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Judiciary Committee
February 02, 2018

[LB785 LB795 LB826 LB845 LB863 LB879 LB972]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 2, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB785, LB826, LB845, LB863, LB795, LB972, and LB879. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete, representing Legislative District 32. I'm the Chair of the Judiciary Committee. Like to start off today by having my colleagues introduce themselves. Let's start with Senator Baker today.

SENATOR BAKER: Pardon?

SENATOR EBKE: Introduce yourself. (Laugh)

SENATOR BAKER: Roy Baker, District 30.

SENATOR MORFELD: Adam Morfeld, District 46.

SENATOR KRIST: Bob Krist, District 10.

SENATOR HANSEN: Matt Hansen, District 26.

SENATOR HALLORAN: Steve Halloran, District 33.

SENATOR EBKE: And just to be fair, it's Friday, so just everybody recognize that. Assisting the committee today are Laurie Vollertsen, our committee clerk, and Tim Hruza, who is one of our two legal counsels. The committee pages today are Rebecca Daugherty who goes to Doane University, and Sam Baird who is a University of Nebraska student. On the table at the front you will find some yellow testifier sheets over there. If you are planning on testifying today, please fill one out and hand it to the page when you come up to testify, so pre-fill it out. This helps us to keep an accurate record of the hearing. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. As you can see, we have a good chunk of people here to testify on a number of bills, so I would urge you, as well, that if what you have...if what you are planning to say has been said, don't feel the need to say any more than,

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yes, I agree with what's been said, to get yourself on the record. For future reference, if you're not testifying in person on a bill and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day before the hearing. We'll begin bill testimony with the introducer's opening statement. Following the opening we will hear from proponents of the bill, then opponents, followed by those speaking in a neutral capacity. We'll finish with the closing statement by the introducer if he or she wishes to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you're going to testify, I ask that we keep the on-deck area, circle or chair, filled on those, the yellow...the chairs with the yellow signs on them. If you have any handouts, please bring up at least 12 copies and give them to the page. If you don't have enough copies with you, the page can help you make more. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask you to wrap up your final thought and stop. We will...we also have an audible beep; at 3 minutes and 30 seconds, the beeper goes off and you are absolutely, positively done, I will step in and ask you to stop. As a matter of committee policy, I would like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings, although senators may use them to take notes or to stay in contact with their staff. And at this time, I would ask for everyone to look at their cell phones and make sure that they are on silent or vibrate mode. Also, verbal outbursts of applause are not permitted in the hearing rooms. Such behavior could be cause for you to be asked to leave the hearing room. And one more thing, you will notice that committee members may move in and out of the room. This has nothing to do with the importance of bills that are being heard but, rather, senators may have bills introduced in other committees or other meetings that are taking up their time, as well, so with that in mind we will begin today with LB785 and Senator Vargas. Welcome to the Judiciary Committee. [LB785]

SENATOR VARGAS: (Exhibit 7) Thank you for the welcome. Good afternoon. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I'd like to thank Chairwoman Ebke and the rest of the members of the committee. I'm here today to introduce LB785. I want to make sure to hand this out before I forget. LB785 harmonizes state statutes with changes in federal law by including neutral references to terminology related to marriage. This bill was brought to me by a county clerk who was concerned about how leaving the statute unchanged could affect his ability to perform marriages and sign marriage licenses for all couples. As originally drafted, the bill replaces "husband and wife" with "spouse," which is reflective of changes in federal law. My office has worked with the Nebraska State Bar Association on an amendment which you all have in front of you. That would change "as spouses" to "in marriage." The Bar Association believes this change will allow whoever is performing the marriage ceremony to tailor the ceremony to meet their needs. With that, I will be happy to answer any questions you may have. Thank you. [LB785]

SENATOR EBKE: Okay, any questions for Senator Vargas? I see none. Thank you. [LB785]

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SENATOR VARGAS: Thank you very much. [LB785]

SENATOR EBKE: First proponent. [LB785]

DANIEL ESCH: Good afternoon, Chair Ebke, Senators. My name is Daniel Esch. First name is spelled D-a-n-i-e-l; last name is spelled E-s-c-h. I'll be brief. I really appreciate the opportunity to testify before you all today. I'm the Douglas County Clerk. As you all know, county clerks issue marriage licenses in Nebraska. That's why I'm interested in the bill and I'm supportive of the bill. The bill addresses statutes that contain language that are outdated. This bill would not only insert language that is more up to date, but it would also be language that's reflective of what the federal law is. So that's why I'm supportive of it. Again, I appreciate your time and I'd be happy to answer any questions you all might have. [LB785]

SENATOR EBKE: Questions for Mr. Esch? I see none. Thank you. [LB785]

DANIEL ESCH: Thank you. [LB785]

BUB WINDLE: Chairperson Ebke, members of the committee, my name is Bub Windle, B-u-b W-i-n-d-l-e, here on behalf of the Nebraska State Bar Association in support of LB785. The Bar Association most fundamentally just supports changes like this that bring our statutes up to date, current with the state of federal law. Senator Vargas mentioned that we've been...that we worked with him on an amendment that would say that the parties take each other "in marriage." Our committee actually looked at this, went back and forth on a number of formulations, kind of landed on this to align with the intent and kind of what we understand to be the objective of this bill, making this gender neutral in order to update it with federal law, and then additionally to kind of align with the purpose and the scope of the declaration required for the marriage. So taking each other "in marriage" aligns with that, aligns with the current state of the law. We support the bill. [LB785]

SENATOR EBKE: I see no questions. Thank you for being here. [LB785]

BUB WINDLE: Thanks. [LB785]

SENATOR EBKE: Next proponent. [LB785]

SPIKE EICKHOLT: (Exhibit 8) Good afternoon, Madam Chair, members of the committee. My name is Spike Eickholt. First name is S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of the bill and in support of Senator Vargas' proposed

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amendment that he brought to the hearing today. In 2015, the U.S. Supreme Court issued an historic decision granting equal marriage rights to same-sex couples. This is now the law of the land and LB785 really reflects that change in the law and is consistent with not only the decision, but also with the--I think somebody may have referred to it earlier--the updating or the modernization of the statutes themselves. I think the bill is consistent with sort of the ongoing legislative effort that you'll see in a number of different bills that sort of changed terms that are a bit antiquated in gender and that sort of thing. I think that the amendment that the Bar Association proposed is good. I know there may be some, or I suspect there may be some, opponents to this bill, but I would submit that the amendment that Senator Vargas brought today really addresses their concerns, and we would urge the committee to advance this bill from committee. [LB785]

SENATOR EBKE: Okay, thank you. Questions? I see none. Thank you. Other proponents? Okay, I see nobody moving. Opponents? [LB785]

NATE GRASZ: (Exhibit 9) Good afternoon, Chairwoman Ebke and members of the committee. My name is Nate Grasz. That's N-a-t-e G-r-a-s-z. I'm the policy director for Nebraska Family Alliance and represent them in my testimony. We have a number of questions and concerns with this bill that are shared widely by faith leaders all across Nebraska. So in addition to my testimony today, I am submitting for the record a letter with the names of more than 70 pastors, clergy, and ministry leaders representing thousands of Nebraskans from diverse congregations and denominations. We're all respectfully asking that this committee not remove the specific reference to husband and wife from state statute regarding the solemnization of marriage. These faith leaders are good, sincere Nebraskans who care for and serve our communities, stretching from Omaha, Lincoln, Crete, and Grand Island, to Cozad, North Platte, Red Cloud, and Chadron. We believe it is unnecessary to remove "husband and wife" from Nebraska Revised Statutes Section 42-109 when the intent of this bill could be achieved by adding neutral references to marriage without removing the specific reference to husband and wife. We question whether the change this bill makes would leave room for the ministers, pastors, and couples who so desire to continue to use language consistent with their sincerely held beliefs in solemnizing a marriage. Due to the strict language in Section 42-109 and the opinion of our legal counsel, we do not believe this would be the case. Although we still disagree on this question, we recognize that this is a sensitive issue and we have sincerely appreciated the open conversation and civil dialogue we were able to have with Senator Vargas and his staff. We are not testifying in opposition out of a desire to prevent anyone from using different language in solemnizing their marriage. But given the strict mandatory language in Section 42-109 and the removal of "husband and wife" under this bill, we simply want to ensure that the state is respecting the rights of those wanting to be married specifically as husband and wife by their pastor and not creating ambiguity or requiring by law all pastors, ministers, and Nebraskans to use different terminology in order to legally solemnize a marriage. Thank you. [LB785]

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SENATOR EBKE: Thank you, Mr. Grasz. Any questions? Senator Hansen. [LB785]

SENATOR HANSEN: Thank you, Chair Ebke, and thank you for coming, Mr. Grasz. Just to clarify, is there specific language you would be okay with, and what is it, if so? [LB785]

NATE GRASZ: Appreciate the question. I think our main concern is the complete removal of "husband and wife." [LB785]

SENATOR HANSEN: Sure. [LB785]

NATE GRASZ: So, you know, there was the amendment that Senator Vargas mentioned of changing "spouses" to "in marriage," so if there was a way for the committee to, rather than just replace "husband and wife," add in something like spouses or "in marriage" to the statute without completely eliminating "husband and wife." [LB785]

SENATOR HANSEN: Okay. And I guess...thank you for your answer. I was just kind of reading the statute and it's, you know, no particular form required except that (inaudible), blah blah blah. [LB785]

NATE GRASZ: Um-hum. [LB785]

SENATOR HANSEN: So I was trying to figure out how exactly strictly prescriptive people view the current statute that, you know, in a solemnization of marriage, if it doesn't literally have the word "husband and wife," are you required to use the words "husband and wife" or if it's just kind of... [LB785]

NATE GRASZ: Um-hum, right, so that's really our concern is that it would be ambiguous, and so in order to not have that ambiguity in the law, we would like to see the reference to husband and wife kept but are certainly open to new language being added. [LB785]

SENATOR HANSEN: Okay. Thank you. [LB785]

SENATOR EBKE: Senator Pansing Brooks. [LB785]

SENATOR PANSING BROOKS: Thank you. Thank you for coming, Mr. Grasz. So you believe by the removal of that language, that ministers cannot say "husband and wife" anymore in a marriage ceremony? [LB785]

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NATE GRASZ: Specifically in the solemnization of marriage, so in Section 42-109, which is very specific with "no particular form shall be required, except that..." So we feel that if there's a question of what language has to be used, simply replacing "husband and wife" with "spouses" just sort of shifts the question and still leaves ambiguity and so we want to make sure that there isn't any ambiguity. And we feel that the best way to do that is to keep "husband and wife" in place and add new terminology. [LB785]

SENATOR PANSING BROOKS: So you wish it would be more specific and say "husband and wife, husband and husband, wife and wife"? [LB785]

NATE GRASZ: Well, something along those lines. We think it's unnecessary to altogether remove the reference to husband and wife. We understand the argument for updating the statute but, you know, we believe that there is a better way to do it, whether that's adding in new terminology or maybe addressing the, you know, "no particular form shall be required, except that," so it is clear that there are options in the words that can be used. [LB785]

SENATOR PANSING BROOKS: And just to be clear, we talked prior to this so I did understand that you were concerned about the solemnization, so I've looked that up to try to understand your point of view. Can you express to me...solemnization generally, under law, means that it's an official ceremony headed by somebody that has either been ordained or an officer of the court, so the ceremony becomes the solemnization. So can you explain to me what that has to do with the "husband and wife" discussion? [LB785]

NATE GRASZ: Sure. So basically there are two requirements for a marriage to be valid in Nebraska. If you can find someone to say yes to marrying you, which is usually the trickiest part, you need a marriage certificate and the subsequent solemnization of the marriage. And so 42-109 deals with the solemnization and it is very clear that, "In the solemnization of marriage, no particular form is required, except that the parties shall solemnly declare..." So it's very direct, mandatory language, so that's where our concern is over removing "husband and wife" from that statute. And I think, Senator, I would say that we're not necessarily saying that the other side is wrong and I don't think this is a case where one side has to lose so the other side can win. We think that there's reasonable interpretations of the statute and of the language on both sides, and so we just want to make sure that there's not that question and it's clear. [LB785]

SENATOR PANSING BROOKS: Okay, thank you, Mr. Grasz. [LB785]

SENATOR EBKE: I do have one question. So I guess I'm not understanding. Have you seen Senator Vargas' amendment? [LB785]

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NATE GRASZ: We did speak with Senator Vargas' staff and were told that there may be an amendment similar to that. We did not see the actual amendment that he brought today. [LB785]

SENATOR EBKE: Okay, so I'm going to read the section and tell me, okay, so the original, the original bill strikes out "husband and wife" and has "spouses." His amendment strikes out "spouses," which will also leave "husband and wife" stricken out, so it says, "In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare in the presence of the magistrate or minister and the attending witnesses, that they take each other in marriage; and in any case there shall be at least two witnesses, besides the minister or magistrate present at the ceremony." So what's wrong with that? [LB785]

NATE GRASZ: Well, again, due to the very direct, strict language of 42-109, again, the question would still remain, is that the exact, specific language that must be used? And again, I think there are interpretations on both sides that would say you could use "husband and wife," but we are concerned that there is interpretation that says, due to the strict language, we've spoken to several attorneys about this who agreed that it would certainly be ambiguous as to what language would have to be used. [LB785]

SENATOR EBKE: Okay. Senator Morfeld. [LB785]

SENATOR MORFELD: Sorry, that made no sense. How does that not solve it? [LB785]

NATE GRASZ: Again, in 42-109, the strict language that "no particular form..." [LB785]

SENATOR MORFELD: Oh, a change in the strict language,... [LB785]

NATE GRASZ: What's that? [LB785]

SENATOR MORFELD: ...but we mandate the strict language, we're changing the strict language,... [LB785]

NATE GRASZ: Um-hum. Well, you're... [LB785]

SENATOR EBKE: This is 42-109, yes. [LB785]

SENATOR MORFELD: This is 42-109. [LB785]

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NATE GRASZ: Right. The only language you're changing is "husband and wife" to "spouses" or "in marriage." [LB785]

SENATOR MORFELD: Okay. [LB785]

NATE GRASZ: So, "no particular form shall be required, except that" still remains. [LB785]

SENATOR MORFELD: So what if we just take that out,... [LB785]

NATE GRASZ: Right, that... [LB785]

SENATOR MORFELD: ...take out "except"? So if we just...we just take out...we just put a period after "required" and strike out "except" all the way to line 18, that would solve your... [LB785]

NATE GRASZ: Yeah, as long as there's no...again, we're open to different amendments, understand there's different interpretations. But we're concerned that just merely replacing "husband and wife" with something like "spouses" or "in marriage" is not the proper solution to the intent of this bill, and that intent could be achieved by something like you suggested, or adding in "in marriage" without removing "husband and wife." [LB785]

SENATOR MORFELD: Okay. [LB785]

SENATOR EBKE: Other questions? Okay, thank you. [LB785]

NATE GRASZ: Thank you. [LB785]

DAN DELZELL: (Exhibit 10) Good afternoon. My name is Dan Delzell, D-a-n D-e-l-z-e-l-l. The terms we use to describe ourselves matter a lot. So God created man in his own image. In the image of God he created him. Male and female, he created them. Terminology matters. For this reason, a man will leave his father and mother, be united to his wife, and the two will become one flesh. What happens if you toss aside standard, time-honored gender terminology used in marriage ceremonies for thousands of years? The terms we use to describe spouses matter a lot. It would be insightful to hear Senator Vargas and Father Damian share the excellent reasons why their Catholic congregation in Omaha, along with thousands of other Christian churches across Nebraska, will most certainly continue to use the terms "husband" and "wife" in their wedding ceremonies, regardless of what happens with LB785. In other words, the bill is

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fraught with ambiguity while being unrealistic and impractical for the majority of churches in our state, including the senator's own congregation. And most importantly, LB785 unwittingly and unnecessarily violates the critical separation between church and state. A Pew survey of 4,573 people was recently conducted. It found that in America today 77 percent of Democrats with four-year degrees think sex is not determined at birth, yet 55 percent of black Democrats and 41 percent of Hispanic Democrats disagree with their fellow Democrats and say that a person's gender is determined by their sex at birth. Make no mistake about it, mandating gender neutrality in marriage ceremonies is only a few steps away from mandating gender neutrality in our public grade schools. Dr. Michelle Cretella, president of the American College of Pediatricians, said a person's sex is determined by one's DNA and stamped in every cell in the body. Furthermore, she added, hormones and surgery cannot alter the nearly 6,500 genetic differences between men and women. Who can fully measure the pain and heartache experienced by young children when taught that their gender is up in the air? And yet today children and parents are being encouraged to make monumental gender declarations based on their subjective feelings, rather than relying on the objective facts of their DNA. Is it wise or is it cruel to promote confusion and uncertainty in children regarding their God-given gender? The terms we use to describe our children matter a lot, and so let's not kid ourselves. While LB785 aims to remove long-established marriage terminology, the bill also lays the tracks for a day when public schoolteachers would not be allowed to affirm and celebrate a student's gender based upon DNA. It's the natural evolution of man playing God and assuming he knows more about gender and marriage than our creator. Changing marriage terminology is a surefire way to speed up the gender-neutral train while the toddlers playing on the tracks have no clue what is barreling full-steam ahead in their direction. Thank you very much. [LB785]

SENATOR EBKE: Thank you. Questions? Thanks for being here. Next opponent. [LB785]

TOM VENZOR: Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Tom Venzor, T-o-m V-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference. A lot of my testimony is probably echoing some of what Mr. Grasz has already said, and it's...more so, fundamentally our concern is with the structure of 42-109 and the way that it reads in terms of, "In the solemnization of marriage no particular form shall be required, except that," and with that language being fairly strict language, and that's followed with "that the parties shall solemnly declare," you know, the following. And so, for example, in the rite of marriage in the Catholic Church, and those priests also being ministers in terms of validating the state marriage here, you know, they're going to be using in their form for marriage that they take each other as husband and wife, and so the concern would be is if different language were inserted, "spouses" or "in marriage," that those strict terms would have to be used in order for them to basically also execute the state marriage. So that's fundamentally our concern so that the people who are seeking marriage, you know, through the church won't have any sort of barrier in term...or ambiguity in terms of what the language has to be and whether they will have a state

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marriage that's basically been properly executed and the form has been met. And again, I think, as Mr. Grasz has also said, obviously, the Nebraska Catholic Conference has, you know, strong views on the nature and the reality of marriage and we're putting those aside in order to kind of talk about the issue here. And I think we would also like to see something similar where "husband and wife" would be retained, and if there's additional language that needs to be inserted, certainly we understand the intent of Senator Vargas and what he's doing. [LB785]

SENATOR EBKE: Senator Krist. [LB785]

SENATOR KRIST: Mr. Venzor, my comments are not about this bill, nor your testimony, but the Catholic Conference seems to come in, in support of issues that are relevant. Why weren't you there yesterday defending an 85-year-old nun from losing her services with the Department of Health and Human Services? [LB785]

TOM VENZOR: Because we're looking into that matter more extensively to have a discussion with the Sisters of Mercy so that we understand the full implications of what is going on in that case, so that we can make a further assessment on the position we ought to take on that issue. [LB785]

SENATOR KRIST: And as a lobbyist, when did you see that bill? [LB785]

TOM VENZOR: Excuse me? [LB785]

SENATOR KRIST: As a lobbyist, when did you recognize and see that bill? [LB785]

TOM VENZOR: Probably a few days into the legislative process. [LB785]

SENATOR KRIST: Whose fault is that? [LB785]

TOM VENZOR: Excuse me? I'm not sure what the question is. [LB785]

SENATOR KRIST: Whose fault is that? [LB785]

TOM VENZOR: Whose fault is what? [LB785]

SENATOR KRIST: That you didn't read the bill and you weren't capable of coming in and defending an 85-year-old woman at a public hearing? [LB785]

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TOM VENZOR: I don't think it's a question about who is at fault. It's a question of we need to do more work to understand the full implications of that bill so that we can take a proper position on the bill, Senator Krist, but thank you. [LB785]

SENATOR KRIST: You're very welcome. [LB785]

TOM VENZOR: Thank you. [LB785]

SENATOR EBKE: Any other questions? So do you have proposed language? I mean, the Bar Association has worked with Senator Vargas to try to take some of the ambiguity out to address the issues that you've got. Doesn't adding "husband and wife" then put limits on the bill if you're...on the declaration, I mean, at some level? Like if you say you...you have the copy of the amendment, right? [LB785]

TOM VENZOR: Um-hum, yeah. Yep. Um-hum, thank you. [LB785]

SENATOR EBKE: So, I mean, what's your objection to saying that people have to say that they take each other in marriage? I mean every wedding that I've been to says that. [LB785]

TOM VENZOR: Um-um. Again, in...and I can only speak, you know, to the form and the rite that we use. And again, as those priests being ministers who are also administering the state solemnization of marriage, in the Catholic rite, they're going to be...the husband and wife are going to be taking each other as husband and wife. They're not going to be taking each other "in marriage" and so they're not going to be using that terminology or that phrasing when they exchange vows and basically execute the form of the marriage. So that would be the concern is that would require additional wording in the rite and we're certainly not going to change the rite to that degree. [LB785]

SENATOR EBKE: Is it...but it's the rite of marriage, right, by definition? I mean it's the rite of marriage, isn't that what they've...what you call it, the rite of holy marriage or something? [LB785]

TOM VENZOR: Yeah, yeah, the rite of holy matrimony, sure, uh-huh, um-hum. [LB785]

SENATOR EBKE: Yeah, yeah, okay. [LB785]

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TOM VENZOR: But so what they're doing there, I mean, also, in that ceremony they're doing what would also constitute a legal state marriage, as well, so when they take each other as husband and wife in the wedding vows they would be fulfilling the requirements here in 42-109. If it were changed to that they take each other in marriage or as spouses, again, we're not administering those words, "as spouses" or "in marriage," and so that would sort of change the requirement. And again, we're reading the language here strictly because of the way we're reading this statute, and that's what we do know is sort of you have reasonable minds, it seems, on both sides of that issue. [LB785]

SENATOR EBKE: Okay, so what if we said some...this is on the fly, "In the solemnization of marriage no particular form shall be required," and you get rid of all the stuff after the comma, "but in any case there shall be at least two witnesses, besides the minister or magistrate present at the ceremony." [LB785]

TOM VENZOR: I'd have to give that some more thought. It wouldn't require any sort of terminology and I would assume that the state would want to require some sort of terminology to bring those individuals together through some sort of vow. [LB785]

SENATOR EBKE: But that's the problem, isn't it, that we're fighting over terminology, trying to get broad, and people want us to be more specific? Senator Morfeld. [LB785]

SENATOR MORFELD: I guess, Mr. Venzor, I guess I would take an even more simple approach, and I think I brought this up with Mr. Grasz: on line 13, "In the solemnization of marriage, no particular form shall be required." I mean, so depending on your religion, if you want to have a witness, you can have a witness; if you want to not have a witness, you don't have to have a witness. If you want to call it marriage, you can call it marriage. I mean, if you want to...you know, whatever the case may be, doesn't that eliminate the issue and the problem? [LB785]

TOM VENZOR: I think that would, right off of the cuff here, thinking with you, I guess it... [LB785]

SENATOR MORFELD: Just trying to be solutions oriented. [LB785]

TOM VENZOR: Sure, sure, yeah, yeah. Sometimes solutions take time to sit down and think about, but just thinking off the cuff with you... [LB785]

SENATOR MORFELD: I understand. [LB785]

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TOM VENZOR: ...I guess that would alleviate part of the problem. The other part you'd have is, here, the issues of witnesses and other things like that, which I assume the state would want for marriages. But again, I'm not...I don't want to go into that area of the ceremony and the form. [LB785]

SENATOR MORFELD: Yeah, I mean, I can make a deal with you. We can keep the witnesses in and just put that in as a comma right after "required." I guess I just...you know, I've been to plenty of weddings in Nebraska and this language is not used and you can't tell me that all those marriages are void now, I mean, they just, poof, don't exist. I don't think that...I think you're reading a very strict interpretation of this because it goes to your argument of just maintaining "husband and wife" when I don't think we necessarily need to do that. I think... [LB785]

TOM VENZOR: Well, I... [LB785]

SENATOR MORFELD: I would expect that Catholic ceremonies... [LB785]

TOM VENZOR: Yeah, um-hum. [LB785]

SENATOR MORFELD: I mean I respect that's your guys'... [LB785]

TOM VENZOR: Um-hum. [LB785]

SENATOR MORFELD: You know, that's your prerogative. I get it. [LB785]

TOM VENZOR: Yeah, and, yeah, I don't think we need that argument to suggest to this committee that we should keep "husband and wife." I mean, I could make an argument for keeping that without giving you an argument based on statutory interpretation, so I don't think we should read my statutory interpretation argument as some sort of vehicle for our belief on marriage. I think I can make both of those mutually, in a mutually exclusive way. It just so happens that they both kind of coalesce. [LB785]

SENATOR MORFELD: Okay. [LB785]

TOM VENZOR: So I wouldn't say that, though, but... [LB785]

SENATOR MORFELD: Okay. [LB785]

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TOM VENZOR: Yeah, um-hum. [LB785]

SENATOR MORFELD: Okay. [LB785]

SENATOR EBKE: Senator Chambers. [LB785]

SENATOR CHAMBERS: I think it's good I came in at this point because what this makes me think of is magic tricks. One says, "Hocus-pocus!" The other says, "Abracadabra!" And all of it is sleight of hand, misdirection. There is no magic. This language means nothing. I probably have officiated more weddings than anybody in here, 13, and I have pronounced people spouses and friends. And I explain what this marriage relationship is about, that it's between the two people who are in front of me, they're not marrying each other's friends, they're not marrying each other's family, they're not marrying each other's in-laws or outlaws. It's strictly between them and each owes to the other those kinds of affections and loyalties that they would give to nobody else, and they're prepared to try to do it for the rest of their natural lives, which is going to be extremely difficult, so make sure you know what you're getting into, and love each other forever but make sure that you remain friends. Friendship will stay there when love flies out the window. So if you've grounded on friendship, you have a chance of a lifetime relationship. If it's founded on love, no way, you cannot live on icing on a cake. You need something of substance. So the words don't mean anything, and nobody can invalidate any of the weddings that I have officiated at because I didn't say "husband and wife." I've never said that. I always say "spouses and friends." And then I invoke something that would make Catholics shudder. I say, in the words of Mr. Spock, "Live long and prosper." And I actually participated in a wedding at a Catholic Church. These two young people, one's family was from Omaha, the other was from New York. The New Yorker wanted me to perform the wedding, and so did the one in Omaha. But the parents of the groom, whichever one was from New York, wanted it in a Catholic Church. It didn't make me any difference. They could have had it in Farmer Brown's barn. They could have had it in the street. Made me no difference whatsoever, because I think when something happens in a church that just about jinxes it because I look at churches like...priests spend a lot of time there and you know how they do little boys and girls and they have that problem in Chile right now. And I heard how in Italy the parents tell their children, whatever you do, don't be in the presence of a priest. And that's said regularly. They don't trust priests, but the priests are always in church. But at any rate, I said, you are going to have to arrange for us to do this in a Catholic Church. There is a Catholic Church in the neighborhood where I live. It's called St. Benedict. And I've known that priest for some time. They retired him against his will. He was a good man, respected in the community. I even signed a petition to allow him to continue to operate. That might be what sealed his doom. But they retired him and removed him from the community. But here's what he explained to me and everybody else, and he knew I would accept it. Whatever they wanted to do, I would do. He explained to the family that when it came to, I call it, the mumbo jumbo of the Catholic Church, he would have to say that, but everything else I

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could say. And since they called it a sacrament, and only a priest could execute that in the church, then he would have to say that. I said, it makes me no difference, I'm here to accommodate these two young people, I'm not even here to accommodate their families. So we went through everything leading up to the mumbo jumbo, and then he said all that, then I took over again. The walls didn't fall down. Ceilings didn't cave in. Everybody went away very happy. So I don't understand what all this arguing about these words are in the statute because they don't have to be used anyway. And I think just put the word...in line 13, "In the solemnization," that shouldn't even be there. It's not solemn. That carries the notion of sadness, long jackass-like faces. It's supposed to be a celebration. Isn't a celebration of marriage? [LB785]

TOM VENZOR: You betcha. [LB785]

SENATOR CHAMBERS: When people celebrate, they're happy, aren't they? They're cheerful. They feel better after having been there than before. But the solemn people got faces long like a jackass, don't want to see a smile anywhere: We're in the presence of God and God doesn't play. Well, if you look at a duck-billed platypus, God has quite a sense of humor. So I think in reality this is much ado about nothing. And if I sound like I'm trivializing it, it's because I think all of this disputing back and forth is trivial. And I will never consent to putting anything into the statute that gives deference to any religion or all religions. Let them keep their religion in church. And if they keep messing around, I'm going to bring a bill to make all you all pay taxes. You know why? I don't go to church but I pay taxes that help pave the streets, that provide streetlights, that provide fire and police protection to these church people and they don't want to pay their own way. Even though Jesus was talking one time and somebody tried to trick him, as they did, they didn't know how slick Jesus was. They said, should we pay taxes? And Jesus said, bring me a coin. And they brought him a coin. He said, whose image and superscription is on that coin? They said, Caesar's. He said, then render unto Caesar what is Caesar's and unto God what is God's--in other words, you pay your taxes--but religions don't want to believe that part, so they pick and choose. And here's why I'm saying this. Whatever people want to do in their church, and none of us is talking about human sacrifice or that crazy stuff that some people do under the name of religion--I'm talking about people who have a religion that's at least sane even if I don't agree with it--they can do whatever they want to in their church. It's theirs. They can set their rules. They can have anybody in their church. They can even bar churches...people. They can segregate their churches by race; they do it by religion, anyway, sexual orientation, anything they want to in their church. But when they want to bring that mess and put it into statute and make everybody act like they believe it, that's where I draw the line. So if you all stay in your church, you won't have any problem with me. But when you stick your nose into my territory, which is the Legislature and the political arena, I'm going to treat you like any other lobbyist. And your church is the only one that has lobbyists on staff who come over here. And I just treat you like a lobbyist, except that I'm more concerned about the Catholic influence because I don't know of any other religion that concealed raping of children where the bishop knew about the

rape and transferred these rapists to other dioceses without warning the people that I'm sending a ravaging wolf among your lambs; a church that would take somebody like Cardinal Law, Bernard, Cardinal Law, who presided over the worst sexual abuse of children in this country and call him to Rome. I think it may have been Paul II who said--John Paul II--who but for that I had a lot of regard for, and put him over the second-most important basilica in Rome, and I think it was called St. Mary's Basilica (sic: Basilica di Santa Maria Maggiore). And I thought, how ironic it's named after the mother of the child that people worship and Bernard Law presided over a church, a domain that they gave him as a cardinal, where children were the sexual targets of these priests. He defamed that basilica. He sullied the Catholic Church, although he couldn't make it any worse than it was because priests were doing that everywhere. But when he finally croaked, Bernard Law, you know what that current pope said over that scoundrel's carcass? I hope God is merciful in judging him. That's what I see in the Catholic Church, and I say it everywhere, just like I talk about the cops. So when you come here, you're on salary, aren't you? [LB785]

TOM VENZOR: Yes, Senator. [LB785]

SENATOR CHAMBERS: You get paid for what you do? [LB785]

TOM VENZOR: Yes, I do. [LB785]

SENATOR CHAMBERS: Okay, so that's your job. I don't fault you for doing your job. I don't fault lawyers when they defend people charged with murder. But, see, I keep in mind...I'm a man who doesn't care about badges and titles. You're doing what you're paid to do. That's why you're here. You are an employee, not a bringer of glad tidings and good news of the gospel, so I take everything you say with a grain of salt. You're given your orders. You're told what to say or the confines in which you can speak, and that's what you do. I had an understanding with Jim Cunningham, who I respected tremendously, but he knew when it came to the religion, nothing; the other guy that I gave a nickname to, which I won't mention now because he's not here to defend himself but it wasn't obscene. And in fact, his friends, when he was getting ready to go away, some of them gave him a little going away party and that's the way they characterized him. I said all that to lead up to one thing. I want to ask you a question. First of all, what language, if you could have your way...let's start with the language as it is now: husband and wife. That is the language currently in the statute, would you agree? [LB785]

TOM VENZOR: Um-hum, yep. [LB785]

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SENATOR CHAMBERS: And you obviously had no objection to that because you never came to say let's amend it into something else. So was "husband and wife" language that was all right with you? [LB785]

TOM VENZOR: Yeah, the language as it originally stood was fine. [LB785]

SENATOR CHAMBERS: Okay. Now this bill strikes "husband and wife" and substitutes "spouses." [LB785]

TOM VENZOR: Um-hum. [LB785]

SENATOR CHAMBERS: Does that word describe two people who are married? [LB785]

TOM VENZOR: Yes. [LB785]

SENATOR CHAMBERS: Do you think people know when they...somebody is referred to as a spouse in an English-speaking country, they're not talking about friends but people who are married? Do you think they understand that? [LB785]

TOM VENZOR: Yep. [LB785]

SENATOR CHAMBERS: So you object, though, to the word "spouses" or you don't object to it? [LB785]

TOM VENZOR: We don't object to it. It's more so, again, retaining the terms "husband" and "wife" because certain people, our ministers, for example, will be administering that marriage and taking, having those couples take each other as husband and wife. They're not going to be taking each other as spouses or as partners or whatever other language might be wanted. [LB785]

SENATOR CHAMBERS: Well, when the Catholics perform a ceremony, they can say whatever they want to, can't they? Can't they? [LB785]

TOM VENZOR: I mean, in the grand scheme of things, yes, but we have a certain formula that's used. [LB785]

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SENATOR CHAMBERS: No, I meant based on...Catholics can determine what formula they're going to use regardless of what's in the statute, can't they? [LB785]

TOM VENZOR: Correct. [LB785]

SENATOR CHAMBERS: And they're...that marriage would not be invalid if they continue to say husband and wife. It wouldn't be invalid, would it? [LB785]

TOM VENZOR: It wouldn't be invalid for the purposes of the church, but to the extent that that minister may be administering that marriage also on behalf of that couple for the purposes of state law, we want to make sure that we're following the formula that the state law has. And what I'm saying here is, if it's retained, "husband and wife," then there's no issue about whether we're meeting the requirements of the form for state law. [LB785]

SENATOR CHAMBERS: I don't...what you said makes no sense to me and I'll tell you why. In the Catholic ceremony, no matter what this...whether it says spouses, whether it says friends, whether it says partners in the statute, the priest can say husband and wife. There are some churches and others who still say man and wife, which indicates the wife is bound by the marriage vow but not the man. They don't call him husband. They say, I pronounce you man and wife. That doesn't invalidate the marriage or the ceremony. If they want to say husband and wife, that's fine. If, as this language says, that would be some harmonizing because it's a statute, not a prayerbook, not a hymnal, not a "Bible," but secular language, "spouses," the priest doesn't have to say spouses. And I would object strenuously to the Legislature trying to accommodate the Catholic Church. [LB785]

TOM VENZOR: I don't think, again, Senator, it's not necessarily here about accommodating, but our ministers are providing both the marriage rite under the sacrament but they're also providing the form of the marriage for this couple so that it's in accord of a state law so that they don't have to go through another ceremony or some other event in order to have a state marriage, so that way they can do it all at once. So again, what we're saying here. And I understand you have a particular reading of it. Your reading seems to say that it doesn't matter what the words are in the statute, you can say whatever you want. I understand that argument and I comprehend it. What we're saying is that, myself and others and other lawyers who we've consulted, there's a different understanding and a different interpretation or a different reading of the statutory provision. To that extent, we're recognizing that there's some reasonable minds here differing on how the statute is to be read. And so in light of that, we're trying to propose something that would kind of meet both sides. [LB785]

SENATOR CHAMBERS: And what would you propose? [LB785]

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TOM VENZOR: You know, I think something like that they take each other as husband and wife or spouses or that they take...again, no particular form shall be required, except the following, and it could be husband and wife, spouses, you know, something like that where it would be you'd have both your spouses and then you'd have husband and wife and... [LB785]

SENATOR CHAMBERS: You mean put "spouses" and then "husband and wife" also? [LB785]

TOM VENZOR: Yeah, or, yeah, "spouses" or "husband and wife." I think there could be some language that would be worked out. [LB785]

SENATOR CHAMBERS: You mean both of them there? [LB785]

SENATOR PANSING BROOKS: Yes. [LB785]

TOM VENZOR: Yes. [LB785]

SENATOR CHAMBERS: Then that would mean they're not the same. If you have two different items, then they're not the same. The courts say that when a statute is being interpreted it's not deemed that any word is surplusage, that every word has a meaning, and the court will give meaning to every word. So we have the judges scratching their head. Now these people are married. Now are they spouses or are they husband and wife? And then one would say, well, if they're husband and wife, they're spouses. And the other one would say, and if they're spouses, they're husband and wife. They'd say, then why did that idiotic Legislature put both of them when one of them suffices? If we put "spouses," if we put "spouses" and we passed the statute, would that change the wording that a priest would use when that sacrament is being carried out? [LB785]

TOM VENZOR: It wouldn't change the wording that they use, but again, then the question would become, if we're using different terminology, then what the statute is saying, are we validly executing a state marriage while we're doing this ecclesial marriage? [LB785]

SENATOR CHAMBERS: If it says no form, no particular form...are you a... [LB785]

TOM VENZOR: ...shall be required, except that... [LB785]

SENATOR CHAMBERS: Are you a lawyer? [LB785]

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TOM VENZOR: Yes, um-hum. So no... [LB785]

SENATOR CHAMBERS: Oh, I'm wasting my time. I didn't...you probably get paid by the word. I've asked you enough questions. I thought you were just a layperson. You're a lawyer hustling a job. [LB785]

TOM VENZOR: Thank you, Senator. [LB785]

SENATOR CHAMBERS: I've said all I need to say. [LB785]

TOM VENZOR: Thank you. [LB785]

SENATOR CHAMBERS: Okay. [LB785]

SENATOR EBKE: Senator Pansing Brooks. [LB785]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Venzor. So I'm just trying to figure out. I mean really it...you're talking about making sure that the churches can comply with the law. Is that what you're saying? [LB785]

TOM VENZOR: Yeah, in other words, right when... [LB785]

SENATOR PANSING BROOKS: Okay, but...so, excuse me, but so if you're complying with the law, the law right now is that various people can get married and it doesn't have to be husband and wife. So how do we as a body that is to support the actual law of the land, how should we fix this, because as Senator Chambers said, having "husband and wife" or "spouses" doesn't fix it. That makes it as if there's some differentiation, and clearly you would like a differentiation. The constitution, the Supreme Court has decided there is not a differentiation. So if you're following the law of the land, you should be embracing this, or we could come up with "in marriage" and that's...this is law because legislators before us set this as law. So we can easily change it to "Fred and Ernie." I mean we can change it to whatever we want. And the law of the land now says that people are to be able to get married. And so changing the wording to that they take each other in marriage doesn't hurt the Catholic Church, it doesn't hurt the Baptists, it doesn't hurt the Pentecostal, it doesn't hurt the Muslim churches. So I don't get this. I don't...it's the law of the land. You're coming here claiming that you are supporting the law and the law says that we need to change this. So what...do you have something to say about that? The law says we need to change this wording right now. This does not comply with the law of the land right now. [LB785]

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TOM VENZOR: Again, I understand the desire here to harmonize the language. What we are intending here by our testimony is to address whether there would be ambiguity as to what specific words would have to be used and if it's... [LB785]

SENATOR PANSING BROOKS: No, but you've just said nobody would...uses it. We've all been to ceremonies. Maybe... [LB785]

TOM VENZOR: I haven't said that. Now there's plenty of instances where something may be happening. It is what it is, but that doesn't necessarily mean that it ought to be as it ought. Now, again, that's why I'm saying there might be reasonable minds differing here as to what the requirement is, and we're just trying to work with that and offer some suggestions and solutions. And I think Senator Chambers raises a good point about the statutory canon dealing with surplusage. If you have two words, they're supposed to have, you know, two different meanings, and that kind of thing, and think that's a valid point and something to be considered in terms of how to construct this in a way that's...takes care of the concern we're raising also. [LB785]

SENATOR PANSING BROOKS: Thank you, Mr. Venzor. [LB785]

TOM VENZOR: Yeah. Thank you. [LB785]

SENATOR EBKE: Senator Chambers. [LB785]

SENATOR CHAMBERS: This is not to be argumentative now. I performed what would be called the same-sex marriage and I was pleased. I think that is the only same-sex marriage that was performed in this Capitol Building and I was the one who had the honor of joining these two loving people in wedlock. I don't say holy. I saw you take a...and shudder, I think. [LB785]

TOM VENZOR: No, it had nothing to do with what you said. [LB785]

SENATOR CHAMBERS: Okay. Now I'm going to ask you... [LB785]

TOM VENZOR: Just to make sure that's clear, that had nothing to do with what you said. [LB785]

SENATOR CHAMBERS: Your being a lawyer, you can help me. I did not say and would not say to a same-sex couple, "husband and wife." I would say, "spouses." What should I say if I cannot or should not say "spouses" to two people of the same sex? How should I say? What do I

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pronounce them, other than the insulting terms that some people use who wouldn't think that ought to be, but where I'm being respectful of them and accommodating their wish? They didn't ask that I say "husband and wife," so what word do you think I ought to use? The word I used, as I stated, but I use this if they're heterosexual or same sex, I use "spouses" all the time. But let's say that "husband and wife" was what usually would be the formula. These two people asked me to officiate. What should I say? In your opinion, not mine, what should I say? Or should I not say anything about what I now pronounce you? [LB785]

TOM VENZOR: I'm not going to offer you any opinion on what I think you should say. I think if you pronounce them as something other, a court would probably look at that and in light of Obergefell, whatever you use, they'd probably find a way to construct that form of the marriage to meet state law. But I'm not going to instruct you on what you should or shouldn't say. [LB785]

SENATOR CHAMBERS: But if I said "spouses," that wouldn't invalidate the wedding, would it, the marriage? [LB785]

TOM VENZOR: In terms of not meeting the requirement of 42-109? I know I'm not supposed to ask questions back and forth. I'm just trying to get clarity. [LB785]

SENATOR CHAMBERS: Let me see what you're referring to. Well, where it says, "no particular form," that means what it says: no particular form... [LB785]

TOM VENZOR: ..."shall be required, except that," and then I think the question was, if I were to use the term "spouses," would that invalidate the marriage? And my, I guess, my argument in response to that is I assume, and I know what assuming does--I watch...my concern there, what I think a court would probably do is they'd probably read that in light of Obergefell and say, well, is the marriage invalidated because I didn't use "husband and wife"? And I assume they would read it in light of Obergefell and say, no, it's not invalid because you didn't use "husband and wife" because Obergefell has some certain law on marriage and that's going to...42-109 is going to have to take that into consideration. [LB785]

SENATOR CHAMBERS: Okay, thank you. That's all that I have. [LB785]

TOM VENZOR: Thank you. [LB785]

SENATOR EBKE: Any other questions for Mr. Venzor? I see none. Thank you. [LB785]

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TOM VENZOR: Thank you for your time. [LB785]

SENATOR EBKE: (Exhibits 1, 2, and 4-6) Other opponents? I see no other opponents moving. Anybody speaking in the neutral capacity? I see none. We have some letters. Senator Vargas, if you want to make your way up. We have several letters in opposition: Katie Burton; Dustin and Amy Ormond; Christine Bates; Adriane Tubaugh; and Barbara Gard. Senator Vargas. [LB785]

SENATOR VARGAS: What did you say? [LB785]

SENATOR PANSING BROOKS: Senator "Bard." [LB785]

SENATOR EBKE: No, I said Senator Vargas. [LB785]

SENATOR VARGAS: Okay, yeah, I just didn't hear. I thought you said...I thought you called me Senator Krist. [LB785]

SENATOR EBKE: No, I said Senator Vargas, I think. [LB785]

SENATOR VARGAS: Okay. Hey, either way, that's a compliment. Okay, so... [LB785]

SENATOR EBKE: Am I talking to the wrong person here or...? (Laughter) [LB785]

SENATOR VARGAS: Thank you, Chairwoman Ebke, members of the committee. I want to thank you for this hearing. Again, I just want to reiterate a couple different things. One, this bill was brought by a county clerk with a concern around how we're leaving the statute unchanged could affect the ability to perform marriages and sign marriage couples...sign marriage licenses for all couples. This is in line and reflective of the changes in federal law. The amendment that we brought--and, Senator Chambers, you weren't here earlier for that--the amendment we brought came from conversations with the Nebraska State Bar Association that would change the "as spouses" into "in marriage" this way. [LB785]

SENATOR CHAMBERS: Uh-huh. [LB785]

SENATOR VARGAS: Right? Yeah, so that change will allow whoever is performing the marriage to tailor the ceremony to the needs of the people getting married. So ministers, magistrates, and officiants can still pronounce a couple husband and wife, just as they have pronounced a couple husbands or wives or husbands and husband or wife and wife. This change

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simply aligns state law with federal law, nothing more, nothing less. I want to thank you all. That's all I have. [LB785]

SENATOR EBKE: Senator Chambers. [LB785]

SENATOR CHAMBERS: Senator Vargas, this is the first time I can recall you being before the Judiciary Committee--is that true, or have you been here?--because I don't remember my being here if you were. [LB785]

SENATOR VARGAS: I was here for a legislative resolution having the Legislature support DACA youth. [LB785]

SENATOR CHAMBERS: Oh, okay. [LB785]

SENATOR VARGAS: Yeah, this is the first LB. [LB785]

SENATOR CHAMBERS: Well, that was something saying...that was very good. This...okay, now here's what I'm going to ask you. If we're going to be very, very technical, hypertechnical...I'm going to read the language of 42-109: "In the solemnization of marriage no particular form shall be required, except that the parties"--there is no definition of the word "parties" that I see with--"that the parties shall solemnly declare in the presence of the magistrate or minister," of which I am one--I purchased my ordination so I came by it honestly and as honestly as those who get theirs from mysticism--"and the attending witnesses, that they take each other as," put "in marriage," or whatever the term is, "and in any case there shall be at least two witnesses, besides the minister or magistrate present at the ceremony." Now we assume that certain words mean something. Where do you see anything there that doesn't...that would not apply to a terrapin and a turtle getting married? [LB785]

SENATOR VARGAS: It doesn't state that. [LB785]

SENATOR CHAMBERS: Right. So I have said that any two creatures who care enough to get married, I would perform the ceremony. And I think that under this statute, if a turtle and a terrapin came to me and could make me understand, either turtle or terrapin, and let me know they want to be married, I could marry them, I could perform the ceremony, and I would. Or if crocodile wanted to marry an alligator, I'd do it. I think you brought very good legislation and I support it. [LB785]

SENATOR VARGAS: Thank you very much. [LB785]

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SENATOR EBKE: Senator Krist. [LB785]

SENATOR KRIST: Just wanted to recognize and thank Mr. Esch for coming down from Douglas County. And say hello to your folks for me, please. Thank you. [LB785]

SENATOR EBKE: Other questions? Okay, this closes the hearing on LB785. We will move to LB826, which is also Senator Vargas. Can I see a show of hands on how many are planning on testifying on LB826? One, two, three, four. Okay, thank you. That helps us to know when to call the next senator. [LB785 LB826]

SENATOR VARGAS: Ready to go? Okay, thank you, Chairwoman Ebke and members of the committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. Hopefully you guys don't get sick of me and we can continue on with good conversation on my next bill, LB826. I'm here today, LB826, to talk about this bill because it reinforces an existing state law that grants state court judges the jurisdiction and authority to make factual findings regarding abused, abandoned, and neglected children in context of findings related to the best interest of a child. Further, LB826 would require judges to make these findings when there is sufficient evidence presented and when requested by a party involved in the proceedings. I'd like to give the committee a very brief general background on this issue as it's fairly unique, tailored to this part of law. Legal experts will testify behind me, so I'd ask the committee to hold specific questions about proceedings, case law, and interactions with judges for them. So Congress originally established the ability for judges to make findings outlawed in LB826 in the 1990 Immigration Act. In 2008, the Trafficking Victims Protection Reauthorization Act reaffirmed the same ability and in 2009, in our great state, the Nebraska Court of Appeals held in In Re Luis G. that juvenile courts have the jurisdiction and the authority to issue orders related to whether a child has been abused, abandoned, or neglected, and whether it would be in the best interest of a child to be returned to his or her country of nationality. Now, unfortunately, there have been an increasing number of occasions when judges have resisted making the necessary court findings due to a mistaken belief that they lack the authority to do so. Other judges choose to not make the findings even when requested because, again, they believe that they're not required to do so. And finally, when requested to make some findings, some judges mistakenly believed they were being asked to grant some sort of immigration benefit. Now none of these reasons are legitimate or lawful, again, given other types of law cases that have come before. The intent of LB826 is to clarify in statute the authority these judges already possess and to ensure that these findings are made when they are requested. It's as simple as that. This bill does not seek to change Nebraska law. Instead, the intent is to clarify in statute the authority that judges already possess. Now like I mentioned earlier, there will be attorneys and legal experts who testify behind me, so I'd ask that the committee save questions regarding proceedings, case law, and interactions with judges for them. You will also hear from a juvenile that has directly benefited and been provided stability from a judge making these findings. I hope their testimony will help you better understand and

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move your support for LB826. And with that, I'll be happy to answer any questions that the committee may have. Thank you. [LB826]

SENATOR EBKE: Questions for Senator Vargas? I see none at this time. [LB826]

SENATOR VARGAS: Thank you very much. [LB826]

SENATOR EBKE: You bet. First proponent. [LB826]

KEVIN RUSER: (Exhibit 4) Chairwoman Ebke, members of the committee, my name is Kevin Ruser, K-e-v-i-n R-u-s-e-r. I'm a professor of law and director of clinical programs at the University of Nebraska College of Law. I'm here today as a private citizen and not as an employee or representative of the university or the law school. I've been on the faculty teaching in the clinical programs at the College of Law since 1985 and my support for this bill stems from the experiences that my students and I have had relating to our work in domestic relations cases. Three of our clinical programs at the College of Law represent clients who are either children or who are the parents of children, and students who work in those clinics contend for custody on behalf of parent clients or seek immigration benefits on behalf of minor children or advocate for the best interest of children in juvenile cases in which they have been appointed as guardians ad litem. In all of those cases courts are decided upon whether to grant the relief our students request on behalf of their clients and whether it's in the best interest of those minor children. And sometimes that can take a very general finding but in other cases those findings need to be shaped into the requirements of the relief sought by the clients or by the children, as in cases where children are in danger of being removed to another country. On occasion, as Senator Vargas said, courts have been reluctant to include findings in their custody orders that are couched in certain language that would benefit the minor children. There have been occasions where we have, for example, asked a court to include specific findings in custody orders that it would not be in a child's best interest to be returned to another country and courts have balked, citing concerns that they do not have jurisdiction, presumably meaning subject matter jurisdiction, to do so. They've also stated that our asking for such specific findings is akin to asking for a declaratory judgments, which some courts of limited jurisdiction believe they cannot do. I actually disagree that any such jurisdictional deficiencies exist. I believe that the courts have subject matter jurisdiction and the authority to make these types of specific factual findings for three reasons. First, the Uniform Child Custody Jurisdiction and Enforcement Act grants such jurisdictions to courts hearing custody cases. Second, as a matter of well-established common law in Nebraska, even courts of limited jurisdiction have within the scope of their limited jurisdiction equity jurisdiction to enter orders consistent with the best interest of children. And third, various decisions of our appellate courts approve of trial courts making such findings and I've cited those in my written testimony. In order to clarify that courts have both the

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jurisdiction and authority to make the types of factual findings cited above, LB826 would amend the UCCJEA by adding clarifying language and stating that courts dealing with custody issues have both the jurisdiction and authority to make necessary and specific factual findings that will enhance their ability to provide for a child's best interest and, as such, I urge the committee to advance this bill. Thank you. [LB826]

SENATOR EBKE: Thank you, Mr. Ruser. Questions? I see none. Thank you. Next proponent. [LB826]

ANGELA ESCOBAR: Good afternoon. My name is Angela Escobar, A-n-g-e-l-a E-s-c-o-b-a-r, and first of all, thank you. It's an honor to be in front of this committee today. And I will be addressing how living in the United States has impacted my life. Six years ago I came. I decided to come to the United States to search for a better future and making that decision changed the course of my life. I was born in a very small town where I had no opportunity to progress in life or get an education. And I am very, very thankful that this great nation gave me the opportunity to stay and be able to get a better education. I was born in a very small town. I lived with my mother. My...she had a very rare mental illness. My father was an alcoholic. My brother was involved in violence and I was being drawn into that same life and that's why I decided to come to the United States. [LB826]

SENATOR EBKE: That's when you decided to come to the United States? [LB826]

ANGELA ESCOBAR: Yes. And now I am able to have the life I've always wanted to have and this year I will be graduating, going to college to study medicine and with the goal to one day become a cardiologist and be able to inspire others. That's... [LB826]

SENATOR EBKE: Finished? [LB826]

ANGELA ESCOBAR: Yes. [LB826]

SENATOR EBKE: Well, thank you. Are there any questions? I see none. Thank you for coming today. Good luck. Next proponent. [LB826]

CHARLES ELLISON: (Exhibit 5) Good afternoon. Dear Chairwoman Ebke and honorable members of the committee, my name is Charles Ellison--that's C-h-a-r-l-e-s E-l-l-i-s-o-n--and I'm the special assistant professor at Creighton University School of Law where I direct the immigrant and refugee clinic and today have been authorized to speak on behalf of Creighton University to express our support for LB826. As Senator Vargas said, this bill clarifies and

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reaffirms that Nebraska state court judges, who are tasked with making determinations regarding the custody and care of juveniles, have jurisdiction and authority to make factual findings already related to children who have been abused, abandoned, and neglected, whether parental reunification is viable, and whether it would be in the child's best interest to be removed to his or her country of nationality. And it's in that respect that LB826 does not create anything new. Instead, it reinforces the existing legal framework. However, LB826 is important and needed because some Nebraska state courts have expressed hesitance in making these findings, as Professor Ruser explained. This bill makes clear that state court judges can and should make these factual findings where sufficient evidence is there to support those findings and, as such, this bill will ensure that vulnerable youth in Nebraska can continue to access the relief for which they're eligible and that is in their best interest to pursue. So there are at least two recurring situations where it's vital to be able to obtain these factual findings. The first is in any situation where there's a custody dispute and one of the parents resides in another country. A court may be called upon to make a finding regarding whether it's in the best interest of the child to be removed to that country. Second, as was said, for any child who is eligible to seek special immigrant juvenile status, as Angela benefited from, while obtaining a state court order with these factual findings is a necessary first step in that process. In either scenario, the well-being of a child and his or her prospects to grow up in a safe and healthy environment turn upon whether the judge makes these factual findings. Finally, it's important to note that LB826 does nothing to undermine a state court's ability to evaluate the evidence presented for purposes of making these factual findings. It just requires Nebraska courts to make them when moved to do so, when they do so on their own motion, and when there is sufficient evidence. So in sum, we urge the committee to advance LB826 because it offers important clarification to ensure that Nebraska courts continue to look after the best interest of children within the state. Thank you. [LB826]

SENATOR EBKE: Thank you, Professor. Questions? I see none. Thank you. [LB826]

CHARLES ELLISON: Thank you. [LB826]

SENATOR EBKE: Next proponent. [LB826]

BUB WINDLE: Chairwoman Ebke, members of the committee, my name is Bub Windle, B-u-b W-i-n-d-l-e, here on behalf of the Nebraska State Bar Association in support of LB826. You've heard from people that are much more expert than me, so I will take your recommendation, Senator Ebke, and simply say that the Bar Association supports this proposal. There is some uncertainty and so we support clarifying this authority more explicitly. Thank you. [LB826]

SENATOR EBKE: (Exhibits 1-3) Thank you, Mr. Windle. Any questions? Thanks. Are there any other proponents? Are there any opponents to LB826? Is there anybody speaking in a neutral

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position on LB826? Senator Vargas. Do we have any letters? We have a few letters that I'll read in quickly. We have one from Mary Bahney of the National Association of Social Workers-Nebraska Chapter, Sarah Helvey of Nebraska Appleseed, and Rose Godinez of the ACLU of Nebraska. And, Senator Vargas... [LB826]

SENATOR VARGAS: Thank you very much, Chairwoman Ebke and members of the committee. I want to thank the individuals that testified here in support of this bill and from different perspectives on the impact of what this change to clarify statute. So I just want to reiterate the intent of LB826 is to clarify in statute the authority that judges already possess to ensure that these findings are made when they are requested. And doing this will ensure that we are doing everything we can to harmonize these statutes and also allow Nebraska law to then be in the way that it should be and so we're not changing anything. We're just making sure that the statute is updated in a way that it currently has been presented to us. Well, thank you very much and I appreciate the time. [LB826]

SENATOR EBKE: Okay. Questions for Senator Vargas? That concludes the hearing on LB826. We will move on to LB845 and Senator Briese. Can I see a show of hands of how many people intend to testify on LB845? Three, four, five, seven, okay. About eight? Okay. So the plan here is that when we complete LB845 we will take about a five-minute break, so just to let...just to give Senator Howard's office a five-minute warning, we'll let her know. Okay? Okay. Senator Briese. [LB826 LB845]

SENATOR BRIESE: Thank you, Chairwoman Ebke and the members of the Judiciary Committee. Good afternoon. My name is Tom Briese, T-o-m B-r-i-e-s-e, and I represent the 41st District in the Nebraska Legislature. LB845 is a bill which was originally brought to me by the National Federation of the Blind of Nebraska and which my office worked on extensively over the last year with a number of organizations in the state representing Nebraskans with disabilities. I believe that you will hear from, or already have received letters from most of those groups today. You've received an amendment being passed around, AM1711, which I would like to become the bill, and I'll speak to it later. But this bill recognizes that individuals with disabilities face societal biases relative to their ability to successfully parent children, and the parents, as well as the children, suffer on this account. LB845 provides that an individual's disability shall not serve as a restriction or denial of custody if it's otherwise in the best interest of the child or children to allow such an arrangement. So the intent of the bill is still to adhere to the "best interests of the child" standard found in Nebraska Revised Statute Section 42-364, I believe. So if the disability is alleged to have a detrimental impact on a child, under this bill the party raising such an allegation must demonstrate by clear and convincing evidence that it endangers a child. If this burden is met, the parent with the disability has the opportunity to show how supportive parenting services can alleviate those concerns. The court may then require such supportive parenting services be implemented. And if a court finds that supportive parenting

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services are not a reasonable accommodation to prevent a denial or limitation on the rights of the parent with a disability, the court must make written findings as to why that is so. This bill is designed to give children of Nebraskans with disabilities the best chance of having a happy, loving, and successful life with their own parents. The amendment I referred to, AM1711, I believe, makes two small changes to the bill. First, it removes language around "prospective parents" which was included in error, as the intent of this bill is to impact only biological or existing adoptive parents. And I will be introducing an interim study with the Health and Human Services Committee regarding adoption, foster, and family placement situations. Second, the amendment addresses some unclear language in the original bill which referred to "family law," which, after discussions, I don't feel is adequately defined in Nebraska law. This amendment clarifies that this bill concerns only proceedings regarding custody. I will also note I understand that the Nebraska Bar Association expressed some concerns feeling that a slight change in language would make it more clear that the standard in custody matters would remain what's in the best interests of the child and that disability is not to be used in determining that best interest. I'd also like to express that I'd like to work with the committee and the Bar Association and our friends in the community of Nebraskans with disabilities on ensuring that this bill can reach the floor in a way that all parties can agree to. I would ask for your support of LB845. I feel this bill is solid, commonsense legislation that both protects the rights of individuals with disabilities, and protects the best interests of children. And with that, I'd welcome any questions. [LB845]

SENATOR EBKE: Any questions for Senator Briese? I see none. Thanks. [LB845]

SENATOR BRIESE: Thank you. [LB845]

SENATOR EBKE: Going to hang around to close? [LB845]

SENATOR BRIESE: I will do that. [LB845]

SENATOR EBKE: Okay, great. First proponent. [LB845]

JENNIFER JAMES: (Exhibit 5) My name is Jennifer James, J-e-n-n-i-f-e-r J-a-m-e-s. I have a disability. My mom also has a disability. She was able to raise me and my younger brother by herself even though she had a disability. Taking children away from their parents just because they have a disability would be so detrimental to the children. If the parent has a disability that is hereditary the child may also inherit the disability. In these cases, it is better for the child to be with the parent who also has the condition rather than someone who is unfamiliar with it. In my case, I have the same disability as my mom. She has helped me learn to live independently with disability based on her own experience. Because of this I am able to stand up for myself and advocate for my rights as a person with a disability. On another note, if the parent has a disability

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that is mental or emotional, taking the child away from them could kick the disability into overdrive. A parent with a disability can parent just as well as any other parent can even if they need some services to support them. Some people look at a parent that has a disability with a child and thinks the child may be in a bad or dangerous situation simply because they have a disability. But taking the child away from that parent could traumatize the child and that could be the bad situation. I hope you move LB845 into General File. Thank you for your time. [LB845]

SENATOR EBKE: Thank you for being here, Ms. James. Any questions? Appreciate your testimony. Next proponent. [LB845]

AMY BURESH: Good afternoon, Chairwoman, members of the committee. My name is Amy Buresh, B-u-r-e-s-h, and it is my privilege to be here in support of this legislation today. First of all, I want to thank Senator Briese as president of the affiliate of the National Federation of the Blind and all of his staff for their hard work on putting this together. We appreciate it. And it's nice to see some of our friends on the committee here today. The National Federation of the Blind knows that blindness is not the characteristic that defines you or your future. Every day, every day we work to raise the expectations of blind people because it's low expectations that create obstacles between blind people and our dreams. We believe that blind people can live the lives that they want. Blindness is not the thing that holds you back. And we present this message with love, hope, and determination. We help to change and make people's dreams a reality. And part of those dreams and living the lives that people want includes becoming a parent or an active grandparent or adoptive or foster, you know, all those things. And there are a lot of people who have questions about the abilities of blind people to parent. And we know that blind people are fully capable and have successfully been parenting and raising their children for generations now. Sighted people, including courtroom judges and social workers, often resort to the "what ifs" when they evaluate blind people's parenting ability. No, not every blind parent is perfect, because not every parent is perfect. And I tell people that it's not blind people that are keeping emergency rooms open. It's accidents. All right? It can happen to anybody. As a blind parent, sure, we certainly do things a little bit differently. We might put bells on our children's shoes or maybe they'll wear special shoes that squeak when they're small or we put tick-tacks in their pocket when they're out playing on the playground. You raise them with expectations that, you know, they will follow and you won't have any problems. And last night I'd fallen asleep on the couch for a brief moment. My husband and my 4-year-old daughter, my 11-year-old son were already long sleeping. And I was holding my daughter and I was thinking, you know, what am I going to say to you, what can I possibly say to bring our point home to you? And I thought, you know, I'm just...I'm making this too complicated. I was thinking about the events of my day. I'm employed as a VR counselor during my 8:00 to 5:00 job. I serve as president of our state affiliate of the National Federation on the Blind, lots of other things, active member in our church and school, trying to balance all these things, and that is the point. I'm living the life I want, trying to

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juggle all the balls in the air, just like each of you. So how many of you--don't raise your hands or nod at me--so how many of you on this committee are parents? Yes? [LB845]

SENATOR PANSING BROOKS: Yes. I am. [LB845]

SENATOR BAKER: Me. [LB845]

SENATOR EBKE: Yeah. [LB845]

SENATOR HALLORAN: Yes (inaudible). [LB845]

SENATOR PANSING BROOKS: I am. [LB845]

AMY BURESH: Yes, a lot, most of you are, right? And so how would you feel if somebody just on the basis of a characteristic like the color of your hair, how short or tall you are, whether you're male or female, would say you're incapable to parent? So we are here to help those people who need the support and the training and I really urge you, on behalf of the blind of Nebraska and others with disabilities, to support this legislation. [LB845]

SENATOR EBKE: Okay. [LB845]

AMY BURESH: Thank you very much. [LB845]

SENATOR EBKE: Thank you, Ms. Buresh. [LB845]

AMY BURESH: Yes. [LB845]

SENATOR EBKE: Thank you for coming today, appreciate it. Any questions? Senator Pansing Brooks. [LB845]

SENATOR PANSING BROOKS: Yes. Thank you for coming. We're really grateful. So I'm listening to all this in complete surprise that it's necessary and that there is some discrimination against being able to. So I presume you have stories and that there are...I presume there are many stories about courts or others deciding that those with disabilities have a higher burden to be able to prove that you can take care of a child, or could you explain to me? [LB845]

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AMY BURESH: Um-hum, sure. [LB845]

SENATOR PANSING BROOKS: I am very surprised by this, so... [LB845]

AMY BURESH: Yeah. [LB845]

SENATOR PANSING BROOKS: ...I'd like to hear the stories, the anecdotal stories of that. [LB845]

AMY BURESH: Um-hum, sure, certainly. You know, we are very fortunate that in regards to blindness, specifically in Nebraska, there aren't a lot of just blatant, egregious cases, but around the country there certainly are. Some of the other disability population have some other stories that I will let them share with you. We see it in custody cases sometimes where it's a blind and sighted couple and where, you know, before the divorce happened they were perfectly fine to coparent, there were no trust issues or concerns, they get divorced, and the blindness is used against the other parent. For instance--this shocked me beyond belief--when our son was born, and he's now 11, we had social workers come and visit us. I was still, you know, crazy, like the birth...I mean we didn't even have his name yet and they came and had this, you know, huge, long list of questions that they were throwing at us that you would not have been asked, like: How are you going to know when you need to change the baby's diaper? How are you going to keep him safe? How are you going to feed him? How are you going to know when he's ill? How are you going to dispense medicine? I get the questions and the concerns, but people will often want to just fault on the "what ifs" and immediately jump to the oh, my gosh, if that was me I couldn't do it. We've had the training and the skills and know the resources. And thankfully, you know, we have a good support system to call on. Not everybody does have that. And thankfully, you know, we were able to answer the questions that the social worker did have and, you know, we were good to go on our way. But there have been several cases, even today, which just really boggles my mind, where babies are taken away within hours of their birth only because the parents are blind, no other reason than that. And that is just despicable and we, you know, Nebraska has a great track record. We just want to protect rights so that we don't get in these kind of situations and have to fight other battles. There's no reason for it. And I wish we didn't have to be here today because in a perfect world we wouldn't. We would all be able to just love and parent our children the way we, you know, are intended and created to do. [LB845]

SENATOR PANSING BROOKS: Well, thank you for that information and testimony, and I think that all of us here want to make sure that you can love and take care of your children. It's better for all of us. [LB845]

AMY BURESH: We appreciate it and really hope we can count on your support. [LB845]

SENATOR PANSING BROOKS: Thank you. [LB845]

AMY BURESH: Thank you. [LB845]

SENATOR EBKE: Thank you. Other questions? I see none. [LB845]

AMY BURESH: Thank you. [LB845]

SENATOR EBKE: Have a good day. Thank you. Next proponent. Welcome. [LB845]

JAMIE RICHEY: Good afternoon, Senator Ebke and members of the committee. My name is Jamie Richey, J-a-m-i-e R-i-c-h-e-y. I am a parent, as many of you are and many in this room. I became a parent in 2002 and thankfully, as Amy Buresh had said, I did not get my child taken away from me or many of the questions even that she received in the hospital. I had a few curiosity questions how I would do things at home, which are completely natural. And parenting is a completely natural thing that we want everyone to have the right to do, no matter if they have a disability or not. I raised my son for 13 years as a single mom. I was with him in the infant and toddler years with discovery and curiosity, in the elementary years of school projects, sleepovers and Cub Scouts, through the middle-school years of those fun video games, school dances, and even missionary trips. And I received questions, from children and adults alike, about how I did things, and I was more than happy to answer those questions. One thing that came about that I always thought was kind of interesting was a question about my son's name, a name which I had read in a book and fell in love with, a name which, Senator Ebke, you will definitely recognize, and a name which I had mulled over making sure that it wasn't a name that was going to be made fun of on the school playground like so many kids do these days, and that name was Isaac (phonetic). I named my son Isaac because I loved the name. But a nurse who worked with my grandma asked me, did you name your son Isaac so he could be your eyes? I was completely appalled by that. Here is a grown adult in the medical field asking me this question, and she was completely serious. A year and a half ago, I was blessed with three more children, not as triplets, thank goodness, but through marriage to my wonderful husband Jeremy. Our family had now doubled, and so it was great to have somebody to help take on those responsibilities of the details of transportation for things like band, show choir, Police Explorers, to help financially with braces, glasses, and soon college tuition, and also to be there with me emotionally, to celebrate with me, commiserate with me, laugh with me, and cry with me. Oh, and by the way, did I mention that my husband is also blind? And he was a single parent as well for several years. Our children have lived complete and full lives, maybe even more so than other children. They are very independent, they know how to self-advocate, they know how to hold themselves in social situations, they know how to have empathy and not sympathy for those with disabilities. And they are going out there living the lives that they want. Jessica (phonetic), 22, lives on her own

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and has a full-time job. Nathan (phonetic), 17, will be graduating high school and going on to Southeast Community College to...for a diploma in motorcycle mechanics. Isaac, who is now 16, plans to join the Marines and pursue a career in law enforcement. And Summer (phonetic), 15, wants to be a small animal veterinarian. So as you can see, all of them have very different goals in life but all have very great dreams, and our blindness has not held them back from living those dreams that they want. And this bill is so important so that all parents with disabilities can raise their children and not be afraid to have them taken away or even that the reason for wanting children to be questioned, that they can bring that bundle of joy home with them and even raise that joy through their teenage years. Thank you. [LB845]

SENATOR EBKE: Thank you, Ms. Richey. Just for the record, my son's name is Isaac. That's where... [LB845]

JAMIE RICHEY: Yeah. [LB845]

SENATOR EBKE: Good research. Any other questions there? [LB845]

JAMIE RICHEY: Questions? [LB845]

SENATOR EBKE: Okay. Thank you for being here today. [LB845]

JAMIE RICHEY: Great. Thank you. [LB845]

SENATOR EBKE: Next proponent. [LB845]

EDISON McDONALD: (Exhibit 6) Hello. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d, and I am the executive director for The Arc of Nebraska. We're a nonprofit with 1,500 members covering the state, advocating for the most inclusive lives possible. We focus on community inclusion because it ensures that costs...that we proceed with the most cost-effective option. We focus on the best treatment possible and we focus on ensuring that we bring the most to us as a society. We strongly support LB845 because it protects parents with disabilities. We support this bill because, if passed, it will protect individuals with disabilities and help to ensure fair custody proceedings. This will protect parents from unnecessary societal biases and attitudes. Children of parents with a disability are being unnecessarily removed and denied the opportunity to enjoy a loving home. This bill places the burden of proof on the nondisabled parent in a custody battle. It also ensures potential recourse and provides opportunity for the disabled parent to prove that supportive parenting tools, they can be effective parents. If a parent with a disability is to care for a child with the child's best interest and safety unthreatened, they

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should not be discriminated against due to their disability. According to a 2012 report--which, this report, I included a link, it's about 300 pages, super-fun read if you have a little bit of extra fun time--but it's from the National Council on Disability. There are more than 4.1 million disabled parents who exist in the United States. And here we are, 22 years later after the ADA, and still we risk potential termination of parental rights for those 4.1 million parents. This clearly violates the intent of the Americans with Disabilities Act. One case in Missouri back in 2010, there was a blind couple who lost custody of their child two days after she was born simply because a nurse oversaw that the mother was having trouble breastfeeding, which many new mothers do, and she reported it to social services that she thought these parents were going to be unfit because they were blind. Regarding Senator Brooks's question, about 70-80 percent of the cases with a parent with a disability, they lose custody. We need to take actions to ensure this is no longer the norm. Please support LB845 making it out of committee and please help us to make sure that this makes it to the floor and into law. And as a last side note, I just want to thank Senator Briese's office. They have gone through a comprehensive list of all the advocacy groups and really made sure to bring us into the discussion and ensure that this is a very sound and reasonable bill that does address the issues of all those engaged. Thank you. [LB845]

SENATOR EBKE: Thank you, Mr. McDonald. Any questions? I see none. Thank you. Next proponent. [LB845]

DEANNA HENKE: (Exhibit 7) Hello, Senator Ebke and members of the Judiciary Committee. My name is Dea Henke, D-e-a H-e-n-k-e, and I'm here today in strong support of LB845. I believe I have a unique perspective on this issue since I am a parent with a disability as well as the daughter of a disabled mother. My mom raised five daughters to be successful, happy adults. I raised one son and one daughter. My daughter, who you have heard from earlier, has the same disability that I have. Both of my kids are now adults with happy and successful lives. All parents face challenges, successes, struggles and joy. Having a disability does not change this in any way. It is an unfortunate and unfair reality that people can view disabled people as less than or as incapable. When this bias and prejudice is used to tear apart families it is inexcusable. Imagine that you have small children and tomorrow you were in an accident that left you blind or with a traumatic brain injury or in a wheelchair or with any other disability. Would it then be okay for your children to be taken away? Would you be any less capable of being a loving, caring parent than you were before the accident? People with disabilities have struggles every day and have to fight for the right to live in society, to live independently, to work or go to school. Should we also have to fight just to keep our families together and raise our children? I do believe there need to be supports available for those that do need them. This includes people with and without disabilities. Having a disability does not necessarily mean that you need supports and not having a disability doesn't necessarily mean that you don't need supports. I believe the children that grow up with disabled parents have a greater sense of compassion, empathy and understanding. They learn that even with a disability you are still a productive and

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equal member of society. Choosing to have a family and have children is a basic freedom and fundamental right. It's not up to the state to decide that I am a less capable parent because of a condition beyond my control. It is not up to the government to make that choice for me. Taking children from their families is a traumatic experience. There is no reason, excuse or justification for doing this. We need to support LB845 to prevent this travesty from happening to any family. We need to make sure the Nebraska does the right thing by protecting family unity and not destroying it. I hope you move LB845 on to General File. Thank you. [LB845]

SENATOR EBKE: Thank you, Ms. Henke. Questions? I see none. Thank you for being here today. [LB845]

DEANNA HENKE: Okay. Thank you. [LB845]

SENATOR EBKE: Next proponent. [LB845]

KATHY HOELL: (Exhibits 8 and 9) Hello, Senator Ebke and members of the Judiciary Committee. My name is Kathy Hoell, K-a-t-h-y H-o-e-l-l, and I'm requesting an accommodation under the Americans with Disabilities Act. Because of my disability, my speech impairment, I'm asking you not use the timer. I am the executive director of the Statewide Independent Living Council. This is a nonprofit organization that is mandated to exist in every state by the Rehab Act as was amended in 1992 and again by the Workforce Innovation and Opportunity Act of 2014. First of all, we want to thank Senator Briese for introducing this bill. The topic of parents with disabilities is often ignored. According to the Christopher and Dana Reeve Foundation and the National Council on Disability, as of 2016, there were still 35 states that said if you had a disability, you could lose the right to be a parent, even if you didn't hurt or ignore your child. People have not paid enough attention to the way parents with disabilities are treated differently and unfairly. No one makes it their most important issue, and there are not many legislators who are talking about the issue or trying to solve it, yet it is still very unfair to have others assume you can't do certain things--like parent--because of your disability. In 2015, states were advised by DOJ and DHHS that all decisions about parents with disabilities has to be what is actually going on in the home not what they assumed they knew. I bring this up because as a parent with a disability my family was told when my son was younger and he was diagnosed with multiple learning disabilities that we had to go see a family psychologist. Okay, it's my first kid, my only kid, so I assumed these people knew what they were talking about. So we went to the family psychologist. Within five minutes this doctor, and I use that term loosely, informed us we were abusing our child because he had multiple learning disabilities that were caused by me being in a wheelchair. What he didn't count on is I am very vocal and in my previous life was a registered nurse. I knew a lot more about learning disabilities than he did and the fact that my husband, his grand...my son's grandfather, and his uncle on his father's side all had the same learning

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disability. I made sure to point that out to him and then we just kind of left his office. Anyway, they tried to say that...they continued saying...the school ways saying that we were abusing this child. And again, I'm vocal. I want people to know my point of view. They finally let it drop. My concern is other people that are in this same situation that I was put in. How would they react? And they might lose their kids because of something so stupid. Anyway, I thank you for listening to me and I hope you move this on to General File. And if you have any questions, I'm glad to answer them. [LB845]

SENATOR EBKE: Thank you, Ms. Hoell. Senator Krist. [LB845]

SENATOR KRIST: Kathy, tell everybody about the...your event on the 13th. [LB845]

KATHY HOELL: What? [LB845]

SENATOR KRIST: Tell everyone about your event for disabilities. [LB845]

KATHY HOELL: Thursday, this next Thursday, we are having the first disability advocacy day at the Legislature. We're going to have a number of people from all over the state meet here and go see their legislator and talk to them about various bills that affect the disability community. Then they'll be going over to The Arc for the...at the Cornhusker for the senatorial dinner, so they get to have dinner with their senators and so you get to meet people that are your constituents. So I hope we'll see all of you there because this is a very important event to a lot of people. [LB845]

SENATOR KRIST: Thank you. Keep up the great work. [LB845]

SENATOR EBKE: Thank you for being here. Any other questions? Senator Pansing Brooks. [LB845]

SENATOR PANSING BROOKS: Thank you for coming today. And I'm glad that you were able to go and speak out. And I've done a little bit of work on learning disabilities and I've never heard of any kind of disability that is related to the mother's chair, the mother's wheelchair, so I think... [LB845]

KATHY HOELL: There's a first time for everything (laugh). [LB845]

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SENATOR PANSING BROOKS: Yeah, there is a first time for everything, huh, not of fact but of just folly. Thank you. [LB845]

KATHY HOELL: Yeah, misconceptions are a lot of what we're about because, yes, we do things differently but that doesn't mean it's wrong. [LB845]

SENATOR PANSING BROOKS: Exactly. [LB845]

KATHY HOELL: It's just different and if we have the proper support in place, we can do anything you can do. [LB845]

SENATOR PANSING BROOKS: I agree. Thank you for coming. [LB845]

SENATOR EBKE: Thank you for being here. Okay, next proponent. Can I see another show of hands how many are still planning on testifying on this bill? Okay, thank you. [LB845]

BRAD MEURRENS: (Exhibit 10) Good afternoon, Senator Ebke and members of the Judiciary Committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy director for Disability Rights Nebraska, the designated protection and advocacy organization for persons with disabilities in Nebraska. And LB845 is a bill we fully support. And in the interest of time, I will truncate my remarks and have my written testimony, but I just want to leave you with one statement, and that is: We appreciate LB845's preference for using the terms "individual with a disability" and "parent with a disability" over "disabled person" and "disabled parent," as was used in the introduced version of LB456 last year. Additionally, we are pleased to see that LB845 clarifies the definition of disability to mirror the definition of disability contained in federal law, the Americans with Disabilities Act, and we think this is a great bill. We thank Senator...the Senator Briese for introducing this legislation. It's about time. And we would fully support the bill. If you have any questions, you have my contact information, you have my written testimony; please reach out if you have any questions. Thank you. [LB845]

SENATOR EBKE: Thank you, Mr. Meurrens. Senator Krist. [LB845]

SENATOR KRIST: When I was on Health and Human Services, Mr. Meurrens would come in with stacks of paper. He killed a tree every time he came in to HHS. [LB845]

BRAD MEURRENS: Several, several trees. [LB845]

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SENATOR KRIST: Several trees. It's nice to see we're down to just one piece of paper. [LB845]

BRAD MEURRENS: It's a first: (a) truncated testimony; and (b) no killing trees. [LB845]

SENATOR KRIST: Well, we appreciate that. [LB845]

SENATOR EBKE: Any other questions? Okay, thanks for being here. [LB845]

BRAD MEURRENS: Thank you. [LB845]

SENATOR EBKE: Other proponents? [LB845]

CHRISTINE BOONE: Good afternoon, Chairwoman Ebke and Vice Chair Pansing Brooks, members of the committee. My name is Christine Boone, C-h-r-i-s-t-i-n-e B-o-o-n-e. I am a lawyer. I represent the National Federation of the Blind. In my capacity as a lawyer, I've done lots of things, some of them even maybe, hopefully, well. But anyway, I've had the chance to represent a number of parents with disabilities and to work with them. So I have some stories for you. First I do want to make one clarification, at least this is our belief, my belief, that the term "custody" as used in this bill refers to...would refer to parenting time, it would refer to physical custody, it would refer to legal custody, and it would refer to the ability to make decisions on behalf of minor children belonging to that parent. "Kristen" is a woman who lives in Oregon, happens to be blind, has two children. When the children were nine and seven, she and her husband began the process of divorce. The husband began by engaging in a whispering campaign to the neighbors telling them how even though it might look like Kristen was a good parent outside the house, she was really terrible inside. She couldn't do anything. She also happens to have extremely significant arthritis, which constitutes a secondary disability for her. In addition to the whispering campaign, when the husband moved out, the couple began dividing the children just sort of trying to do it in an amicable way between the two of them. He began working on the children, letting them know that their mother really wasn't a good mother. And in the course of all of that, Kristen happens to be a lawyer. She is a guardian ad litem and works with many, many other parents and judges, so, because of her connections in the community, was able to put on a case, which is exactly what she had to do, to support her own right for shared custody of those children. And she managed to do that. Had she not been a lawyer herself, possibly even had she been a lawyer in another field, it might have been extremely difficult. It was extremely difficult, destructive, and awful for her to have to go through that. It took her four years to get through that case. So by the time she was finished, her children's lives were impacted by that. "Eileen" also happens to be blind and lives in Maryland. When she divorced her husband--they have one daughter--her husband actually hired a private investigator to follow her and to record everything that she did. And then he provided false information to the private

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investigator, saying that Eileen did not know how to cross streets safely, that she would imperil the life of the child, and so she had to fight that. And these cases both happened in the last...one was about eight years ago, the other one just two years ago when it ended. "Michael" is another dad who happens to be blind, oh, and lives in Maryland, and his wife similarly engaged in a campaign to basically assassinate his character for the sake of being able to have those children. The only other thing that I really want to add, if you'll permit me, is just that we understand that some parents do need supports. Some of those supports might be physical, some might even be emotional, depending upon a parent's disability. That is okay. We support that. We also understand that not every parent is a perfect parent, disabled or not, and in the event that someone's parenting skills and their ability to parent is truly compromised, we are not supporting that the rights of that parent be maintained. We are simply saying that it's not the disability that impairs the right to parent. It is the same kinds of issues that would impair the right of an able-bodied person to parent. Thank you. [LB845]

SENATOR EBKE: Thank you very much, Ms. Boone. Any questions? Thank you for being here. [LB845]

CHRISTINE BOONE: Thank you. [LB845]

SENATOR EBKE: Are there any other proponents? Are there any opponents to the legislation? Is there anyone here to speak in a neutral capacity? [LB845]

BUB WINDLE: Chairwoman Ebke, members of the committee, my name is Bub Windle, B-u-b W-i-n-d-l-e, here on behalf of the Nebraska State Bar Association. Simply wanted to testify be on the record, thanking Senator Briese and his office for working with us on this bill and some language focused on that best-interest standard. We will continue to work with them. We will work with the committee as needed. I'm happy to take any questions. [LB845]

SENATOR EBKE: Any questions from this committee (inaudible)? Okay, thanks. [LB845]

BUB WINDLE: Thank you. [LB845]

SENATOR EBKE: (Exhibits 1-3) Okay. Do I see anybody else that's going to testify? If not, Senator Briese, would you like to close? And I will read some letters into the record. We have three letters of support from: Mary Bahney of the National Association of Social Workers-Nebraska Chapter; one from Heath Focken of the Nebraska Association of the Deaf; and one from Leroy Becker of the Nebraska Parental Rights. [LB845]

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SENATOR BRIESE: Thank you, Chairwoman Ebke. And briefly here I'd just like to close by asking for your support on this bill. I feel the bill is solid, commonsense legislation that protects both the rights of those with disabilities and protects the best interest of our children. Thanks again and again. Like I said earlier, we'll be more than willing to work on a little bit of language here with the Bar Association, with the committee, and come up with something agreeable to all parties. So thanks again. [LB845]

SENATOR EBKE: Thank you, Senator Briese. Senator Chambers. [LB845]

SENATOR CHAMBERS: Senator Briese, me lad, you're doing good work today and you remind me of myself when I was a kid, (singing) when I wore a younger man's clothes. [LB845]

SENATOR BRIESE: Well, thank you, Senator Chambers. That's quite a compliment. [LB845]

SENATOR CHAMBERS: Okay. [LB845]

SENATOR BRIESE: So thank you. [LB845]

SENATOR EBKE: Other questions? This closes the hearing on LB845. We are going to take a "fiveish" minute break and return. [LB845]

BREAK

SENATOR EBKE: Okay, we are back. Senator Howard, welcome to the Judiciary Committee. [LB863]

SENATOR HOWARD: I'm back, making it a daily... [LB863]

SENATOR EBKE: We're going to open the hearing on LB863. [LB863]

SENATOR HOWARD: ...daily visit to Judiciary. [LB863]

SENATOR EBKE: I wouldn't want to do that if I were you. [LB863]

SENATOR HOWARD: (Laugh) You already do it. [LB863]

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SENATOR EBKE: But I'm not sitting up there. [LB863]

SENATOR HOWARD: (Exhibits 9-11) Okay. Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I'm here presenting you LB863, a bill that adds grounds to the termination of parental rights in Nebraska statute. LB863 states that if a child is under the age of three and has been in out-of-home placement for a cumulative total of six months or longer due to a court order and the parent has willfully refused to remedy the circumstances that have caused the child to be in the out-of-home placement, including refusal to participate in reunification services, it is grounds for termination of parental rights. So this bill is far from perfect and it's far from ready for prime time, but I couldn't think of a better way to bring before this committee, in particular, the issue of length of time in out-of-home placement. In the Health and Human Services Committee, we get regular updates from the Foster Care Review Office and the Office of Inspector General, but you aren't getting those. And so this is a real opportunity for me to highlight that issue for you, but also highlight your potential part of the solution to some of those lengths of stay for out-of-home placement. So I brought you--Sam, only three times, we're going to do this three times--I brought you the Foster Care Review Office's annual report about length of time in foster care, and what I want to highlight for you is that there...last year there were over...there were 230 kids who spent more than three years in our foster care system, and to me that's not just concerning, it's egregious. We shouldn't have kids who are just languishing in care. The idea for this bill actually came from a woman that I sat by at NCSL and we were complaining about child welfare because of how it's difficult and complicated and I said our real challenge is that kids are in out-of-home placement for a really long time without reunification or termination. And so in Arizona they actually already have this in statute. I believe there are four states that have this. And while my office has received plenty of feedback about concern for the very quick turnaround of adding these grounds, other folks...we've heard from other folks who said that delaying these types of rulings have unintended consequences. For instance, some states have challenges recruiting adoptive parents because it's hard to recruit an adoptive parent if a child isn't legally an orphan or isn't free for adoption. And a lot of prospective parents or adoptive parents are reluctant to take somebody in when there hasn't been a termination. So, and I appreciate that termination proceedings are lengthy and time consuming and many attorneys who handle these cases on behalf of children in the state are already overburdened with high caseloads, as well as our caseworkers. And so the second handout I have is about our termination statistics from the Foster Care Review Office. And if I'm reading this correctly, based on wards in out-of-home care, there were 822 last year where grounds existed and there were best interests for termination. That's a lot of kids where there was grounds for termination and maybe it did not occur. As of January 25--we wanted to get you the most recent information we could--there were 13 children who were three years of age who had been out of home for over 36 months. So just doing the math, that means that they had spent almost their entire lives in out-of-home placement. And that's the most important time for a lot of kids. That's a lot of development that's

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happening in that early birth-to-three period of time. There were also 41 children--Sam, this is my last time, then you can have a rest--there were also 41 children of that age who had been out of home from 36 to 34 months. These are children who are at risk of suffering lifelong effects of not having a permanent home as babies. And when we look to the system as a whole, as of today, there are 340 children who are in out-of-home care today who have been in care for 36 continuous months or longer. This is 340 children who, for over three years, have not had a place to call home. I understand that the six-month time period in LB863 may be considered too quick to terminate, but it was really fun for me to also...if you look at your green copy, that's our termination statutes and it hasn't been updated in a really, really long time. It has words like "debauchery" and "lewd" and "lascivious." I mean it's very clear that these are statutes that are ready for us to reconsider them and ready for us to reconsider what's in the best interest of children in this state. I don't want us to be waiting too long to jeopardize the chance for a child to have a permanent adoptive home and I really don't want to erase the chances of a family to be reunified either. More, I want to make sure that we're giving opportunities to attorneys and caseworkers and people who are working with these families and children to make the right choices for each child when it's appropriate. The importance of LB863 is also because I've noticed we're not having as many oversight committees as we used to have. We used to bring members from multiple committees to come together and we would look at an issue of shared jurisdiction and we haven't really done that. There is an opportunity, I believe, in front of the Executive Board that would help with some of that overlay. Senator Bolz has an oversight committee for child welfare and I think that would be a great opportunity for the Judiciary and the Health and Human Services Committees to come together and really look at the issue of how the state is handling terminations and what type of updates to the statute may be called for. And with that, I'm happy to try to answer any questions that you have and I do appreciate your time and attention to this issue. [LB863]

SENATOR EBKE: Thank you, Senator Howard. Any questions? Senator Chambers. [LB863]

SENATOR CHAMBERS: What does the word "substantially" mean where it says they have "substantially neglected"? I have two copies of the bill. Let me get to the page. When it's talking about the grounds for termination, for the three-year period, the parent who has "substantially neglected or..." [LB863]

SENATOR HOWARD: On line 5, page 3? [LB863]

SENATOR CHAMBERS: (Inaudible.) [LB863]

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SENATOR HOWARD: Absolutely. It's actually based on the substantial standard in Section 2, so where the parents have substantially and continuously, repeatedly neglected, and I believe that's been enforced by case law, but I can look into it as well. [LB863]

SENATOR CHAMBERS: Okay. You're looking at where I was talking "substantially neglected or willfully refused." [LB863]

SENATOR HOWARD: Right, so the substantially we cribbed off of page 2, line 10, the "substantially and continuously or repeatedly neglected." The willfully...the willful refusal is if a parent refuses to accept services or refuses to work with the system to try to remedy whatever the situation is that's causing the neglect. [LB863]

SENATOR CHAMBERS: Okay, I see the word, but how has that word been interpreted... [LB863]

SENATOR HOWARD: Interpreted? [LB863]

SENATOR CHAMBERS: ...by the courts? [LB863]

SENATOR HOWARD: I can look back into the case law for that. I apologize that I don't have it with me. [LB863]

SENATOR CHAMBERS: That's okay. I understand the direction this is intending to go, but I don't trust HHS. I don't trust the courts. I don't trust the state. And I've seen cases where if there is a mixed-race child and one of the parents is white, then there are white people who like that child because that child is beautiful and they try to take the child. And the white parents will try to, grandparents will try to eliminate the black side of the family. This is a bill just on its face. I know the work that you've done and I respect that. But a bill like this is...it's too much for me to swallow. But being 80 years old and having only three years left in the Legislature, you'll only have to get by three years and I won't be here to object to it anymore. But some things are so final, they are so consequential and drastic, that I can't swallow it right now and it would be wrong for me to give the impression that I'm seriously considering it. That doesn't mean you're not serious. It doesn't mean you haven't thought it through. It's just a move that I cannot at this point see as being prudent on my part to support. I'm saying that because I'm not going to be asking you a lot of questions or disputing with you or anybody else who would speak for the bill. But I want it on the record where my...what my position is so that total silence will not give consent. And I don't mind talking to you later, but I don't want to do it all in the context of this hearing today. [LB863]

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SENATOR HOWARD: Thank you, Senator Chambers. And you are in luck because I am actually not asking the committee to kick it out. I took a page from your notebook and tried to think of a way where we could have a conversation about termination and about length of stay without asking the committee to make any moves. [LB863]

SENATOR CHAMBERS: That's why I say we can talk elsewhere. [LB863]

SENATOR HOWARD: Yes. [LB863]

SENATOR CHAMBERS: Okay, good. [LB863]

SENATOR HOWARD: Yes. There's a lot of work to do in terms of termination statutes that one small section can't address. [LB863]

SENATOR CHAMBERS: Something like I see a lot of problems with the, not to lower it, with the prairie dog bill, not just because it's the prairie dogs. They are the occasion that brought me to some bad provisions in law that go to much deeper and different issues. [LB863]

SENATOR HOWARD: Yes, absolutely. [LB863]

SENATOR CHAMBERS: Okay. [LB863]

SENATOR HOWARD: And I will tell you in full disclosure my mom worked for the department for 34 years and ended her tenure as an adoption specialist and so she was basically the caseworker who was doing high-risk adoptions for the state in a team setting, and so she spent a lot of time in these statutes, as well. So she was very excited that we were looking at children and looking at how we can help babies, in particular. And I think there are a lot of opportunities for addressing some of the language challenges that exist beyond this one small portion. So I appreciate your attention though. [LB863]

SENATOR EBKE: I will say, Senator Howard, that I commend you for taking a look at this. I like the under three years, the consideration for under three years. I don't talk about this a lot, but I had...my middle daughter was adopted from foster care and she had been in foster care from the time she was about three months old. She'd been in a foster care situation for six months and one day they said, the people who thought that they were just going to be foster-to-adopt, said, no, we...they didn't want her anymore and we got her the next day as a foster-to-adopt. We waited over a year before everything was completed, but the point being that during that period of time when the children are very young you can run into some real issues with respect to

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bonding and things like that. And so anything that we can do to make something final in some way, shape, or form, rather than picking kids up just as they're, you know, figuring out who they are, I think is an important thing, so thank you for bringing this. [LB863]

SENATOR HOWARD: Thank you. [LB863]

SENATOR EBKE: Other questions, comments? I didn't ask you a question. I'm sorry. [LB863]

SENATOR HOWARD: No, it was a wonderful comment. I appreciated it. [LB863]

SENATOR EBKE: Okay, thank you. [LB863]

SENATOR HOWARD: All right, thank you. [LB863]

SENATOR EBKE: Okay, proponents? [LB863]

HEATH JOHNSON: (Exhibit 2) Good afternoon. My name is Heath Johnson, H-e-a-t-h J-o-h-n-s-o-n, and I hope I can read this in time. I'm the high school principal at LCC School in Laurel, Nebraska. My wife is currently the high school SPED teacher at Wayne High School in Wayne, Nebraska. I wanted to drive down here today and express my strong support for LB863. I believe we are currently one of the many people in the state of Nebraska this bill could help. In January of 2017 we accepted our foster son into our home. He was three months old. He has lived in our home for the past 12 months. In December his mother gave birth to another child, her fourth child, and we also accepted him into our home as a newborn. We have watched for the past 12 months as their mother and father made no efforts in their reunification plan. As we drew nearer and nearer to the 15th month, their mother and father began to make small steps toward reunification. However, in the 15 months that our first foster son has been out of the home, there has been no significant progress made toward reunification yet we are told that because they are now in the final months making progress, albeit small progress, termination of parental rights is not recommended at this time. Fifteen months doesn't seem like a long time to you and me. We look back, we think, where did the year go? We say things like, boy, time goes by so fast. We lose sight sometimes as adults of how long 15 months is and how critical 15 months can be to a young child, toddler, or infant. We have three other children besides our two foster sons. Lincoln (phonetic) is ten; Trinity (phonetic) is eight; Sierra (phonetic) is five. My wife and I are both products of adoption. I was adopted by my stepdad when I was eight and my wife was adopted at birth. However, I know my biological father and Stacy has met her biological father and mother. We know what our lives would be like if we had not experienced the love and sacrifice of someone who was willing to love us as if we were their own child. Our oldest foster son knows

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us as mom and dad. He hears us being called that repeatedly and, as any typical two-parent household, we hear the word "mom" many times a day. He has slept every night in our home for the past 12 months. He wakes up sick or scared, it is my wife or myself who comfort him, give him medicine, and sing to him. The first 15 months of a child's life are critical to bonding. He has not only bonded with us, he has bonded with our children, and now his brother is on the same path. It is possible for his brother to spend the entire 15-month period in our home knowing his brother and bonding with the rest of our family as well. The passing of this bill means many things and I learned of its existence Wednesday. I cleared my schedule and drove from Laurel to Lincoln to be here today because I believe this bill is a big step in the right direction for our kids and our foster system. Sorry. The passing of this bill would mean that we could have a reduction in spending in the foster care system. I believe it would have a huge impact on the number of people who would sign up to be foster parents. Nebraska is unique and I believe at the top of the state is filled with loving and kind, giving people who would open their homes to foster kids. This bill would raise the level of expectations on parents and personally I believe that it has been on the downhill slide for some time. I see it currently in our situation. Our foster children's parents have been allowed to not take their reunification effort seriously for over 12 months. But most importantly, this bill puts kids first. It says that we are about the well-being of our kids, that we understand how much can happen in 15 months, and we owe it to our kids to raise the bar for their care and development. Confucius says: If your plan is for one year, plant rice; if your plan is for 10 years, plant trees; and if your plan is for 100 years, educate children. Thank you. [LB863]

SENATOR EBKE: Thank you, Mr. Johnson. Any questions? Thank you. [LB863]

SENATOR HALLORAN: Senator, just...compliment you on your testimony. It was (inaudible). [LB863]

HEATH JOHNSON: Thank you. [LB863]

SENATOR EBKE: Other proponents? Opponents? [LB863]

TINA MARROQUIN: Good afternoon. Senator Ebke and the committee, my name is Tina Marroquin. It is spelled T-i-n-a, last name is M-a-r-r-o-q-u-i-n. I am currently the public defender in Seward County but I sit here today as representing the position of the Nebraska Criminal Defense Attorneys Association that I sit on the board for. I guess I don't know if this is going to come off as truly an opponent to the bill. I think Senator Howard brings an important bill, an important issue before this committee. And certainly prior to being the public defender, I was in Lancaster County for over ten years and Seward County and some other counties and served primarily as a guardian ad litem. I probably had one of the biggest caseloads as a guardian ad

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litem. I had 65 GAL cases when I left. So I have advocated for the best interest of children throughout my career and I continue to represent parents and children. The concern is only the six-month mark and that's a concern just based on the logistics and reality of our juvenile justice system as it stands right now. Judges don't have docket dates. They're busy. Caseworkers have too many cases. They're overworked. And what happens is a parent comes into the system, a child is removed, sometimes that results in incarceration due to abuse, addictive issues, maybe they have a drug charge as part of it, and time starts ticking right away. These are often folks who have persistent mental health issues, addictive issues. All of these things are things that we want to work towards reunification and it's still a system where we want reunification if it can be successful, safe, and healthy for that biological family. And so I think we have to understand that if a parent who has these problems comes with a caseworker who has a heavy caseload, the first thing they do when they lose their children is they lose Medicaid if they don't have any private health insurance. So if they needed a substance abuse evaluation, a mental health evaluation, or to get any services, they have to rely on the Department of Health and Human Services to go through their process to get a voucher system. And they may be waiting in jail for a period of time. As I said, there's companion cases a lot of times. And then once we get that, they still have to partake in those services. And I think this statute really fast-tracks termination on these kinds of cases where we may be able to over a time period get that person to a point where they can safely parent and reunify. But to change a lifelong pattern of behavior and to provide appropriate services, six months is just very fast. And that may seem like a reasonable amount of time, but I think in the juvenile court system that's quick. One other thing is the statutes do provide for automatic terminations. If there is serious bodily injury, you can file a termination immediately; if there's sexual abuse, you can file a termination immediately. If parental rights have been terminated before, terminations can be filed immediately. So we are literally talking about those cases where we're trying to reunify. And so I think it's important that they have more time, given access to services, so that we can reach that goal. I don't think I have any other comments. I just think that the time issue is something that really needs to be thought through a little bit more. [LB863]

SENATOR EBKE: Thank you. Any questions? Okay. Thanks. [LB863]

TINA MARROQUIN: Thank you. [LB863]

SENATOR EBKE: Other opponents? Don't see anybody rushing up. Anybody in a neutral capacity? [LB863]

KIM HAWEKOTTE: (Exhibit 12) Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e, and I'm the executive director at the Foster Care Review Office, and we are here in the neutral capacity on

LB863. As each of you know, the FCRO is an independent agency. We're responsible for the oversight for all children in out-of-home care in the state. We meet that statutory duty through doing two things. One, we do individual case file reviews--we do over 4,000 every year on children in out-of-home care--and then we also collect data and make recommendations to all stakeholders through our quarterly and annual report. I think everybody in this room, including all of you, would agree that children grow best in families. There's no question that's what we all strive for. And we all know, as, Senator Ebke, you stated, this is especially true for children under the age of three. In my testimony I won't go through it, but I did outline some of the important research that has been done on brain development and trauma and the effects that occurs, the age zero to three for children. First question to really take a look at then is what does the data say here in Nebraska, what do we have. You'll notice on page 2 of my testimony we do have broken out as of January 24 of this year, looking at children age zero to four, how many have been out of home, in out-of-home care, and for what time period. And you'll notice that staggering number of 1,099. That's a lot of children under the age of four in out-of-home care. When you break it down further, looking at Senator Howard's bill, so how many are under the age of three and have been out of home six months or longer, that's 517 children in this state. So we know legislation such as this will directly impact permanency for children. Second thing I think we all can agree upon is that all children in out-of-home care deserve permanency in the most expeditious manner we can do it. And that permanency can be returning to their parent or it could be adoption. It could be the whole spectrum of it. Under current Nebraska law, under 43-292, Senator Howard is correct, it has not been revised for almost 20 years. And it is time we seriously take a look at that statute and see are we truly meeting the needs of our children. I do have outlined within my testimony, we thank Senator Howard for really spurring the long-needed discussions that need to occur in this area because we have children languishing in out-of-home care and we as a system have to do something. So looking at my testimony, on page 2 and on top of page 3, we list some of those basic things we need to look at along with this bill. Timely adjudication in juvenile court cases: A lot of states say 30 days. We are at 90 days in most cases we look at to a third of them are taking six months or longer to just get them basically adjudicated. The failure to timely file termination of parental rights is required by statute. There is no mechanism to ensure that that happens. Failure of the courts: We found that only 15 percent of our courts across the state are having the mandatory statutory exception hearing that is required. They're not doing it. We have an inadequate statewide array of services. We have areas of this state where you couldn't get a service for a parent. We need to look at that. Would you like me to finish? [LB863]

SENATOR EBKE: Go ahead and finish up, yeah. [LB863]

KIM HAWEKOTTE: We don't deal with fathers' rights appropriately. We wait too long. We also know that one out of four children reenter out-of-home care after being returned to their parent. What I...one thing I do want to put forward to you is that the legal parties task force of the

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Nebraska Children's Commission is very willing to work with Senator Howard and with each of you on LB863 and on these systemic issues, so let's look at it as a package deal and come up with something that would benefit all kids. And I would be happy to answer any questions. [LB863]

SENATOR EBKE: Senator... [LB863]

SENATOR CHAMBERS: Go ahead. [LB863]

SENATOR EBKE: Senator? Senator Pansing Brooks. [LB863]

SENATOR PANSING BROOKS: So thank you for coming, Ms. Hawekotte. So if they need to be...if the laws need to be changed, shouldn't it come from all of you to...because you work in it every day so you know what the needs are and what's happening and what the goals are. Seems like that would be a really good charge for some committee that you have to be able to create this and change it and present it to us so...or have another attorney or senator bring it. What about that? [LB863]

KIM HAWEKOTTE: And that's why the legal parties task force of the Nebraska Children's Commission, about three months ago, we did start looking at these statutes. That is a group made up of attorneys and judges from all across the state, both rural and urban, because the issues in the urban areas are much different than the issues in the rural area when you're looking at the complexity of this issue and we've started working on it. We are not near to the point of coming forward with any legislation. It was our hope that we'd be coming to one of you next fall with some proposed legislation that would deal with a lot of the issues that I've laid out in my testimony because that's what we're working on, Senator. [LB863]

SENATOR PANSING BROOKS: Great. Thank you very much. [LB863]

SENATOR EBKE: Senator Chambers. [LB863]

SENATOR CHAMBERS: Since you're in the neutral capacity, I'm going to ask you a few questions for my enlightenment. [LB863]

KIM HAWEKOTTE: Okay. [LB863]

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SENATOR CHAMBERS: With this six-month point as the earliest point when this procedure can be undertaken, who would initiate the action? Let's say it's going to be six months. Who would initiate the action? [LB863]

HIM HAWEKOTTE: Who files the petition would be under statute either the county attorney or a guardian ad litem. [LB863]

SENATOR CHAMBERS: And how would it come to the county attorney's attention that for six months this set of circumstances had existed? [LB863]

KIM HAWEKOTTE: It would probably be coming from the case manager within the Health and Human Services system. [LB863]

SENATOR CHAMBERS: And where would these children go when they're taken from the parent? [LB863]

KIM HAWEKOTTE: Usually they've been placed with a foster parent, either a relative/kinship foster home, Senator, or in a licensed foster home through an agency. [LB863]

SENATOR CHAMBERS: And does that foster family immediately gain parental rights, I mean, custody of the child? [LB863]

KIM HAWEKOTTE: No, because the child remains a state ward so it's under the state's custody until the parental rights are either terminated or relinquished. [LB863]

SENATOR CHAMBERS: And how long can the child remain in foster care? [LB863]

KIM HAWEKOTTE: Senator, we have children that have been in foster care for five, six, seven years. [LB863]

SENATOR CHAMBERS: And that's better than...I mean that doesn't seem to me to be that good a set of circumstances because... [LB863]

KIM HAWEKOTTE: That's not, Senator. [LB863]

SENATOR CHAMBERS: And I've seen cases where the state would know that a child was being placed who could either be dangerous to other children or that a child was placed in a

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dangerous situation and the state is not liable. And when Jon Bruning was the Attorney General, they had even suggested that a mother was responsible because if she hadn't done what she had done or failed to do what she should have done, the child never would have been in foster care, where the child was abused, so the mother from whom they took the child should be held accountable for the abuse that occurred in the foster home. That's the way the state may handle things. And I'm not confident that children are better off in the custody of the state. It's almost like that Scylla and Charybdis where one is a whirlpool on this side and a monster on the other and if you went between them, one of them is going to get you. Neither alternative is good. I cannot say, as I mentioned to Senator Howard, that I think this is a good situation. It seems to me it's like saying, well, in this situation A, the child is being boiled in oil, so we'll put them in situation B where they're fried in Crisco. Neither is ideal. So are there other factors to look at, such as the relationship between a parent and a child and the constitutional protections that would be given to that relationship? And I'm not arguing with you. I'm not asking for an answer ultimately from you. I'm using you as a sounding board so it'll be clear--as clear as I can make it--why I have concerns with this. If the state did a better job, maybe I'd feel differently, maybe the child would go into a setting. But if the parental rights are terminated after six months, then that means the parent is out of the picture. That's it. [LB863]

KIM HAWEKOTTE: We always called it the death penalty for parents. [LB863]

SENATOR CHAMBERS: Say it again? [LB863]

KIM HAWEKOTTE: We always called that the death penalty for parents. [LB863]

SENATOR CHAMBERS: That's what you call it? [LB863]

KIM HAWEKOTTE: That's what...yes. [LB863]

SENATOR CHAMBERS: Oh, okay, then I don't need to ask you any more questions because I think you know what I'm driving at, whether you agree with my approach or not. [LB863]

KIM HAWEKOTTE: No, and I would agree and that's why we came in as neutral on this because six months is not necessarily a magical number. But really what needs to happen more is looking at the entire system to see how do we improve, whether it is from case management or whether it is from county attorneys actually filing the petitions that they should be filing, to doing other type things within the system to make it work instead of just doing an approach like this. This might be one of them. I did take the opportunity to look at all 50 state statutes on this. And in looking at the other state statutes, we are about probably ten years behind the time. And

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they have done a lot of updating to their statutes to meet the needs of their children and families and have really taken an opportunity to define in statute what is best interest, what is the relationship between the parent and the child, how do you consider it, what do you look at, I mean all of those type things that we have nothing in our statute about. [LB863]

SENATOR CHAMBERS: The one thing Senator Howard's bill is going to make me do is talk to her and pay more attention than I ordinarily would. And it's not that I'm lacking in concern, but there are a lot of other issues that I try to deal with and I can't deal with all of them. But this I will make it a point go look into more so than I have up to now. [LB863]

KIM HAWEKOTTE: Well, and just let me know, Senator, if there's any data or information that our office can give to you as you look into it. [LB863]

SENATOR CHAMBERS: Thank you. [LB863]

KIM HAWEKOTTE: Okay. [LB863]

SENATOR EBKE: Other questions? Thank you for being here today. [LB863]

KIM HAWEKOTTE: Thanks. [LB863]

SENATOR EBKE: Do we have anybody else testifying in a neutral capacity? The list? Okay, Senator Howard, I'm going to find the list of letters but come on up. Go ahead. [LB863]

SENATOR HOWARD: You know, I don't have much by way of closing. [LB863]

SENATOR EBKE: Well, cover for me for a minute while I find my letters. [LB863]

SENATOR HOWARD: I will. I will cover for you and fill the silence beautifully with my mellifluous voice. But I do appreciate this committee's deference to the challenge of how long kids are in out-of-home placement and how layered the difficulties are when we are trying to help a family get to permanency. My mother would tell you that after several decades--and she worked with Ms. Hawekotte as well--you would see the pendulum swing back and forth. So you would see the department wanting you to reunify all the time and then you would see the department wanting to terminate all the time and there really isn't...the pendulum swing isn't...the extremes are not what's best for families. It's what's unique and nuanced to each family, and so making sure that our statutes support that, I think, is the most appropriate thing. And I am

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excited. Actually this is a really...this would be a really fun project to work on. Updating our termination statutes would be an honor for me to work on and so I'm very excited at the opportunity. And you...and I mean it. Like, I'm not being nerdy about it. I'm being totally sincere. [LB863]

SENATOR EBKE: You look excited there. [LB863]

SENATOR CHAMBERS: Madam Chair, I want to say something to Senator Halloran. [LB863]

SENATOR EBKE: Oh, okay. [LB863]

SENATOR CHAMBERS: Senator Halloran, you're going to see that there are circumstances when I cannot be baited into a discussion when I said I'm not going to be in one. This is it. But we'll talk at another time. [LB863]

SENATOR HOWARD: Yeah, this will be fun, I mean, for me. [LB863]

SENATOR EBKE: (Exhibits 1 and 3-8) Okay. Any other questions, comments? We have letters of support from Patrick and Shelli Arens, Vicky Johnson, and Kay Wenzl, and opposed from Twyla Gallino and Amy Miller of the ACLU of Nebraska, in a neutral capacity from Sarah Helvey of Nebraska Appleseed and Juliet Summers from Voices for Children. And this closes the hearing on LB863. [LB863]

SENATOR HOWARD: Thank you. [LB863]

SENATOR EBKE: We will move at 4:20... [LB863]

SENATOR HOWARD: Have a good day. [LB863]

SENATOR EBKE: ...to LB795. Senator McDonnell. [LB795]

SENATOR McDONNELL: (Exhibits 3-5) I have three handouts. One is an amendment. One is some talking points and one is my testimony. I am Senator Mike McDonnell, spelled M-i-k-e M-c-D-o-n-n-e-l-l, from Legislative District 5, representing south Omaha. Today I am introducing LB795 to provide for an acknowledgment of maternity form. Nebraska birth certificates list the person whose body from whom a child is born as the mother on the birth certificate. Current statutes allow a woman giving birth to agree to the paternity of the child and the naming of the

child's father on the birth certificate by agreement with that individual. Thus, in a natural birth, a father can admit paternity and be placed on a birth certificate simply by executing an acknowledgment of paternity prepared by the Nebraska Department of Health and Human Services Vital Records. The acknowledgment of paternity can be executed at the hospital prior to the birth. Where a birth occurs using a gestational carrier, there is no such option for the genetic mother absent an adoption decree to be named on a birth certificate. The only option a genetic mother has to have her name placed on the birth certificate is to undergo the rigorous and unnecessarily expensive adoption process as a stepparent. LB795 provides for a genetic mother to be placed on her child's birth certificate by executing a similar form, likely to be called an acknowledgment of maternity, at the time of the birth of the child. Current Nebraska statute does not address gestational carrier. A gestational carrier is a woman who has fertilized egg from another woman, the genetic mother, implanted in her womb so as to bear a child on behalf of the genetic mother. A gestational carrier is not to be confused with a traditional surrogate who is a woman who both provides genetic material--her egg--and acts as a carrier for the child. A gestational carrier lacks a genetic connection to the child. She is simply carrying for the genetic parents. Women who have difficulty becoming pregnant naturally have used assisted reproduction by way of using a gestational carrier. LB795 allows for a process whereby a genetic mother's name would be placed on the birth certificate using the current process as a father is placed on a birth certificate in any other birth. Allowing for a genetic mother to acknowledge maternity avoids her having to literally adopt her own children. Under the current adoption statutes, a genetic mother who has a child born from a gestational carrier must adopt her child as a stepparent. In Nebraska a stepparent cannot begin the adoption process until the stepchild has resided with the stepparent for a period of six months. This means that a genetic mother must wait six months after her child is born to have any legal rights to her child. While the genetic mother's husband will be named as the birth father on the birth certificate using an acknowledgment of paternity, the genetic mother is required to have the birth father present for any decisions on behalf of the child. Where the genetic mother has to wait six months to adopt her child, if, in that interim, the genetic father, listed as the birth father on the birth certificate, dies or otherwise becomes incapacitated, the gestational carrier, who is not genetically related to the child, would be the only person having any legal rights to the child. Melissa and Lisa and Christina is here today to testify on this. I don't want them to be here today. I don't want them to testify, the pain and suffering they've gone through and what they shared. And Melissa and Lisa are from my district. And coming in, and I know as senators you've experienced this, they open their heart to you and they tell you their stories, not only the pain and suffering but the humiliation when they tell you some of the things that have happened to them because of a piece of paper, because of what they were going through and trying to have a family, and now you have people and you have a process that don't respect that and don't understand it. Now this isn't going to help them. This isn't going to take away their pain or suffering. This is not about them. This is about the next woman that finds their self in that position. They want to make sure that they don't go through that pain and suffering. They're here to help somebody they don't even

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know. We hear a number of things about attorneys that sometimes aren't great. Well, Tracy is here as their attorney and what she's doing is taking money out of her own pocket. She's a family attorney. She goes through, she helps people with adoptions. This is taking money out of her pocket, but she knows what pain and suffering is and she's seen it with these women that she's tried to help. I can't do justice. I can't tell their story. I wish I could. I wish I could say I can do it and I could do it justice and you guys just don't testify. But they're here to testify and I'm so proud that they are going to...what they're going to share with you because it's not going to be easy for them. And for me as a new state senator, this is what I thought we should be doing. These people need our help and this is something that we can do to not help, of course, them because they've already gone through the pain and suffering, but people in the future, women in the future that are going to be suffering. We have an opportunity to help them. Like to answer any of your questions if I can. [LB795]

SENATOR EBKE: Senator Chambers. [LB795]

SENATOR CHAMBERS: Senator McDonnell, I understand what you're saying. I understand what you're trying to do. And I don't think it's just my training in the law. I've been thoughtful for as long as I can remember myself being aware of things. I'd want to know how things work and so forth. I mentioned on the floor that there is a maxim that they teach you early on in law school: Hard cases make bad law. One case will bring to everybody's attention what can happen in a set of circumstances. But the question is, should the whole law be changed because of that one situation when there are situations other than that one which would be problematic if what is being asked for is asked for? You might have situations, and I'm saying it to you because I don't want them to feel that I'm unsympathetic or insensitive, but if that's the way I come across, that's the way it has to be because I have a job to do also. We sometimes, in trying to remedy one situation, which, as you say, we cannot undo at this point anyway, we cannot anticipate with precision how much impact a law is going to have because there are unscrupulous people in this activity that you're talking about though they have medical degrees, and some of them have other degrees. But sometimes financial interests intervene and there is chicanery in this line of activity. And not everybody who participates--and I'm not talking about the women--are what they appear to be and they develop a tremendous amount of leverage once they've got people enmeshed in this activity. So I'm going to listen not with just an open mind but with a sympathetic mind, but also with a cynical eye toward people who help facilitate this activity. And you may not even understand what I'm saying, but I wanted to say it for the record. [LB795]

SENATOR McDONNELL: Thank you. [LB795]

SENATOR EBKE: Other questions? Okay, first proponent. [LB795]

MELISSA KAYSER: (Exhibit 6) Good afternoon. My name is Melissa Kayser, M-e-l-i-s-s-a K-a-y-s-e-r, and I'm a genetic mother. Hearing you are unable to carry a child, it's hard, can be one of the most devastating things that a woman can hear. And that's what I heard after my nine miscarriages. Even though we went through years, years of testing and treatment and doctors and traveling to other states to see specialists, we got no answers. My body just cannot carry a pregnancy. So my doctors suggested that we move on to either adoption or using a gestational carrier and my amazing sister offered to be the gestational carrier for us. What that means is we use my egg and my husband's sperm, so the children are biologically my children. We transferred two embryos and we were incredibly blessed with twins last march, two little girls. My husband is on the birth certificate and along with my sister at birth. It did provide some complications that one would not normally think of. I was told in the hospital before the girls were...thank you. Before the girls were born, I had a social worker look me in the face and say, you will not make any medical decisions for your children. Sorry. They would only allow my husband to make any medical decisions. When my girls were transferred to the NICU because they were born a little bit prematurely, the NICU doctor said, we cannot tell you any information, we cannot take any direction from you, because I was not the mother, to this hospital, to my biological children. There is a process you can do where you can...a woman can induce lactation so you can breast-feed an adopted baby or a baby born through gestational carrier and I was able to do that. The hospital would not let me because I was not on the birth certificate, because I did not birth these children, even though they were biologically my child. So supporting a bill like this is so important because gestational carriers are used a lot across the country and across the world. We want to provide the legal support for the genetic mother so that it can circumvent any legal complications when the child or children are born. We have met so many, so many women and couples through our process that would love to either be a gestational carrier and help build families or use a gestational carrier, but they have not been able to because of the current laws. And we're not asking for the laws to change on traditional surrogacy. We're not even asking for surrogates to currently be compensated, because that's illegal. We just want for gestational carriers, for the genetic mother to be on the birth certificate like currently the fathers are. It's an emotional process but I'm so thankful for what it has given us because I was blessed for two beautiful little girls. My husband deployed when they were just a couple months old. That brought whole new series of complications because now if something were to happen, my husband is not here. He cannot give that consent. I was blessed that nothing happened. I didn't have to take my girls to the hospital and no complications were...you know, it would happen to us, but it might happen to somebody. By supporting this bill, we can help really build families. And you're really, you're really, really going to touch hearts across the state. You're going to really support women that want to go through this process and all they want is the same thing I wanted. We just wanted to build our family. So thank you for hearing me today. [LB795]

SENATOR EBKE: Thank you. Any questions? Senator Chambers. [LB795]

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SENATOR CHAMBERS: I have to ask you this. Suppose the woman who is going to give birth changes her mind and is not going to acknowledge that the situation is what it really is. What happens then? And I'm not saying you need to answer a question like Solomon, but I'm asking the question if you have an answer. [LB795]

MELISSA KAYSER: Well, I know my lawyer can answer more in depth, but when we went through the initial process, we went through medical testing. She went through medical testing and we created contracts, so we went into a legal contract to where my sister agreed to carry the babies and to give over rights at birth, so... [LB795]

SENATOR CHAMBERS: Was the...oh, go ahead. Your lawyer is going to speak here today? [LB795]

MELISSA KAYSER: Yes, she is. [LB795]

SENATOR CHAMBERS: Oh, I'll wait then. Okay. [LB795]

MELISSA KAYSER: Thank you, Senator. [LB795]

SENATOR EBKE: Other questions? Thank you for being here today. [LB795]

MELISSA KAYSER: Thank you. Have a good one. [LB795]

SENATOR EBKE: Next proponent. [LB795]

LISA AUTEN: (Exhibit 7) Good afternoon. My name is Lisa Auten, L-i-s-a A-u-t-e-n. And bear with me. So, "I just had my 9th miscarriage." That was the text message that I received from my sister in January of 2016. What most people in my life didn't realize is that I had received a text message eight times prior for every miscarriage that she'd had. Every time my heart sank. Infertility is something that nobody should deal with, let alone my sister. When Melissa told me that her doctor suggested she use a gestational carrier, I didn't think twice. My response was, with some humor, you can borrow my uterus, and from there our journey started. We spent months doing research on the process, including Nebraska law. We quickly learned that being a surrogate and a gestational carrier are two very different things. We also quickly learned that Nebraska law currently does not address the process of using a gestational carrier, therefore, we were forced to follow the law as if we were doing traditional surrogacy. While these two terms--"gestational carrier" and "surrogate"--are sometimes used interchangeably, there is a big difference between the two. I was a gestational carrier for my sister. The babies, which are my

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nieces, were not biologically mine. The embryos were made using Melissa's egg and her husband's sperm. The embryos were then transferred to my uterus, essentially making my uterus nothing but a temporary home for the babies. Under current Nebraska law, I was deemed the babies' birth mother. What Melissa and I could not understand is how the babies were biologically hers and her husbands' yet, in the eyes of the law, she was not the mother. After delivering my nieces, I was hand-delivered the paperwork for the birth certificates. My name had to go on the birth certificate as legal mother. After years of infertility and wanting nothing more than a baby and being blessed with two, my sister could not even put her own name on the girls' birth certificates. While this may seem minor to some, it came with numerous possible complications, such as Melissa's inability to provide medical consent, not being able to breast-feed her own children in the hospital, or simply even take her own children to the doctor. When the girls were six months, we went through an adoption process. State law states that they have to be with their...in their permanent home for six months before they can be adopted. We go into the courtroom and we were advised by our attorney to just look at it as a stepparent adoption, don't bring up surrogacy, we don't want to muddy the waters. So to this judge, who is sitting in front of me, I look like somebody who had sex with my brother-in-law, got pregnant, and now I'm giving them up to my sister. This judge knows nothing that this was a surrogacy process. He knows I'm pregnant by my brother-in-law, or was pregnant by my brother-in-law, and now I'm giving them up to my sister. I mean that's...not only is it demeaning to me and makes me look like God knows what, but it's demeaning to my sister and we sit in this courtroom and we can't even address, you know, the beautiful process that took place. Having an acknowledgment of maternity would make this process so much easier for families in Nebraska. Throughout our research period, we ran into numerous couples in Nebraska who choose not to pursue gestational carrier in Nebraska due to the lack of legal support for genetic mothers. By acknowledging...excuse me. By allowing an acknowledgment of maternity, the genetic mother would be on the children's birth certificate from birth. This would avoid any legal mishaps for both the genetic mother and the gestational carrier. Being my sister's gestational carrier was one of the most humbling, exciting, crazy things I have ever done. I truly believe that using a gestational carrier is one of the best ways to help families grow. By supporting LB795 you would be allowing Nebraska to grow with the rest of the country and by allowing...and you would be allowing today's medical advances to play a role in growing families. Thank you. [LB795]

SENATOR EBKE: Thank you. Any questions? I see none. Thank you... [LB795]

LISA AUTEN: Thank you. [LB795]

SENATOR EBKE: ...for being here today. [LB795]

LISA AUTEN: Thank you. [LB795]

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SENATOR EBKE: Next proponent. [LB795]

CHRISTINA WILLIAMSON: (Exhibit 8) Good afternoon. My name is Christina Williamson, C-h-r-i-s-t-i-n-a W-i-l-l-i-a-m-s-o-n. I am here in support of LB795. My husband and I tried for almost ten years to have a baby. After suffering three devastating losses, we decided that both physically and emotionally we couldn't keep trying naturally. After our third loss in 2013, I had a close friend approach me about being a gestational carrier. She offered to carry our baby using my eggs and my husband's sperm. My husband and I talked about it and we all, including our carrier's husband, visited a reproductive clinic since we had no idea what having a gestational carrier or being a gestational carrier really entailed. During our consultation they explained the difference between being a traditional surrogate and a gestational carrier. A gestational carrier is what we decided. It was suggested that we had an attorney draw up an agreement that would help define all our roles during this process and what would happen before and after the baby was born. We scheduled an appointment with our attorney and as I was listening to what she had to say, one thing that stuck out the most was the fact that although this potential baby would be 100 percent genetically mine and my husband's, I would still have to do an adoption as a stepparent and wait six months after the birth to begin the adoption process. During those six months I would have no rights to the child, which meant that I couldn't take the baby to the doctors or anywhere else without my husband. He was on the...he was the only one that could legally sign because his name was on the birth certificate. We decided to move forward with our decision to have a gestational carrier. The next ten months would be the biggest roller coaster ride of emotions for me, but also the most rewarding of my life. We welcomed Gabriel and Armando, two healthy twin boys, on July 2, 2015. It was the happiest day of my life but also one of the hardest. Although those two amazing boys were genetically mine, I couldn't hold them or make any decisions about them unless our gestational carrier authorized it. In my case, she couldn't sign right away any right for me to do that because she had an emergency C-section. That was the big heartache, especially since they had to be admitted in the NICU right after birth, so I had to be a bystander in my own children's birth process. I had an idea of what the next six months prior to starting the stepparent adoption would be like, but I really couldn't prepare for the reality of it. I hope you consider passing LB795 so that other mothers don't have to go through the waiting process and unnecessary expenses like I did. Thank you for listening to my story. [LB795]

SENATOR EBKE: Thank you. Any questions? Thanks for coming in today... [LB795]

CHRISTINA WILLIAMSON: Thank you. [LB795]

SENATOR EBKE: ...and waiting a long time. [LB795]

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TRACY HIGHTOWER-HENNE: (Exhibit 9) Hello. My name is Tracy Hightower Henne, T-r-a-c-y H-i-g-h-t-o-w-e-r, hyphen, H-e-n-n-e, and I'm here wearing two hats today in support of LB795, one as a member of the Nebraska State Bar Association's legislative family law subcommittee and the second as an attorney having personally represented the women you just heard from today in their difficult path toward becoming mothers. LB795 creates a fix to that devastating process that requires women like Melissa and Christina, who have created children using a gestational carrier, to literally have to adopt their own children and have to wait six months before they can even start the adoption process. Women who want to use gestational carriers are told to stay away from Nebraska. I've represented several women who have told me their heartbreaking story of having tried many, many times to have a baby naturally and decided to use a gestational carrier to start a family. Their devastating story continues when I have to share with her that when her baby is born she won't have any legal rights to her child under current Nebraska law. She's considered a stepparent to her new baby, literally having to adopt her own child. Even worse, during the adoption process, the genetic mother, like Christina and Melissa, has to provide much paperwork, including a credit score, in order to adopt her own child. Even more continuing of the demeaning process, the gestational carrier has to allege under oath that she didn't have intercourse with anyone other than the baby's father when she never did in the first place. Current Nebraska law provides no means for a genetic mother to have her name placed on her child's birth certificate despite her husband simply being able to sign an acknowledgment of paternity which allows for his name to be placed on the birth certificate as birth father. LB795 will allow for a genetic mother using a gestational carrier to be placed on her child's birth certificate without having to undergo the adoption process. LB795 will allow for genetic mothers like Melissa and Christina to have immediate legal rights to her child. I'm happy to answer any questions that you have and it's true that I will be taking money out of my own pocket. Adoption is one of my favorite things to do in my office because the majority of my work is divorces. But I think that the process that these women have to go through is very demeaning and devastating when they also have a newborn child and having to wait six months for that. Senator Chambers, I can answer your earlier question if you'd like. [LB795]

SENATOR CHAMBERS: This is a situation which, if it's discussed frankly, could sound crude or unfeeling. But you know who the mother is, there's no question about...by that I meant who the woman is who gave birth to the child. The expression on the street, that's why I say it could sound crude but it sums it up: mother's baby, father's maybe. There are men who are not the biological father of a woman...I mean of a baby who would sign the birth certificate, change his mind, then say, let's have a genetic test and you'll see that I'm not the father, and that happens. [LB795]

TRACY HIGHTOWER-HENNE: That's right. [LB795]

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SENATOR CHAMBERS: So they will allow any man who is willing to sign a birth certificate to sign it. They don't know. [LB795]

TRACY HIGHTOWER-HENNE: That's right. [LB795]

SENATOR CHAMBERS: But they know who the woman is who gave birth. The complexity comes in when you begin to mix things, as this situation is doing. The egg was fertilized by the father and the egg that was fertilized was from his wife, so they...let me use letters, if I may, so you...it's easy for me to make clear what I'm saying without having to explain every step. "A" stands for the couple whose child it is, the real father--let me use that term, it sounds crude--the real father and the real mother, because the genetic material is hers. So "A" is a letter that stands for the two biological parents, if I can say that. "B" stands for the beautiful person who is going to carry the egg to term for A. When the child is born, one half of A is going to be on the birth certificate because A is allowed to sign whether he's really the father or not. [LB795]

TRACY HIGHTOWER-HENNE: That's right. [LB795]

SENATOR CHAMBERS: But in reality we know he is. A's name is there. Because there can be questions as to who is who and what is what, the only name when it comes to the one who gave birth can be the person whose birth canal was the passageway that brought this child into the world. Now since the idea of a contract has been discussed, I would like you to describe for me what the contract says and tell me if this contract is recognized as a legal document, binding, I mean, that is enforceable. That's why I need to know what the terms are, generally what they would be. [LB795]

TRACY HIGHTOWER-HENNE: Okay, first of all, your scenario sounded like a bar exam question, so I'm glad I didn't have to answer that directly. But thankfully I haven't had to litigate one of these agreements that we've done in our office. We have been selective in any representation that we would do in knowing that the...there is not likely going to be a changing of the mind at the time of birth. But if that were to happen, we felt comfortable in our office based on our research that just like a father could do a paternity test, a mother could do a maternity test and we would litigate that issue then. The contract, I don't know if it's a legally binding contract until it would be litigated and thankfully, again, I haven't had to litigate that. Before I decided to represent Christina--she was the first in a situation like this--I did extensive research on this and decided if that worst-case scenario happened, what do I think would happen in court, I decided that I think it could have been a risk and she understood that risk knowing that that contract could not be enforceable potentially in court under this, the current statute that we have. Because there wasn't compensation for the baby specifically, I was comfortable that that statute wouldn't apply in that situation. The terms in the agreement, and I like to call it an

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agreement because it's really, truly an agreement between the two women, talk about certain things like is the gestational carrier going to breast-feed the baby, and so there's questions about bonding and what that will look like. There are... [LB795]

SENATOR CHAMBERS: Let me get right to what I'm concerned about. If B changes her mind and is going to claim the baby as hers and not that she's carrying an egg that was fertilized and was the egg of another person, let's say she does some bonding and she says, no, I didn't...what they say is not true, then what steps, what do you argue in court? If B insists that this is my child and I'm going to keep my child and I'm not going to let this lady take my child and if somebody said, well, why is this man's name on the birth certificate, she can say, well, I was in a bind and a favor was being done for me so that there would be an identifiable person as the father to spare me embarrassment and that's why his name is on the birth certificate. And then they would...might ask, well, did you and he have sex? And she'd say no. Who is the father? I don't want to say. Could she be compelled to let her child submit to a DNA test and she be compelled to give one against her will? [LB795]

TRACY HIGHTOWER-HENNE: In that situation, I think a court order would probably order her to do a maternity test and we don't have precedent on that, so that would be something that I don't know the answer to that. But I think in any...the same situation in the vice versus: If a man signs a birth certificate or signs the acknowledgment of paternity and decides to change his mind, he would then go to court and have to ask for a paternity test. That woman in that situation would have to provide the child for a paternity test potentially against her will if she didn't want the birth certificate to be changed. So I think it's a similar situation that I don't know exactly what would happen because it hasn't been litigated in Nebraska and mostly because I think women are not doing gestational carrier because of this situation, so... [LB795]

SENATOR CHAMBERS: But, see, as a policymaker, I have to look at it and maybe I go a step further than others. When a man has been named the father and he really isn't, he would...he could initiate it and say, I want to show I'm not the father. I'm simplifying it. There could be legal complications but I'm trying to simplify it. So then steps may be taken to determine whether or not he is the father. He says he's not. The mother says he is. In this case, the mother says a man is not the father. Is that man going to say, I insist that I be given a...that I give DNA and the child give DNA? [LB795]

TRACY HIGHTOWER-HENNE: Yes. [LB795]

SENATOR CHAMBERS: Could insist on that? [LB795]

TRACY HIGHTOWER-HENNE: Yes. [LB795]

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SENATOR CHAMBERS: And then he's going to, if he is named the father, then he's going to have custody of the child, is that what's going to happen? Or can she say, we had consensual sex? And I'm not...he can be the father and give child support, he can have visitation, but it's not his child. [LB795]

TRACY HIGHTOWER-HENNE: If a paternity test were to show that it was his child, I think a court would allow for parenting time and custody just like any paternity order would now. [LB795]

SENATOR CHAMBERS: On what basis would she have to give up custody? Or would they have joint custody? [LB795]

TRACY HIGHTOWER-HENNE: It would depend on... [LB795]

SENATOR CHAMBERS: And I'm not listening for... [LB795]

TRACY HIGHTOWER-HENNE: It would depend on the circumstances and the judge. [LB795]

SENATOR CHAMBERS: Here's why I'm doing this. If you would take the time, if you can follow what I was asking and think about it and then write me a letter--I'm serious about this, I wouldn't ask you to do it if I wasn't serious--then we would have something that we both could refer to in writing and discuss back and forth because right here this moment it's difficult for me to keep clear what's in my mind when I say it. [LB795]

TRACY HIGHTOWER-HENNE: Sure. I'm happy... [LB795]

SENATOR CHAMBERS: But I'm not ready to support this bill right now, to be quite frank with you. [LB795]

TRACY HIGHTOWER-HENNE: I'm happy to do that. I don't know that I fully understand your question, so I'm happy to have a conversation elsewhere or if you want to specify the question too. [LB795]

SENATOR CHAMBERS: Oh, that would be all right with me. Okay, just so we don't have to try to figure it all out here. [LB795]

TRACY HIGHTOWER-HENNE: Sure. [LB795]

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SENATOR CHAMBERS: We can do it on the telephone sometime if you wanted. [LB795]

TRACY HIGHTOWER-HENNE: I'd be happy to do that. [LB795]

SENATOR CHAMBERS: Okay. [LB795]

TRACY HIGHTOWER-HENNE: And I think the problem is hypothetically speaking it's always very difficult, and I tell clients that all the time. My primary practice is in family law, just in custody in general, so I think I can talk through any scenarios that could happen in general with regards to paternity and I think this issue hasn't been litigated in Nebraska so we could speak in "hypothetics." I don't know...I think the problem is I wouldn't know the exact answer just because we don't have precedent as far as what happens with gestational carriers and maternity and so forth. [LB795]

SENATOR CHAMBERS: Okay, then before you leave for good, then you and I will exchange numbers and we'll talk that way. [LB795]

TRACY HIGHTOWER-HENNE: I would... [LB795]

SENATOR CHAMBERS: I just don't want to take all that time right now during the hearing. [LB795]

TRACY HIGHTOWER-HENNE: I would be happy to. [LB795]

SENATOR CHAMBERS: Okay, thank you. [LB795]

TRACY HIGHTOWER-HENNE: Thank you. [LB795]

SENATOR EBKE: Any other questions? Okay, thanks for being here. [LB795]

TRACY HIGHTOWER-HENNE: Thank you. [LB795]

SENATOR EBKE: (Exhibits 1 and 2) Are there any other proponents? I see nobody moving. Are we...are there any opponents to LB795? I see nobody moving. How about neutral testimony? I see no one. Senator McDonnell, we have two letters of support, one from Scout Richters of the ACLU of Nebraska and one from Meghan Oakes. Would you like to close? [LB795]

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SENATOR McDONNELL: Unless you have questions, I'll waive closing because I know there's a number of people waiting in here to be here for a few more hours. [LB795]

SENATOR EBKE: Oh, this is the Judiciary Committee. We... [LB795]

SENATOR MORFELD: You can stick with us if you want. [LB795]

SENATOR McDONNELL: Thank you. [LB795]

SENATOR EBKE: Okay, thank you. This closes the hearing on LB795. LB972. Are we waiting for Senator Wayne? [LB972]

_____: Senator Wayne is (inaudible). [LB972]

SENATOR EBKE: That's okay. We're not going anywhere. [LB972]

SENATOR MORFELD: Skip over it. [LB972]

SENATOR CHAMBERS: (Inaudible) for himself. [LB972]

SENATOR EBKE: Senator Wayne. [LB972]

SENATOR WAYNE: Yes. I didn't know if we were waiting (inaudible). [LB972]

SENATOR EBKE: Oh, no, we were just... [LB972]

SENATOR WAYNE: So I (inaudible). [LB972]

SENATOR EBKE: That's okay. We're getting punchy. It's late and we're... [LB972]

SENATOR WAYNE: Since I...and I love having the...my Fridays spent with you all. [LB972]

SENATOR EBKE: Well, you're not the last one. [LB972]

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SENATOR WAYNE: That is true, but this is two Fridays in a row and I'm looking for next Friday too. I've already locked it out for Judiciary... [LB972]

SENATOR EBKE: All right. Well, we've got... [LB972]

SENATOR WAYNE: ...even though I'm not there. [LB972]

SENATOR EBKE: Next Friday is a recess day and we'll be here so... [LB972]

SENATOR WAYNE: If you need me, I will be here. [LB972]

SENATOR EBKE: Well, I'm sure somebody won't be. You can come be a sub. [LB972]

SENATOR MORFELD: Take over for legal counsel. [LB972]

SENATOR EBKE: Yeah, (laugh) take over for legal counsel. They'd probably be happy. Okay. Go right ahead. [LB972]

SENATOR WAYNE: (Exhibit 1) Yes. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13 which is north Omaha and northeast Omaha. This bill in its current form will need some amendments to it probably. Part of it is some technical issues regarding how the courts need to administer the process, but the concept behind the bill is solid. As we look at overcrowding in prisons, as we look at the issues of a felony record, we are starting to have different courts come about to make sure that we give people second chances, and this is an opportunity to give somebody a second chance and a clean slate. What you have being passed out to you is a chart. I don't know when the exact date it was created, but these are the number of different states who all have some type of deferred judgment process. This law was basically...or this bill was basically written mainly off of the Iowa statute and that's why there's a couple things we'll have to correct, minor things. But the point of it is whether it's conservative or what would be deemed liberal states, all of them have deferred judgments and actually all the states around us, connecting us, have deferred judgments. We always talk about our surrounding states when we talk about taxes and economic development. Well, I think we should also look around to other states as we talk about how we improve our sentencing and improve our judicial system. And this is just, again, another way when I represent people who go to drug court, when I represent people who go to diversion, just another way for judges to have some discretion and to give those individuals who need a second chance and a clean slate that opportunity. With that, I'll answer any questions. [LB972]

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SENATOR EBKE: Any questions for Senator Wayne? I see none. [LB972]

SENATOR CHAMBERS: I just have one. [LB972]

SENATOR EBKE: Oh, I'm sorry. I didn't see your hand go up. [LB972]

SENATOR CHAMBERS: Well, it might be too difficult. I won't ask it. [LB972]

SENATOR WAYNE: No, I'm ready. I'm sharp. I've got tea in here. I'm ready to go. [LB972]

SENATOR CHAMBERS: Who is going to win the Super Bowl? Don't...you don't have to answer. I just thought I'd... [LB972]

SENATOR WAYNE: My team isn't in it so... [LB972]

SENATOR EBKE: Is that this weekend? [LB972]

SENATOR CHAMBERS: No, I don't really have any questions. That was it. [LB972]

SENATOR EBKE: Okay. (Laughter) Okay. Okay. First proponent, LB972. [LB972]

JOE NIGRO: Good afternoon. Senator Ebke, members of the committee, I'm Joe Nigro; that's spelled 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 in support of LB972. I would like to thank Senator Wayne for introducing this needed legislation. I became aware of this concept of deferred judgment a few years ago when I became frustrated when applicants for drug court were turned down because their drug problem wasn't severe enough and they were told that they could seek to be placed on traditional probation. The problem is that people who get into drug court and graduate get their cases dismissed. People who complete probation still have a felony on their record. They can try years later to have it set aside, but that doesn't happen easily. In 37 states, deferred judgment exists for a variety of offenses. Iowa is one of those states. It exists in a number of southern states. Under Nebraska law, once sentence is pronounced by the court, the case is final. With deferred judgment probation, the court keeps control of the case and can dismiss it after probation has been successfully completed. This helps to restore people completely to society. They can say no when asked on a job application if they've been...if they're asked if they've been convicted of a felony. It could impact eligibility for federal student loans and federal housing. All of those things can help someone to be more likely to be

successful and less likely to reoffend. This dismissal is not a gift. People have to earn it by successfully completing probation. Judges decide who even gets the opportunity. They don't have to place people on deferred judgment probation. It's unlikely that deferred judgment will be granted for a number of offenses or for people who have significant criminal records and there are limitations in the bill on certain sorts of prior convictions that would eliminate eligibility. It will motivate some defendants to seek probation instead of just doing time. And it will motivate defendants to successfully complete probation. Now if there is opposition today, I would hope that those opponents will have constructive suggestions for ways to improve this bill instead of just saying it's too much too soon because when 37 states have done this, this is not some new concept. And this committee did an interim study this summer so this is something that people had a chance to come and comment on just a few months ago. This is an idea that's been floating around for a while and so somebody just coming up here and saying no is not helpful. And I know there have been people on a variety of reform proposals--I've been here in the last couple of weeks--who seem to say no without offering other alternatives for ways that we can help reduce recidivism and reduce prison overcrowding. This one may not reduce prison overcrowding directly, although if people are less likely to reoffend I think it does indirectly. This concept is similar to other steps the Legislature has taken, such as "ban the box," which would restore people fully to society after they've served their sentences. If people are fully restored, they're more likely to be successful in life and that benefits all of us. And so I urge the committee to advance LB972. [LB972]

SENATOR EBKE: Thank you, Mr. Nigro. Any questions? [LB972]

JOE NIGRO: Thank you. [LB972]

SENATOR EBKE: Okay. Thank you. Any other proponents? Proponents? Okay, do we have any opponents? [LB972]

SHAKIL MALIK: (Exhibits 2 and 3) Good afternoon, Senators. My name is Shakil Malik. I am deputy county attorney for the Douglas County Attorney's Office in Omaha, Nebraska, here testifying in opposition to this bill on behalf of the Nebraska County Attorneys Association. I won't belabor every point that's in my written testimony, but I just want to make it clear the opposition is not to the concept of deferred adjudication, deferred sentencing, or suspended sentencing. It's just the bill as it's currently implemented. As noted by Mr. Nigro's testimony, there is...the bill is essentially taking portions of Iowa's statutes for this type of alternative and applying to Nebraska. The concerns really are that there...if you even look at Iowa's law, there are protections and restrictions in there that are not present in this bill. For example, Iowa does not allow this type of deferment for what they call forcible felonies and I lay that out as well. There are also concerns about Iowa doesn't allow for aggravated DUIs, repeat offender DUIs,

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driving under suspension for a DUI suspension revocation. So there's a whole class of offenses that are barred on that more on the serious side and where someone has already had prior chances. The other concern--well, among others--is this creates, unlike Iowa, this creates a presumption of deferred judgment and that's towards the end of the bill where you have to show basically if you were going to put them on probation, you have to show why you want to do a deferred judgment. Iowa doesn't do it that way. The issue with that presumption is not the fact that there is a presumption, but also added to this bill that Iowa doesn't have is some requirements for proving up prior deferments and prior convictions among those, which is interesting because it's almost like a DUI enhancement where you have to prove that if they had a right to a jury trial that they...and they didn't do that, that they waived it, that they would have the right to counsel on these prior convictions, so, you know, how is that going to be accomplished, how is that going to be proven, who is the burden on to be able to do that? Additionally, just from a more procedural standpoint, Iowa and other states, you know, either have...they require the consent or application of the defendant to do this type of deferment or the agreement of prosecutor and defendant. This doesn't but then it doesn't address what do you do in a situation where one or both parties wants to appeal the sentence or contest that, so how would that work? So I wanted to bring those points to the committee for consideration on this bill. And lastly, and also as far as how the records will work, it says that these deferred judgments would be accessible to judges, county attorneys, public defenders and whatnot in the state, but if we're saying, and like other states do, they've had prior deferred judgments, you're going to be eligible if you hit a certain amount or a certain type of crime, if we only let our state get access to it, how do other states find out about it from us and vice versa? So just some items to consider if this is something that moves forward either this session or in the future. And with that, I'd be happy to answer any questions you might have on it. [LB972]

SENATOR EBKE: Thank you for being here today. Are there any questions? I see none. [LB972]

SENATOR CHAMBERS: Oh. [LB972]

SENATOR HANSEN: Senator. [LB972]

SENATOR HALLORAN: Senator Hansen here. [LB972]

SENATOR EBKE: Oh, I'm sorry. You didn't wave fast enough. [LB972]

SENATOR HANSEN: No. Thank you, Senator Ebke. Thank you for coming and testifying. So just to clarify, the county attorneys' opposition to this bill is not the concept, so we could write a deferred judgment/probation bill that would get the support of the county attorneys? [LB972]

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SHAKIL MALIK: Yeah. And if I could just expand on that? [LB972]

SENATOR HANSEN: Sure. [LB972]

SHAKIL MALIK: One of the funny things, and I had some conversations with Senator Wayne before we walked in--and I've known him for a number of years--and when you're kind of previewing your argument ahead of time, you're...the proponent previews then what you're going to say. And I don't want to couch that as a let's just go full forward, every offense, deferred adjudication or whatnot. But I think there could certainly be a rollout of that because, as was noted, we already have it in some places in Nebraska through the drug court but it is a clunky thing because you're basically doing...some statutes were added but you're kind of doing drug court...it's a creation. It's not something that's heavily statutorily defined or supported how you do this reversal. And it is unfortunate. You know, I don't know if we've had that in Douglas County, but where he was talking about how some people haven't been eligible or were told to go on probation, yeah, that's a concern. So I think, you know, I looked at all these surrounding states--I think I might have missed Wyoming--that touch Nebraska and all of them do have this in some way, shape, or form. Some of them are more treatment-targeted or treatment-responsive offense targeted where, you know, drugs or some other issue is the underlying thing. So that might be a great starting point is looking at, you know, where it's something that's clearly defined that this is more of a issue of a substance abuse or mental health issue--you know, we have mental health diversion, as well, too, in Douglas County--and targeting that as, hey, that's a smart one where somebody would not have committed this crime but for the factors of that mental health issue or substance abuse. That's something where if they get back on the right track, they shouldn't have to have that permanent, you know, permanent conviction on their record. [LB972]

SENATOR HANSEN: All right. I appreciate you expanding on it. Thank you. [LB972]

SENATOR EBKE: Any other questions? Senator Chambers. [LB972]

SENATOR CHAMBERS: At least Don Kleine didn't come today (laughter). [LB972]

SHAKIL MALIK: I know. He sent me instead. [LB972]

SENATOR CHAMBERS: And every...no matter what reform there is offered, no matter how minor it is, the county attorneys are against it in a knee-jerk fashion and it takes away the impact; it's hard to even listen. And this is no disparagement of you. I've been on this committee 43 years and the county attorneys are saying the same thing now that they always say: Oh, it's something

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that, uh-oh, no, we're not for that, and then the Legislature is supposed to accept what they say. I'm not for the...and I hear you say, and it's the argument I give, because something is happening in another state doesn't necessarily make it right. But I've seen county attorneys come in here and use that very argument--no other state is doing this, Nebraska. So they flip and I said that even to Don Kleine when he talked about taking away the judges' discretion when we said the one-third rule. But then when we say you take away the judges' discretion when you have a mandatory minimum, he couldn't accept that. You can't trust the judges. So that's the way the county attorneys are. They are not consistent. They say whatever fits the particular situation. In other words, they're utilitarians. They are not principled in the arguments. And you notice I say "they," not "you." You're just speaking for them. But whoever comes and speaks for them is the only one I can talk to. And I'm not going to put you through a meat grinder because the committee will do what it's going to do on these bills and you haven't come in here with...you're not breathing fire and smoke or anything that would make me feel like I have to counteract what you said. We just have a difference of opinion on this bill. So I hope you will not be reluctant to come before this committee because you know whenever a new person comes and you have an old tough bird like me, every now and then you need some fresh red meat, so (inaudible). [LB972]

SHAKIL MALIK: If I may respond, Senator, I don't mean to put you on the spot. I'm actually not a new bird on this committee. I'm here every year for about the last six years. I just pick my spots carefully. I'm not a reactive person. I actually keyed into this bill just because I have done a lot of work with diversion alternatives. I actually am listed as an author and contributor for the statewide juvenile diversion manual. I'm a Georgetown fellow in juvenile diversion, so I do care about alternatives. But I'm also a stickler for how bills will actually go because when a lot of these initiatives go forward, like adult sealed records and whatnot, I chair some of the Douglas County committees that have to implement these, so I see more of the on-the-ground problems and things that occur. So I'm just...I'm, as you are fond of saying, I'm just setting out the record of items I found of concern and the committee obviously can do what it will with what I've brought forward. [LB972]

SENATOR CHAMBERS: And that's why I don't have a lot of questions. You were very...now I don't need to give you any compliments. Okay, well, I'll leave (inaudible). [LB972]

SHAKIL MALIK: If you want, I mean, it's late, I've been here for a few hours, I'll take some. [LB972]

SENATOR CHAMBERS: I'll say it. You did not do a bad job. That's as far as I can go. [LB972]

SHAKIL MALIK: Thank you. Thank you. [LB972]

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SENATOR EBKE: Other questions? Thank you for being here. [LB972]

SHAKIL MALIK: Thank you. [LB972]

SENATOR EBKE: Next opponent. [LB972]

KORBY GILBERTSON: Good evening, Madam Chair, members of the committee. For the record, my name is Korby Gilbertson; it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today in opposition to LB972 on behalf of Media of Nebraska. Media of Nebraska is a group that is made up of both print and broadcast media. However, they limit their interest to First Amendment public records and open meetings issues. This would fall under the public records part of their interest and their primary concern is something that we've seen in a number of bills this year which are attempts to erase history. And our concern is that there might be times when you have felonies that are committed that it would not be appropriate for the charge to be dismissed without any entrance of judgment or any access to the records that are kept by the state. With that, I'd be happy to answer any questions. [LB972]

SENATOR EBKE: Any questions? Senator Chambers. [LB972]

SENATOR CHAMBERS: What do you mean, "erase history"? [LB972]

KORBY GILBERTSON: There would be no record of the action that took place, the felony that was committed. [LB972]

SENATOR CHAMBERS: Well, are the media interested in having a story to write or keeping society safe? [LB972]

KORBY GILBERTSON: I think that their interest is both providing information to the citizens of the state so that that, it can keep citizens safe. But I also think it's not necessarily about writing a story. A story might have been written when the original crime was committed. This is trying to after the fact go back and have things erased at the court level. [LB972]

SENATOR CHAMBERS: But they're not judicial people, people in the media. [LB972]

KORBY GILBERTSON: No. [LB972]

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SENATOR CHAMBERS: They're not lawyers. I don't mean no person who is in the media has ever studied law. But they look at these situations from the standpoint of their craft, their business, their enterprises. We as policymakers look at it from a different point of view. And Senator Wayne mentioned the term "second chances" and the media will just have to take what we put out there because I've seen numerous issues that I thought were important and the media wouldn't touch them because their editors say, well, no, that's a little too hot for us, or it hasn't reached a point where we're going to be the first ones out there to do it. So the media, in Nebraska at least, are not the investigative crusaders that other media are in other places. And that doesn't mean all of the media someplace else are what I'm describing, but their word on this bill means nothing to me--in fact, less than nothing--and the fact that they don't like it makes me even stronger in favor of it because, again, they pick and choose the kind of stories they're going to write on various issues. And depending on the race, the gender of the ones involved, they'll make maybe an inch and a quarter reference to it but no details. Then if there's something that can be made to appear lurid, they might have three or four columns and it will continue on the next page. And the reason I know, I clip articles and which ones continue on page 3 or page 5. And this is not an attack on you and I think you know that. But you're the bearer and I've never killed a messenger, especially if it's a woman. [LB972]

KORBY GILBERTSON: And I will carry that message back. [LB972]

SENATOR CHAMBERS: And I (inaudible) in my life, so... [LB972]

KORBY GILBERTSON: Yeah. [LB972]

SENATOR CHAMBERS: ...we kind of know each other. [LB972]

KORBY GILBERTSON: Yep, you've known me for a very long time. [LB972]

SENATOR CHAMBERS: Okay. Thank you. [LB972]

SENATOR EBKE: Any other questions? Thank you for being here. [LB972]

KORBY GILBERTSON: Thank you. [LB972]

SENATOR EBKE: Next opponent. I see no one. Is there anybody speaking in the neutral capacity? [LB972]

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GENE COTTER: (Exhibit 4) Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Gene Cotter, G-e-n-e C-o-t-t-e-r, and I'm the deputy probation administrator with the Administrative Office of Courts and Probation. I come before you today to testify in a neutral capacity on LB972. The reason for that neutrality actually was spoken to by Senator Wayne in his opening, and that is that we would need a number of clarifications or questions answered so that we can prepare operationally for the implementation of deferred-judgment probation. For example, we wonder about the effect that this initiative would have. It may disincentivize the utilization of problem-solving courts and the recent efforts to expand specialty courts statewide, especially young-adult courts who target the same population, young first-time offenders. As we know, the effectiveness of problem-solving courts is well documented in research. Second, we worry about a possible net widening. We will likely see an increase in the number of presentence investigations and criminal background checks required, needed to verify whether or not individuals are truly first-time offenders, as provided for, the way this is presently written. Also, will this bill prolong the involvement of individuals in the court system that would have otherwise been fined, had charges dismissed or diverted to probation, in order...in a case that historically would not have been, especially those with lower-level misdemeanors? Three, what voice do victims have, what role do they have, as the currently do in the court process or probation term? A fourth question may be, are sex offender registries, firearm prohibitions, or other provisions applicable and domestic violence charges enforceable because this is not a final conviction? Fifth, is there delayed implementation of the bill plan or will the normal 90-day rule be in effect? In order to expedite or maximize our implementation, we'd need to develop policy, procedures, train our staff, and educate staff, as well as modify our IT systems in order to make this fully operational. We also wonder about how LB972 would interact with other justice reinvestment efforts, especially provisions around presumptive probation on Class IV felonies provided for in Nebraska Statute 29-2204.02 and custodial sanctions provided for in 29-2266.02. And last, in Section 2 of the bill, it talks about a statewide database used for a deferred judgment docket. This section calls for a permanent but confidential record. Accessibility to and maintenance of the record is in question. Regardless, the JUSTICE system expansion to current functionality for this specific purpose would be needed, which, in turn, would require resources and time. In closing, Nebraska courts and probation are committed to the safety of our communities, the restoration of victims, and the rehabilitation of justice-involved individuals. We are a proven, successful alternative to incarceration at all levels. While there are likely benefits to LB972, clarity would be appreciated so we could better estimate the overall impact this would have on us, as well as any needed judicial and probation resources. We would be more than happy to collaborate with Senator Wayne, the Judiciary Committee, or others to achieve those needed clarifications. So I appreciate your time. And if there's any questions, I'd be more than happy to answer those. [LB972]

SENATOR EBKE: Thank you, Mr. Cotter. Any questions? Senator Chambers. [LB972]

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SENATOR CHAMBERS: This isn't directly in line with what you all do, but I look at the entire criminal justice system and I have yet to hear anybody come here and talk about these excessive bonds that are being set by judges. You may not know it, but I know they are excessive and I believe they violate the Eighth Amendment to the constitution. And sometimes they're put on people to keep them in jail even before they have had a trial, even before a trial date is set. When you get there, they put this heavy bond. Whoever heard of a million-dollar bond on somebody except here? And your office won't talk about it, the judges won't talk about it because they're doing it, and nobody else will, and that's why I don't have much respect for people who call themselves members of the judicial branch, those in the criminal justice system, those who talk about public safety. I have to look at what really is justice, and justice means giving people their due. And I think, just like these people who talked about the Second Amendment, I think the Eighth Amendment still has effect as far as the constitution, but judges can disregard it and nobody will say anything. But I'm going to say something about it every time somebody from any branch of the government comes here, from the courts. That's what they're going to hear from me. The young man who was here from the county attorneys, I can talk to him about other things. But I get sick of hearing people talk about we're concerned about public safety and victims. Well, fine, so am I, but there are other aspects where those who man and operate the system are corrupting it. And I don't expect you to say anything about excessive bails or bonds or fines, because that doesn't mean anything to you. If that's what the courts are going to do, fine, you get your check every week or however often you're paid and that's it. So I wouldn't look for you to say anything, but I'm going to start making you all earn some of your money, because you've got to listen to what I say when you sit in that chair. And if you want to respond, you can, but your words sound to me like sounding brass and a tinkling cymbal. They don't have any substance, any consequence whatsoever. You want your job to be easy or they're routine things you have to say or this is the kind of bill you have to oppose so you can say, well, today I earned my money because somebody called me out, and that's what I'm doing. And you haven't done anything personal to me. I don't even know who you are. I've never seen you before. I'm speaking with you on the basis of what your title is and what you say you represent, and then I listen to the words that you utter and I don't see a congruence between the two. I see a dichotomy. But then my view is a lot different. You might look at the world through a telescope where you see big things. I look at the world through a microscope where I see the little things that cause the problems. A meteorite can be seen with the naked eye if it's going through the night sky. It's not going to give you a disease. A microbe that can take you out and an entire civilization is so tiny the naked eye cannot see it. You'll not even know it's there. So that's maybe why the "Bible" said it's the little foxes that destroy the vines. The little things do count. And to people in your exalted position--and that's what it is because you all can dictate what's going to happen to other people--these kind of things are so mundane that they don't matter. But I see the ignoring of these basic fundamental principles as what will destroy the judicial system, destroy public respect for it, because you're taking--not you personally--you're taking people who haven't been convicted of anything and making them stay in jail however long it's going to take for them

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to go to trial. And maybe the charges ultimately will be dismissed. And sometimes judges will say, you're guilty, time served, and maybe the time you stayed in jail waiting to go to trial is more time than you'd had to serve if you were found guilty. That's what I think about and you'll know now what direction my mind is working when you come before the committee. And your coming here opens the way because I think of the law as a seamless web. All of it is connected, interconnected. And that's...if you want to respond, you can, but you don't have to because I don't know if there was a question in there for you. [LB972]

SENATOR EBKE: To be clear, Senator Chambers, Mr. Cotter is here in a neutral position, so he didn't come in...I think you mentioned that it was a... [LB972]

SENATOR CHAMBERS: Well, people say, I'm neutral, then they tell the things... [LB972]

SENATOR EBKE: Sure. [LB972]

SENATOR CHAMBERS: ...they give the kind of testimony that lets me know they're really not in favor of the bill. So if he's not in favor of it, he's against it. There is no such thing as neutrality. And Jesus, which he probably (inaudible he may not be... [LB972]

SENATOR EBKE: That's what Senator Erdman would say about him. [LB972]

SENATOR CHAMBERS: You know what Jesus did? That "Bibble said if you're lukewarm, I'll spew you out of my mouth, I want you to be hot or cold. And that's me. [LB972]

SENATOR EBKE: All right. Fair enough. [LB972]

SENATOR CHAMBERS: Okay. [LB972]

SENATOR EBKE: Mr. Cotter, is it fair to say that your neutrality is not...is more based on procedure and concern about procedure and process and clarification? Is that... [LB972]

GENE COTTER: It's exactly what Senator Wayne said during his opening that... [LB972]

SENATOR EBKE: Okay. [LB972]

GENE COTTER: ...in its current format we would have some questions and would asked to be involved in... [LB972]

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SENATOR EBKE: It's not conceptual. [LB972]

GENE COTTER: ...making it so that...yes, absolutely not. [LB972]

SENATOR EBKE: Okay. Thank you. Okay, thank you for being here. Any other neutral testimony? Does it say immunity? [LB972]

SENATOR MORFELD: There's no immunity? [LB972]

JOHN LINDSAY: Senator Ebke, members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, and I'm pleased to be here to testify without using the word "immunity," which apparently I just did. I'm here on behalf of the Nebraska County Judges Association. They don't have a position on the underlying concept. It's much what the last testifier mentioned and what Senator Wayne mentioned in his opening. Just some clarifications about how it would impact other areas of statute, for example, 39...excuse me, 29-3906...excuse me, 29-3604, which prohibits pretrial diversion in cases involving DWI, and the question is, would this apply to a situation like that or would it not apply to a situation like that? And so we are just looking for clarification on some of those things. We've talked to Senator Wayne and we are willing to...mentioned to him that we'd love to be involved in the discussion and be a resource as the committee and Senator Wayne work through the bill. With that, I'd be happy to answer any questions. [LB972]

SENATOR EBKE: Thank you, Mr. Lindsay. Senator Chambers. [LB972]

SENATOR CHAMBERS: Mr. Lindsay, who did you say you're representing today? [LB972]

JOHN LINDSAY: The...(laugh) is this where I invoke my Fifth Amendment privilege? No, I.. [LB972]

SENATOR MORFELD: I think he's just here for fun, Senator. [LB972]

JOHN LINDSAY: I'm here with the Nebraska County Judges Association. [LB972]

SENATOR CHAMBERS: The county judges? [LB972]

JOHN LINDSAY: Right. [LB972]

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SENATOR CHAMBERS: Now the county judges are the ones who people might appear before, before they are bound over to a district judge. Is that true for trial? [LB972]

JOHN LINDSAY: That would be correct,... [LB972]

SENATOR CHAMBERS: So if I'm going to have a bond set... [LB972]

JOHN LINDSAY: ...and misdemeanors and... [LB972]

SENATOR CHAMBERS: ...what level of the courts will usually set the bond for me? [LB972]

JOHN LINDSAY: Typically that would be the...on your initial, as I understand it, your initial entry into the system, the county judge would be setting the initial bond. [LB972]

SENATOR CHAMBERS: Then I have contempt for your clients. Really, I have...not you. You're doing...you're making your money. [LB972]

SENATOR PANSING BROOKS: I have to say something. [LB972]

SENATOR CHAMBERS: I have utter contempt for them. And, see, I talked to the judges--this was some years ago--gave a talk to them and they were concerned about my criticism of them. So they're aware of what my opinion is and these judges know better than to set the bonds that they're setting. Those bonds are to keep people in jail who they know cannot post bond. Mr. Kleine was even saying that they're, in Douglas County, they're trying to look at something because he's talked to Mr. Foxall who runs the County Correctional Center and they have all these people stacking up in jail only because they can't make bond. And there are some people, and I can prove this, who might spend more time in jail because they can't make bond than they'd make...than they'd spend if they were convicted. And maybe that's a way to try to make them go ahead and plead because I'll put a bond on you where you won't get out of jail. If you plead, I'll give you a couple of days. You've been there already. I'll let you out. I think these judges are corrupt, not all of them. I think they've corrupted the system. And I use that strong language because, as I said to the gentleman who came before--and he was more neutral than you are today--these judges are the ones who give the public their understanding of what the judicial system and, by extrapolation, what justice means in this society. And for poor people, there is no justice. Rich people who could pay a high bond don't have to pay one. And sometimes they say, well, I'm saying this for myself, excuse me. The judges won't say that unless they're talking to a rich man. They say he's not a flight risk, she's not a flight risk. These people don't even have the means to flee. And the judges know they're not going to go anywhere. And they put those

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humongous bonds. So when you go back to your clients, you tell them I'm very upset about the fact that they ignore the Eighth Amendment. That's the one that means something to me. I don't care about the Second Amendment. Those are dangerous people who misuse that. But I condemn the judges even more because they do this on a daily basis. When I pick that newspaper up and I read where some poor person has gotten this huge bond, I won't tell you the kind of thoughts I would have if I were not such a constrained, modest, easygoing person. But it's reaching a point now where I can't take it anymore quietly. Now I'm not going to go bump a judge off. It's not worth me losing one day of my freedom to bump one of these worthless people off, so that's not going to happen. But there is a guy who was a Supreme Court judge and he is going to be...he's my target now, not to bump him off, but he quit suddenly. And I'm not going to ask you for an opinion on that. But my opinion is that when somebody with a job like that quit suddenly, it's either serious illness or scandal. And I believe it's scandal, so that judge is giving me a target to focus all my ire on. And in the new few days I'm going to go through my files and find some judges that I got disciplined, and one of them quit because he didn't want to tangle with me for misconduct toward females. And his name is Kelch or "Belch" or something like that. But on this particular matter, I will not be favorable toward anything that pertains to district judges as long as they put those humongous bonds because I don't think of them as judges, I think of them as corrupters of the system. And I don't mean if you have somebody who is genuinely a flight risk you don't put a bond to make sure that if they flee, if they get that much and get out, then somebody is going to pay, then somebody else might want to make sure that they show up. But I'm not going to go through specific cases but I could. And I think there may be some you've seen where the bond was unreasonable based on the person likely fleeing and the only purpose for the bond is to be sure that a person shows up for trial. And some people who have on a given case have had court appearances and they've always shown up, but maybe some judge said, well, I'm just tired of seeing this guy, \$150,000, just out of the sky, \$1,500,000. And people may not be aware that some judges in Douglas County are putting million-dollar bonds on people now, but that's all that I will say. And I'm saying it to you because that gentleman took his medicine and now you have to take yours. When you go to the doctor, the doctor has a syringe, the doctor has it for a purpose. And now that I've "syringed" you also, I don't have anything else to say. [LB972]

JOHN LINDSAY: Senator, I will deliver that message to my association. [LB972]

SENATOR CHAMBERS: I know you will. Okay. And I'm serious. If some of them want to talk to me, I will talk to them and we can maybe reach an accord on this subject. [LB972]

JOHN LINDSAY: I will convey that as well. [LB972]

SENATOR CHAMBERS: Thank you very much. [LB972]

SENATOR EBKE: Mr. Lindsay, now that we've talked about the Eighth Amendment, I think we're going to talk about the Sixth Amendment. Senator Pansing Brooks. [LB972]

SENATOR PANSING BROOKS: We are. I cannot help myself because now that we are, we do have the county judges represented in front of us right now, I do appreciate the fact that Senator Chambers is concerned about the Eighth. The fact that the county judges are standing as the sole barriers right now to children in our state getting their constitutional right to attorneys, I am still having arguments with people on the floor who don't understand that it's a constitutional right. And that's because the county judges are saying to them, oh, we can handle it, we just have them come and ask them what they did and then we tell them what their judgment is. That is not allowed in the ethical standards. So I don't agree that all judges are terrible people and doing wrong things, and there are wonderful judges in this state and Lancaster and Douglas and Sarpy are all giving right to counsel 100 percent of the time. The fact that we have judges, as a lawyer, the most shocking thing is that we have judges in our state acting as the barrier to our children's and the most vulnerable people that we have, their constitutional right to a lawyer. And we're expecting them to wander through the abyss of the criminal justice system. We had the Attorney General send us a corrective letter yesterday telling us that he didn't get the law exactly right. But we expect a child, a child... [LB972]

SENATOR CHAMBERS: Amen, Sister. [LB972]

SENATOR PANSING BROOKS: ...to wander the criminal justice system. It is, it's obscene that the judges are the barrier and I will continue to fight this. I'm very passionate about it. I'm aggravated that the judges are the barrier and have come to the legislators and said, oh, it's not necessary. Wait till there's a lawsuit, just wait. And the judges need to step up. They need to keep their mouths shut. They know what the constitutional rights of our citizenry is and I am very concerned about that. I appreciate their work. I appreciate their passion on so many things. But this, in this area, those who are standing against children's constitutional rights, it is wrong. And I couldn't help it because Senator Chambers talked to him. [LB972]

SENATOR CHAMBERS: And you know, what speaking to you, my goddaughter, these judges better not come in here with a bill asking for a salary increase. (Laughter) Now let them know--and I promise--the next bill that comes in for a salary increase--I'll be here three more years--they will not get a salary increase in that time or I'll tie up the whole Legislature for as long as I need to, to make sure they don't get a salary increase. [LB972]

SENATOR PANSING BROOKS: And we... [LB972]

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SENATOR CHAMBERS: And, see, I'm not saying decide a specific case a specific way. They are not earning a salary increase. And all I have to do is stop the Chief Justice because I think his salary is set then all the others fall in line. [LB972]

JOHN LINDSAY: That's correct. [LB972]

SENATOR CHAMBERS: I'm tired of it and now I've got to show that I'm not just going to be a good guy and talk here. Senator Halloran will say, yeah, there's Chambers fat-mouthing again, why doesn't he do something about what he's talking about? Well, I'm going to show Senator Halloran that I will. And you tell those judges that Senator Halloran is the reason that I'm coming down on them so hard. (Laughter) [LB972]

SENATOR PANSING BROOKS: Okay, I don't think Senator Halloran said that. [LB972]

SENATOR HALLORAN: I didn't. [LB972]

SENATOR PANSING BROOKS: And I do appreciate (laughter), I do appreciate you, Mr. Lindsay. We are friends. I'm sorry to be so passionate. But really... [LB972]

JOHN LINDSAY: Senator, I will pass your concerns and the passion of your concerns... [LB972]

SENATOR PANSING BROOKS: Okay. [LB972]

JOHN LINDSAY: ...on to my clients as well then. [LB972]

SENATOR PANSING BROOKS: Thank you very much. I appreciate it. [LB972]

SENATOR EBKE: I think I'd like to talk about the quartering of soldiers (laughter). [LB972]

SENATOR MORFELD: That's a concern (inaudible). [LB972]

JOHN LINDSAY: (Inaudible) only section left. [LB972]

SENATOR EBKE: See if we're just going to go through the whole batch. Anything else? Thank you, Senator Lindsay. [LB972]

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JOHN LINDSAY: Thank you. [LB972]

SENATOR EBKE: Okay. Do we have anybody else testifying in any way, shape, or form?
[LB972]

SENATOR HALLORAN: Senator Ebke, if I could, for the record, I have not said--and thank you, Senator Pansing Brooks, for defending--I have not said nor will I say what you suggested I was going to say. [LB972]

SENATOR CHAMBERS: I can't even hear what you're saying. [LB972]

SENATOR HALLORAN: That's okay. That's okay. Thank God I can't hear most of what you're saying. [LB972]

SENATOR CHAMBERS: I still can't hear you. [LB972]

SENATOR EBKE: That's okay. It's okay. [LB972]

SENATOR CHAMBERS: What did he say? [LB972]

SENATOR EBKE: I'll tell you later. [LB972]

SENATOR CHAMBERS: Oh, okay. [LB972]

SENATOR EBKE: Senator Wayne, you want to close? [LB972]

SENATOR WAYNE: Yes. [LB972]

SENATOR EBKE: Do we have any...we have no letters on this one. [LB972]

SENATOR WAYNE: This has what... [LB972]

SENATOR EBKE: It's Friday night and we're all getting punchy, I think. [LB972]

SENATOR WAYNE: This is what happens on a Friday night. So again, thank you. I appreciate the dialogue, appreciate work...I look forward to working with committee counsel. But there are

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some real-life...I never give in front of this body, give a long, passionate opening because I want testifiers talking, then I kind of follow up and tell you the real situation. Multiple people I represent who have a first-time drug offense in Douglas County. In order to get into Douglas County Drug Court you have to go to the prosecutor. Lancaster does it different where a judge can decide even though the Omaha...or the Lancaster prosecutor may object. You have to go through all the screening, all the negotiation through Douglas County prosecutor. Sometimes you can get in; sometimes you can't. And those who can't will get sentenced to probation and it's still on their record. Those who can, sometimes it's removed, sometimes it's knocked down to a misdemeanor, no longer a felony. The second thing is I have another bill coming before this committee, LB977, which deals with Class IV felonies. So once you get in the district court, you're dealing with a felony, nine times out of ten. There's a couple times you're not with domestic violence and a couple other things, but most of the time you're dealing with some type of felony. Why is that important? Because a Class IV felony, there's a presumption of probation. But to Senator Chambers' point, I have many clients who sit in jail for six months before we get to hear, actually get a plea, and they'll get time served. So the judge has to find them not appropriate for probation and overcome the presumption laid out in LB605 on a Class IV to put them...give them time served but then turn around and put them back on supervised release for nine months, whereas a deferred sentence they're already there. After they get done--nine months, six months--they're done. Instead of having an individual wrapped up in the judicial system for two years over a Class IV felony, this could literally reduce our prison population by saying you're going to be involved in the system for a year. It's that simple. So the concept is there. I look forward to working with everybody to get this done. And LB977 is scheduled for February 23 and I look forward to that being part of the "Christmas tree" package. Thank you. [LB972]

SENATOR EBKE: Thank you, Senator Wayne. This concludes the hearing on LB972. I will turn this over to Senator Pansing Brooks. [LB972]

SENATOR PANSING BROOKS: Okay. Welcome, Senator Ebke. [LB879]

SENATOR EBKE: Oh, I haven't gotten there yet. [LB879]

SENATOR PANSING BROOKS: Okay. Welcome, Senator Ebke. Now we're opening to the hearing on LB879. [LB879]

SENATOR EBKE: (Exhibits 2 and 3) Okay. [LB879]

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SENATOR PANSING BROOKS: Do we...could you please raise your hands if you're here for this hearing so we have a feel for how many are left? Okay, good. Thank you. So welcome. [LB879]

SENATOR EBKE: Okay. Well, thank you, Senator Pansing Brooks and members of the committee. For the record, my name is Laura Ebke; that's E-b-k-e. I represent District 32. LB879 is a very simple bill. At its core it seeks to add one check-the-box question to an existing Vital Statistics form that is already completed in connection with every divorce in the state. I've circulated a copy of the current Vital Statistics form and the proposed question which is based on a question taken from a form used in Washington State since 2007. As you'll see, the proposed question, which is question 2 on the Washington form, would ask the parties to check the box that best summarizes the parenting time arrangements contained in the divorce decree. This question is more precise than the question that is currently asked in Nebraska and will provide critical information about variations in parenting time awards in Nebraska. The information is important because numerous mental health studies demonstrate a link between certain types of parenting time awards and the emotional and physical health of children of divorce. Some scholars have said this inadequate parenting time is contributing to a public health crisis. The bill would also collect information about domestic violence and other risk factors which is not currently collected. This information would be collected through a question modeled on question 3 in the Washington form. The Nebraska form is already in use and there are well-established procedures in place to collect the forms and compile the information collected. None of these procedures will change. As I said earlier, this is a very simple bill that will collect critical information with minimal impact to existing processes and procedures, and we know it's being used in some form in other states. While I think this is a good idea, I do note the fiscal impact indicated in the note. I understand with that attached it's unlikely to go anywhere at this time, but I think it's worth some discussion even on a Friday night. I will admit that I am not as knowledgeable as those who will follow to testify in support of LB879 and I look forward to hearing from those who might testify against or in the neutral capacity to talk about this as well. So I'll try to answer questions if you have them. Otherwise, I am sure that some of the supporters will provide additional insight. [LB879]

SENATOR PANSING BROOKS: Thank you, Senator Ebke. Does anybody have a question? Nope. Thank you. Any proponents? [LB879]

JIM CREIGH: (Exhibit 4) Good evening. My name is Jim Creigh, which is spelled C-r-e-i-g-h. I'm an attorney in private practice in Omaha and I'm here to testify in favor of LB879. As Senator Ebke mentioned, this is a very simple bill. It would tweak a longstanding data collection form and process that has been used in this state since 2003 to collect information about child custody awards in divorce cases. It does not require the creation of any new procedures by either the court clerks or the Department of Health and Human Services. And in response to a comment

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that Senator Ebke made, I believe that the fiscal note is incorrect because it is based on an inaccurate assumption. The fiscal note seems to be based on the assumption that this would require the creation of a new process and create two new state employee positions within HHS. That's incorrect. Those positions already exist and have existed since 2003, so those are already reflected in the state's current budget. In light of that, I would encourage the committee to ask for a revision of the fiscal note. As I mentioned the bill would tweak the existing form and process in a couple of ways. As Senator Ebke noted, LB879 would amend an existing question on the Nebraska form to capture more precise information than what is currently collected. As you'll see from the Nebraska form, the question that is asked asks the parties to state whether the custody awarded went to the husband, the wife, joint, or other, whereas the comparable question in Washington State asked the party to quantify the parenting time to the nearest 10 percent. That information is both more precise and more useful to the practitioners and policymakers. The Washington form has been in force since 2007, so we have more than a decade's worth of experience with it. I'm not aware that there is any concerns about people understanding it. As Senator Ebke noted, LB879 would also collect information about whether the court found domestic violence or other risk factors in the case. This information is not currently collected in Nebraska. And finally, the bill would expand the universe of cases from which information is collected to both divorce and paternity cases. Currently data is collected only in divorce cases, which is only one-third of the universe of cases in Nebraska which all custody matters are decided. This change is similar to what this committee did last year when you approved LB307 to expand the Parenting Act fee to both paternity and divorce cases. I would observe that the state recently spent \$150,000 on a comprehensive ten-year study of custody cases because it does not currently collect this information. LB879 would gather this information on a real-time basis at much less cost to taxpayers, which is another element that I would encourage you to ask for input from the fiscal note people. And with that, I'd be happy to answer any questions that you may have. [LB879]

SENATOR PANSING BROOKS: Anybody have a question? Thank you for coming, Mr. Creigh. [LB879]

JIM CREIGH: Sure. Thank you. [LB879]

SENATOR PANSING BROOKS: Next proponent. Proponents? Okay, what about opponents? Do we have any opponents? Welcome. [LB879]

DEBORA DENNY: (Exhibit 5) Good evening. Members of the Judiciary Committee and Chair Pansing Brooks, my name is Debora Denny, D-e-b-o-r-a D-e-n-n-y. I'm the director of the State Court Administrator Office of Dispute Resolution and I'm here on behalf of Corey Steel who is at an all-day, previously scheduled conference. We are here in opposition to LB879. The prior

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speaker talked about the custody study that we did and we did do, indeed, a very comprehensive custody study that came up with a lot of very good research about issues important to both the proponent and us as opponents of the bill, which is, what is the status of parents giving legal custody, joint custody, time frames, are they represented by attorneys, do they have a parenting plan. All those questions were indeed studied by a formal researcher. And if any of you have ever done formal research, you know what is on paper is much more challenging and difficult to capture accurate data. LB879 looks simple on its face. However, when you start digging down and try to get good data, it is much more than meets the eye. The prior testifier talked about Washington State. It, indeed, had a similar type of report. But they have stopped reporting on it in 2014 because, as they said, they have not been getting filings on this form. They did a study and they said in a couple of counties only 58 percent of the people were filing the form. And in many other counties only...zero percent were filing the form and they said that the data that they've gathered by those who actually submitted this kind of form was biased because it was not comprehensive and they recommended that a more thorough review based on a sample of cases would result in a lower total cost in addition to more accurate view. The other problem with this bill is that the way it is written it implied that the clerks would merely transmit these forms rather than put them into our JUSTICE system. That's noted in the fiscal note and that was based on that assumption. However, the statement of intent talks about only one box being added. There's actually seven new elements that would be added to this form. And that also talks about using existing procedures. That would include automation of our JUSTICE system which would cost us more money to automate that system. So there's difficulties with the bill as it is written and that's why we're here in opposition. If there's any questions, I'm happy to take them.
[LB879]

SENATOR PANSING BROOKS: Thank you, Ms. Denny. Does anyone have a question? Yes, Senator Halloran. [LB879]

SENATOR HALLORAN: Thank you, Chair Pansing Brooks. So we have a form now that we collect data on, collect this information? [LB879]

DEBORA DENNY: We do have a Bureau of Vital Statistics form, yes, um-hum. [LB879]

SENATOR HALLORAN: Okay. What percentage of those are filled out? [LB879]

DEBORA DENNY: I don't have that answer. [LB879]

SENATOR HALLORAN: Do we know what Washington's figures are? [LB879]

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DEBORA DENNY: Yes. [LB879]

SENATOR HALLORAN: But we don't have an answer for ours? [LB879]

DEBORA DENNY: Right. [LB879]

SENATOR HALLORAN: Don't you find that puzzling that... [LB879]

DEBORA DENNY: No. [LB879]

SENATOR HALLORAN: ...we don't have data on the data much... [LB879]

DEBORA DENNY: What I do know, Senator, is that judges will not sign the final court order until the current Bureau of Vital Statistics form is submitted. And so that is part of our normal court process, so my assumption is that it's a very high percentage. And it's a pretty demographic form: name of parents; name of the court; when was the divorce; who were the parents; children given physical custody to mom or dad. And so that form, as I said, according to our internal procedures and our statute, is being submitted at the end before the judges will sign the final order. [LB879]

SENATOR HALLORAN: So you find that collecting more specific data will be cumbersome then? [LB879]

DEBORA DENNY: It's the type of data, so, and it only requires the plaintiff to file. So if mom is the plaintiff, she's the one that answers the question, was there domestic abuse considered by the judge in deciding custody? She would be the one who would decide how to answer the question, was there chemical abuse in the judge deciding custody? [LB879]

SENATOR HALLORAN: That (inaudible). [LB879]

DEBORA DENNY: The dad would not know what the mom wrote down on that form. [LB879]

SENATOR HALLORAN: Okay, so that's what our form asks for, that information which you just... [LB879]

DEBORA DENNY: That bill, this bill would ask for that, yeah. [LB879]

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SENATOR HALLORAN: This bill would ask for it. [LB879]

SENATOR PANSING BROOKS: Any additional questions of Ms. Denny? Thank you for coming. [LB879]

DEBORA DENNY: All right. Thank you. [LB879]

SENATOR PANSING BROOKS: Next opponent. Welcome. [LB879]

TRACY HIGHTOWER-HENNE: Hi. My name is Tracy Hightower-Henne; again, T-r-a-c-y H-i-g-h-t-o-w-e-r, hyphen, H-e-n-n-e, here on behalf of the Nebraska State Bar Association as a member of the family law legislative subcommittee, testifying in opposition of LB879. The concerns from the Bar Association really stem from the fact that these cases oftentimes involve pro se litigants, either on both sides of the case or on one side of the case, which can add some complexity and additional requirements of pro se parties that may be confusing. Also, sort of to the question of Senator Halloran regarding the reliability of the data, and these cases are often very contentious to begin with and if then there are additional questions about domestic violence--for example, what is the definition of that as it if were a check-the-box--I think that's really important to understand. There's also no requirements about substantiating the claims and that reporting can be prone to abuse if it's a simple check-the-box, which oftentimes these things that happen in these family law cases are not simple black-and-white-type situations. It also adds to the administrative burden of litigants and the courts and the clerks, in particular, will have to compile and report this data, oftentimes having to interpret a parenting plan in order to check the box, which parenting plans are very much not black and white at times. Number of counting of days can seem very burdensome for the clerks' offices. And I think it's important to note, too, that the information already that is available in these parenting plans is already part of a public file and anyone can review those parenting plans in a court file and that burden shouldn't be placed on the clerk's office to get that information and then have to report that information. And with that, I'm happy to answer any questions. [LB879]

SENATOR PANSING BROOKS: Any questions? Nope. Thank you for coming, Miss... [LB879]

TRACY HIGHTOWER-HENNE: Can I answer one question? I think... [LB879]

SENATOR PANSING BROOKS: Sure. [LB879]

TRACY HIGHTOWER-HENNE: ...earlier and also to what currently happens, when we file a divorce action, the Vital Statistics form is required to be filed, at least in most counties. I have

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never filed a divorce action without also filing the Vital Statistics. And even if there's some sort of demographic information that's not included, they will kick that back to us and tell us we have to have that information. I don't know what happens at the end of a divorce case as far as filling out further information so I'm not certain what information then gets put into the Vital Statistics at the end of the case. My only experience is that form is filed at the beginning of a case. So I don't know at this point. Checking the box, when would that happen and who is going to put that information on the form, is I think something that needs to be explored. [LB879]

SENATOR PANSING BROOKS: Any other? Thank you, Ms. Hightower-Henne. [LB879]

TRACY HIGHTOWER-HENNE: Thank you. [LB879]

SENATOR PANSING BROOKS: Okay. Any other opponents? Welcome. [LB879]

BETH BAZYN FERRELL: (Exhibit 6) Thank you. Good evening, Senator Pansing Brooks, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials and I'm appearing here in opposition to the bill. Our opposition has nothing to do with the policy of parenting time or how that should be awarded. It really just has to do with the administrative details and I think the AOC's Office and the attorney who was here really addressed our concerns about the administration of that. What you're being handed out is a packet of information. It's topped by a letter that was prepared by Janet Wiechelman. She is the clerk of the district court in Cedar County and she is the legislative liaison for the Clerk of the District Court Association. She sets out some of those same discussion points in her letter. The packet also includes in about the fourth page in a copy of the Vital Statistics worksheet if you'd like to see the information that is requested on that form. It is, as indicated, really primarily demographic information. Some of the other information that's included in the packet is some data that Janet compiled by looking at all of the dissolution cases that were filed in July of 2017. It's just really a snapshot of what was included in some of those. The supporting documentation is in the end of the packet, the spreadsheet that's copied there. And also for your information we included the court rules about visitation and parenting time, as well as joint physical custody. It references a worksheet and we've included a sample of what a worksheet might look like. Again, our concerns really are how to administer, how to report the information that would be required in the bill, and we have spoken with Senator Ebke about our concerns about the bill. I think there are some things we can work on but at this point we're still opposed to the bill as written. I'd be happy to answer questions. [LB879]

SENATOR PANSING BROOKS: (Exhibit 1) Thank you very much for being here. Any questions? Thank you very much. Any additional opponents? How about neutral? Do we have a

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neutral testimony? And we have one letter in support from Les Veskrna, V-e-s-k-r-n-a--sorry if I mispronounced it. And to close, Senator Ebke. [LB879]

SENATOR EBKE: Just one or two comments. I think this is a positive thing when we can bring stakeholders together. This is a conversation that Senator Chambers will attest the things related to this have been going on for many, many years, have come before this committee. Certainly I think we've had something related to parenting time, parenting time recording, you know, every year that I've been here, and I continue to appreciate those who bring the bills and those who come in and testify, both in favor and in opposition, so that we can keep the conversation going. So with that, I will close. [LB879]

SENATOR PANSING BROOKS: Thank you, Senator Ebke. And that closes the hearing on LB879 and we are done for the day. Thank you. [LB879]