature of the room isn't addressed. You know, that's a separate bill. You know, I was sick that day and I didn't get to testify. But there's a lot of things that aren't being...there are available that haven't been looked in to. [LB661]

SENATOR BLOOD: I appreciate you sharing your personal story. Thank you. [LB661]

MIRIAM THIMM KELLE: Well, thank you. [LB661]

SENATOR MURANTE: Thank you. Any final questions? Seeing none, thank you very much for your testimony. Welcome. [LB661]

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MATT MALY: Hi. Good afternoon. My name is Matt Maly, M-a-t-t M-a-l-y. When voters were faced with the broader issue of the death penalty this last election, I was very involved in the effort to keep capital punishment out of our state from the very beginning. And throughout that campaign, we said again and again and again to voters, I said it probably at least a hundred times myself, the only way to resume executions in this state would be for the state to make it a secret where they get the drugs from. And the citizens of Nebraska would never accept that kind of lack of transparency. So fast forward two years and here we are. The state is proposing to make it a secret where they get the drugs from and we the citizens are refusing to accept that kind of lack of transparency, because in Nebraska we have a tradition of open and transparent government going above and beyond, I would say, that of other states. I walked into the Capitol this morning no questions asked, no security check. Walked right into the gallery, sat down, and watched my Legislature and that's my right to do so. That wouldn't happen in all state capitol buildings, but in Nebraska we believe that this is the people's building. And it's...the Legislature is doing the people's work. The decisions you make impact my community. And the dollars you spend, I work to earn. And the Department of Corrections is really no different than the Legislature at all. That department exists to keep citizens like myself safe. When they do executions, it's done in my name. When they purchase these drugs, it's using my money. And that enough makes it...that makes it my business. And so I should have every right to know where these drugs are coming from. This is the most serious action the state government could ever do. We're talking about life and death. We're talking about killing our own citizens. This is very serious and there is absolutely no room for error. And because of the gravity of this issue of this action by the state government, we have to have absolutely as many checks and balances built into every part of the system as is feasible. It's been asked several times, why do you need to know? And with all due respect, that's none of the Legislature's business. As a citizen, I want to know because I want to know. And the burden of proof should be on the Legislature because we have a standing policy of transparency in general. And you're seeking to make an exception to the statute on public record. So the burden of proof is to say this is why that's an exception. In general, we should default towards everything being open and transparent. This bill scares me, to be honest, because one day I'd like my kids and grandkids to grow up in Nebraska as committed to open and transparent government as the Nebraska that I grew up in. I fear that that's slipping away. But you all have an opportunity to protect that uniquely Nebraskan tradition by keeping this bill off the floor. I thank you for your time. I'd be happy to answer any questions if there are any.
[LB661]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thanks for coming down today. Welcome. [LB661]

TOM VENZOR: (Exhibit 11) Chairman Murante and members of the Government, Military and Veterans Affairs Committee, my name is Tom Venzor; that's T-o-m V-e-n-z-o-r, and I'm the executive director for the Nebraska Catholic Conference. The Nebraska Catholic Conference

represents the mutual public policy interests of the three Catholic Bishops serving in Nebraska. For at least several reasons, the NCC does not believe that LB661 merits advancement to General File. While there may be reasonable disagreements as to whether the death penalty is necessary for the protection of public safety, there should be no reasonable disagreement that exceptions to the public records laws of a state should merit the strongest arguments and rationales. These arguments ought to be rooted in serious concerns for the safety of individual persons or the public, and not simply in convenience or in shielding business and financial interests. LB661 unfortunately, seems to be rooted more in the latter rather than the former. While accepting, for the sake of argument, that LB661 seeks the noble aim of protecting the safety of providers of lethal injection drugs, the claim still requires substantiation. Reviewing evidence from other states does not seem to establish an adequate finding that providers of lethal injection drugs are facing threats to their safety. At best, it seems that providers may face harassment for their involvement in the death penalty process. While the NCC would never condone harassment or any other uncharitable or harmful activity aimed at these providers, justifying the confidentiality of otherwise public records merits more compelling arguments to demonstrate that safety is being compromised. Even assuming the presence of serious threats to safety, it does not follow that nondisclosure of the information is the most tailored solution to the problem. Other practical or statutory remedies would seem more fitting, for example: establishing increased criminal penalties for those who threaten the welfare of providers of lethal injection drugs, thereby deterring such bad actors. Such solutions could avoid damaging the public trust. Further, citizens ought to be afforded the ability to know the identity of providers of lethal injection drugs. Americans have a long tradition of exercising their moral decision making in our free market economy. This provides citizens the opportunity to legitimately protest in a peaceful manner and demonstrate public disapproval for a company engaging in a practice they understand to be unnecessary and immoral under our current circumstances. To cloak the provider of lethal injection drugs undermines this exercise of moral decision making in our free market system. Ultimately, if the government wants to engage in one of its most serious acts, that is, the taking of human life, such an act ought to be conducted in the light of day rather than clouded by elements of secrecy. In short, the benefits of a LB661 do not outweigh the significant costs that would come at the expense of its passage. And for such reasons, the NCC asks the committee not to advance LB661 to General File. And the other thing I guess I wanted to add just kind of going off the script real quick is I know there's been a lot of talk about this issue of harassment. And like I stated in our testimony, obviously we wouldn't condone any of that and it ought not to be done by people and that being uncharitable or harmful. But I think there is probably also, just as a matter of policy to really be thinking about, what are we talking about when we use the word "harassment" and I haven't really heard that word or that term being defined. And then, you know, if there is harassment, what types of actions ought to be taken in response to that? And is creating exceptions to the public records requirements, again, the most tailored or the best argument against dealing with those types of situations? But I just wanted to add that just kind of as a further thought to perhaps be thinking about as you all are I know

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thinking hard about making good policy decisions. But with that I'll take any questions if there are any. [LB661]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thanks for coming down today. [LB661]

TOM VENZOR: Yeah, thank you. [LB661]

SENATOR MURANTE: Ms. Gilbertson, welcome back to your Committee on Government, Military and Veterans Affairs. [LB661]

KORBY GILBERTSON: Good afternoon. For the record, my name is Korby Gibertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Media of Nebraska, Incorporated. And I'm going to totally go off script because I think a lot of what I was going to say has already been said. But I want to point out two things and I think the previous testifier and Mr. Eickholt touched on this briefly without kind of going directly into it. But this is...and Media of Nebraska, which by the way is both print and broadcast media groups but the Media of Nebraska group alone just focuses on open meetings and public records issues and First Amendment issues. The dangerous precedent that this legislation might start, that if we are going to all of a sudden have a standard of harassment for then stopping access to public records for activities that one group of society might not agree with I think is something that this committee should weigh very heavily, because for right now it might be on the drugs that are brought in for doing these acts, but it might be another act. I think Mr. Eickholt touched on so if you have an abortion provider that is then being harassed, should we then shield those providers names from public because they are harassed and doing their legal activity? The other thing I just wanted to talk about just briefly is again address Senator Lowe's question about Senator Wishart's legislation which Media did look at and we spoke with Senator Wishart because we were concerned with making the officers' records not public at all. And that did just limit it to access on-line and you so you can still access all those records with a personal request. And that's it. I'd be happy to answer any questions. [LB661]

SENATOR MURANTE: All right. Thank you very much for your testimony. Are there any questions? Seeing none, thanks for coming down. [LB661]

KORBY GILBERTSON: Thank you. [LB661]

SENATOR MURANTE: Welcome. [LB661]

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JOE NIGRO: Good afternoon. My name is Joe Nigro and that's J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of the Nebraska Criminal Defense Attorneys Association and the Nebraska State Bar Association. Both of these organizations are opposed to LB661. It isn't surprising that the defense attorneys are opposed to this legislation given our opposition to the death penalty. The Nebraska Bar Association's position is a different matter. I've been a member of the house of delegates of the Bar Association for several years. The Nebraska Bar Association is a cautious, conservative organization. Our association shies away from controversy. The Nebraska Bar Association has not taken a position on the death penalty. The State Bar Association takes positions on legislation that further the administration of justice. The house of delegates voiced strong opposition to this bill because the idea of hiding those involved in making the drugs used to execute people and how they made those drugs could not be further from the administration of justice. This isn't about taking a position on the death penalty. You can support the death penalty and be opposed to keeping the means of execution and those involved secret. The ends do not justify the means. This goes against our tradition of open and transparent government. We cannot execute people without knowing what the drugs are, where did they come from, how were they obtained, and who are the obtained from. Using secret drugs of death is inconsistent with American values and it is certainly inconsistent with Nebraska values. We are better than this. I urge you to reject this bill. Thank you. [LB661]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing none, thanks for coming down today. [LB661]

JOE NIGRO: Thank you very much. [LB661]

SENATOR MURANTE: Still on opposition testimony. Welcome. [LB661]

FRAN KAYE: Thank you very much, and thank you for sitting here and listening to everybody. My name is Fran Kaye, F-r-a-n K-a-y-e. I am opposed to the death penalty, but I am also opposed to LB661. If you look at the Declaration of Independence it starts out by saying a decent respect for the opinions of mankind is why we are writing this Declaration of Independence. One of the reasons it is so difficult to get these drugs is not because drug companies are being harassed, it's because, as several people have said, drug companies do not wish to be part of a death enterprise. If they make their drugs to make people well or even to help veterinarians put down a sick cat, that's very different from using those drugs for death. As for harassment, I've been harassed for walking around with a shirt that says abolish the death penalty. If you have political thought, you're going to have some kind of discussion about it. I haven't heard anything about harassment in the terms of legal things and I would think that that perfectly...if people want to have a consumer boycott, well, then they have the right to have a consumer boycott. As a child, I remember lots of consumer boycotts that my father was involved

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in because he did not wish to support companies that supported Joe McCarthy. It is an important political tradition to be able to have consumer boycotts. If companies had kept secret the fact that they were supporting McCarthy, I think I probably wouldn't have been able to drink milk when I was a child because my father was very serious about this. I believe it is really very important to know who one is dealing with and to have the right not to deal with a company that affects one's own moral beliefs. So I think it's important to have it open who is supplying in this case execution drugs, or in my father's case who was not hiring people who were supposedly had a communist background. This is very much my idea of patriotism, is being able to choose. I can't choose if I don't know. Probably I'm not going to go out and get anything from a compounding pharmacy. I'm not a veterinarian. I'm not an anesthesiologist. But still, as a Nebraskan, I would like to know. It seems to me that this is important. And again, a decent respect for the opinions of mankind tells us that if so many big European companies are refusing to sell us these drugs even if it does make things difficult for perfectly innocent patients, then maybe we ought to think about what they're saying. Maybe we ought to think about what we're doing. And I guess finally, if we don't have enough guts to do it in public, maybe it's something we shouldn't be doing. So please don't support LB661. Let us be honest about what we're doing and where we are getting things. Thank you very much for this letting me speak. [LB661]

SENATOR MURANTE: And thank you for testifying. Are there any questions? Seeing none, thanks for coming down today. [LB661]

FRAN KAYE: Thank you. [LB661]

SENATOR MURANTE: Is there any additional opposition testimony to LB661? Senator Hilgers. (Laughter) Every time he walks right into that, every single time. Seeing no additional opposition testimony, is there neutral testimony? Seeing none, Senator Kuehn. [LB661]

SENATOR KUEHN: (Exhibits 12 and 13) Thank you, committee members. In answer to a couple of the questions, both Senator Wayne's, I'm distributing to the committee a couple of pieces of evidence, if you will. One is a letter actually in one of the more prominent cases of a compounding pharmacy in Texas describing what they have described as a firestorm, hate mail, etcetera, and why they requested to have products returned from the Texas Bureau of Corrections, as well as another issue from an Oklahoma pharmacy. So I hope they're legible and readable. They're kind of rough, but it's what we could find here in time to get that in your hands before the conclusion of today's hearing. I'd also like to provide just a quotation from Clive Stafford Smith who is the individual who started the group Reprieve which was the first European group who began the process of civil disobedience, if you will, harassment on the other side of pharmaceutical manufacturers who produce anesthetic agents. And his quote I would like to report to you is, quote: Who's easier to persuade, the Supreme Court or a

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corporation that has financial interests; you can make it not worth their while. So in terms of the actual pressure, we have some evidence for you to consider as well. Just to follow up on a few of the pieces of information, with regard to Mr. Peterson's discussion of some of the legal challenges, certainly Arizona has faced its legal challenges. I do want to reiterate, LB661, if you look at it, and I'm sure legal counsel will verify, is very close to Georgia which has withstood legal challenge and has withstood many of the legal challenges before it. I would also like to echo he talked about people just doing their job. And ultimately that's what we're talking about with whether it's a compounding pharmacist order or a pharmaceutical manufacturer, they're just doing their job. And this idea, going back to Senator Lowe's question and others, about an allegation that pressure from an activist, pressure from groups has resulted in companies not choosing to manufacture sodium thiopental and others is not my allegation. This is an allegation that has been made and this is an issue which has been addressed by the American Society of Anesthesiologists. They have appealed in multiple letters about the consequences. And I will say I find it a little concerning that social justice groups such as the Catholic Conference would really make the idea that an open records request takes a greater moral priority than the lives of vulnerable medical patients. This is the moral quandary we're put in. In these moral and ethical decisions, there is no free lunch. There is no easy out. Priorities are made. And finally, just on kind of an interesting note--maybe some of you find it light, some of you not--I'm really proud to hear all of the people who talked about transparency in government and ensuring that all things are open to public view and scrutiny and I look forward to their endorsement of our open committee chair vote process and other actions on the floor of the Legislature as we go forward. There seems to be a rousing idea that all things government should be open to public view and public scrutiny by the voters, so I look forward to that continuing support. If there's any questions from the committee, I'm happy to answer them. [LB661]

SENATOR MURANTE: Are there any final questions? Seeing none, thank you, Senator Kuehn. (Exhibits 14-16) Before we close the hearing I do have letters of opposition to LB661 from Paul Olson from Nebraskans for Peace; Kelly Keller from the National Association of Social Workers-Nebraska Chapter; and Robert Ranney on behalf of himself. That closes the hearing on LB661 and ends our public hearings for the day. Thank you, everyone. [LB661]