

Judiciary Committee February 1, 2019

LATHROP: [00:00:01] My name is Steve Lathrop. I am the state senator from LD12, or Legislative District 12, which encompasses Ralston and parts of southwest Omaha. I'm Chair of the Judiciary Committee. I'd like to start off today by having the other members introduce themselves and we'll start to my left with Senator Brandt.

BRANDT: [00:00:22] I'm Senator Tom Brandt from Legislative District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

CHAMBERS: [00:00:32] Ernie Chambers, District 11 in Omaha.

SLAMA: [00:00:37] Julie Slama, District 1, representing Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties in southeast Nebraska.

WAYNE: [00:00:45] Justin Wayne, District 13 which is North Omaha and northeast Douglas County.

LATHROP: [00:00:50] Assisting the committee today are Laurie Vollertsen who's our committee clerk, lady that's sitting back here. She runs things. Neal Erickson and Josh Henningsen are our two legal counsel. The committee pages are Alyssa Lund and Dana Mallett, both students at UNL. On the table inside the doors that you came in, you will find yellow testifier sheets. If you are planning on testifying today, please fill out one and hand it to the page when you come up to testify. This helps us keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. Also, for future reference, if you are 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 to receive those letters in order that they might be included in the record. We begin bill testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents, and finally, by anyone speaking in a neutral capacity. We'll finish with a closing statement by the introducer if they wish to provide us with one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. We utilize an on-deck chair which is located to the-- my right, your left, of the chair, if you could keep that on-deck chair filled with the next person to testify so that we can keep the hearings moving along. If you have any handouts, please bring 12 copies with you and give them to the page. If you do not have enough copies, the page will help you out by making more copies. We will be using a light system right here. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. You'll have a total of three minutes to testify. When the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, we'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time I would ask everyone to look at their cell phones and make sure they're in the silent mode. Also, verbal outbursts or applause and the like are not permitted in the hearing room. Such behavior may be cause to have you be asked to leave the room. You may notice committee members coming and going. This has nothing to do with the-- their perception of the importance of the matter before the committee, but senators have bills to introduce in other committees and sometimes they have other meetings. And one last thing, since we're holding our hearings in the Warner Chamber while our hearing room is being renovated, please remember that water bottles, soda cans, and cups and that sort of thing are not permitted on the tables to avoid any damage or watermarks. We're joined by Senator Pansing Brooks. And with that-- oh, and Senator DeBoer is here as well. With that, we will begin our-- take our first bill. That brings us to Senator McCollister and the introduction of LB318. Welcome, Senator McCollister.

McCOLLISTER: [00:04:20] Yeah. Thank you, Chairman Lathrop. Good afternoon, Chairman Lathrop and members of the committee. I am John McCollister, J-o-h-n M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. Today I'm introducing LB318 to remove the 90-day limitation period for the enforcement of a petroleum products lien and to harmonize the enforcement provisions for petroleum products with the similar statutory agricultural liens pursuant to the Uniform Commercial Code. Currently language found in Section 52-903 provides that enforcement of petroleum product liens shall be in the manner and form provided for the enforcement of secured transactions as provided in Article 9 of the Uniform Commercial Code, except that such enforcement proceedings shall be instituted within 90 days after the filing of the lien. The 90-day limitation period was put in place with the passage of LB314 in 1987. Prior to that time, the period of enforcement was only 30 days. In 2001, however, the Legislature adopted LB54. LB54 did bring the perfection and enforcement of all statutory agricultural liens within the framework of Article 9 of the Uniform Commercial Code. Since 2001, these statutory liens have been filed and perfected using UCC-1 financing statement, just like all other UCC liens. Grain practices have changed significantly since the 90-day limitation period was created in 1987. In the intervening 30 years, irrigation in Nebraska has increased considerably, which, in turn, has increased the amount of petroleum products sold as inputs into growing crops. Farmers have also substantially increased their on-farm storage of harvested crops, so it's no longer unusual for farmers to hold grain on the farm from one growing season to the next, which makes cash flow from operations much more irregular. With the current 90-day limitation period for enforcement, a petroleum products lien has a much shorter period of enforcement than any other agricultural input liens. This inconsistency requires vendors who are used to having liens up to a year or more on crops grown from other inputs such as fertilizer, ag chemicals, or seed to meet a much earlier deadline to enforce the petroleum products lien or risk losing their claim. If the spring growing season is dry and requires early irrigation, it's possible the vendor would have to initiate

enforcement proceedings before crops are even harvested in the fall. Furthermore, in its current form, the 90-day limitation period requires vendors having petroleum lien to resort to enforcement measures which may include legal action before their crops are mature or before the proceeds from crops may be available to pay the bill for the purchase of such products. In order to make the time for enforcement of a petroleum product lien consistent with the other individual agricultural input liens and create a commercially reasonable time period for enforcement of-- of the liens, I urge your support for LB318. I'll note that last year LB833 was advanced by this committee on a clean vote with no opposition testimony. I asked that LB318 be advanced to the floor in the same manner.

Thank you.

LATHROP: [00:08:18] Very good. Thanks, John. I don't see any questions. Are you going to stay to close, John?

McCOLLISTER: [00:08:23] Yes, I will.

LATHROP: [00:08:25] OK. Perfect. Proponents can come forward. Just a reminder, if you are going to testify today, make sure you pull that mike here. This is not a great place for the sound and having that mike close enough to pick up your voice is going to be important in this hearing room. Welcome.

ROCKY WEBER: [00:08:43] Thank you. Senator Lathrop, members of the Judiciary Committee, my name is Rocky, R-o-c-k-y, Weber, W-e-b-e-r. I'm the president-general counsel of the Nebraska Cooperative Council. Our trade association represents nearly all of the farmer-owned cooperatives across the state of Nebraska. I'd like to thank Senator McCollister for introducing LB318 on behalf of the council and its members. The change that we are requesting to the petroleum products lien has become an important issue to our membership in the last few years. As the senator mentioned in

his opening statement, farm grain practices have changed dramatically in the last 30 years since the statute was last amended. Today we see farmers holding grain on the farm in storage and in elevators in storage for long periods of time, sometimes exceeding a year, in order to capture the best possible markets. We also have seen a proliferation of irrigation across the state of Nebraska. It is not unusual for one of our members to have hundreds of thousands of dollars in fuel bills ran up in May and June and July of any given crop year to go to-- to-- for the energy to irrigate the crops in the field. So the only protection that an input supplier like a farmer-owned cooperative has to get a lien is through the statutory ag lien system. And so they have 60 days after the furnishing of any products to file the lien. But then this particular ag input lien provides for a 90-day enforcement period after it is filed. Well, certainly, if hundreds of thousands of dollars can be ran up in May and June, by the end of June, one might be faced with filing the lien to protect themselves and then have 90 days to the end of September to enforce the lien, and most of the time by September we're not even into harvest very significantly yet. And so it's very difficult at that point to know whether or not you should take enforcement action or not. Like other input suppliers, the farmer-owned cooperatives do not want to sue their members, do not want to litigate with their customers unless they absolutely have to. And so the situation that our members have been forced into is to decide to litigate prematurely to make sure they don't lose their lien interest or allow their lien interest to expire. That's the situation that came up a couple years ago and that's why we went to see Senator McCollister and asked him to consider this legislation. The other issue we have is that because the other traditional ag input liens such as fertilizer, feed, seed, and farm chemicals all have longer enforcement periods, we see our members confused about the 90-day short period and oftentimes don't realize that their time is running as quickly as it is running. And so LB318 is amended to-- to amend the statute to create and harmonize the provisions with the other ag input liens that we have on the books, and we'd ask this committee to seriously consider advancing LB318 to the floor.

Thank you.

LATHROP: [00:11:40] Thanks, Rocky. Senator Brandt.

BRANDT: [00:11:43] Thank you, Mr. Weber, for coming in today. The lien you're talking about would attach to the crop. Is that correct?

ROCKY WEBER: [00:11:51] Yes.

BRANDT: [00:11:52] Would you be ahead of the bank or behind the bank?

ROCKY WEBER: [00:11:55] As an input supplier, we're-- we are generally always behind the bank. The bank typically has a-- has a platform UCC interest in all of the grain and assets of the farmer. And so the input suppliers' liens are really secondary to those liens but they're the only way that an input supplier can secure their interest in the crop to which that input went into to create that crop.

BRANDT: [00:12:22] OK. And then the second part to my question is we talked about fuel for crop inputs, but let's say we go from November to March and we don't have a crop and the guy is just trucking or, you know, using a lot of fuel for another enterprise out there and it could be outside of agriculture also. You would still attached to the crop?

ROCKY WEBER: [00:12:44] Well, as the-- attaches to the crop and then the buyer of the crop is obligated to put the input supplier's name on the check for the grain, and occasionally that doesn't happen, and then we have a right of action to enforce against the purchaser of the grain. And again, this 90-day limitation would prevent us from going after a purchaser who fails to put our name on a check.

BRANDT: [00:13:09] Thank you.

LATHROP: [00:13:12] I see no other questions. Thanks, Rocky.

ROCKY WEBER: [00:13:13] Thank you.

LATHROP: [00:13:14] Anyone else here to testify as a proponent of LB318? Anyone here to testify in opposition to LB318? Neutral capacity? Seeing no other testifiers, Senator McCollister to close.

McCOLLISTER: [00:13:37] I'll be brief, Mr. Chairman. I was in the petroleum business for 35 years and I know firsthand about the issues raised in this bill, particularly when the margins in the petroleum business are so thin that if you have a customer that doesn't pay his bills, that could very well be the entire profit for the year. So this is an important bill. I-- we haven't had much controversy, I know, here, but it is an important bill. I would be grateful for your-- your speedy moving this to the floor. Thank you.

LATHROP: [00:14:13] You're welcome. The record should reflect we also have a letter in support from Tim Keigher, the Nebraska Petroleum Marketers and Convenience Store Association. With that, we'll close our hearing on three-- .LB318 and move to LB322 and Senator Crawford.

CRAWFORD: [00:14:48] Good afternoon.

LATHROP: [00:14:52] Good afternoon, Senator Crawford. Welcome to Judiciary Committee.

CRAWFORD: [00:14:55] Thank you. Thank you. Good afternoon, Chairman Lathrop and

members of the Judiciary Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. I'm here to open on LB322, a bill to establish a clear and uniform process for tobacco compliance checks conducted by law enforcement and tobacco prevention coalitions across our state. This issue was first brought to my attention by Tobacco Education and Advocacy Midlands, formerly Tobacco Free Sarpy, who you will hear from today. In Nebraska, tobacco compliance checks are conducted by three entities, the Department of Health and Human Services, tobacco coalitions, and the FDA. Both DHHS and tobacco prevention coalitions work with local law enforcement or Nebraska State Patrol to conduct these checks. Each entity should, and likely does, have procedures they follow when conducting these checks. LB322 creates a minimum uniform standard for these checks. The standard contained in LB322 is based on best practices that DHHS follows under the federal Synar Amendment as well as statutes from other states. It's our understanding there are eight prevention coalitions currently conducting tobacco compliance checks across the state. These include Cass, Sarpy, Douglas, Lincoln, Platte, Hall, and Lancaster County and the Panhandle. This bill is similar to LB1058 that I brought in 2016 and includes language from an amendment that I brought at that time at the suggestion of Sheri Dawson, director of behavioral health for the Department of Health and Human Services based on what is required for their Synar checks. Under-- this is-- under our current statutes, any person under the age of 18 who misrepresents their age to obtain tobacco is guilty of a Class V misdemeanor. This has caused some apprehension on the part of our law enforcement agencies and a hesitancy to work with young people to conduct these checks out of fear they could run the risk of violating that statute. LB322 clarifies that cooperating individuals are not at risk of violating 28-1427 if they're working in cooperation with law enforcement to conduct the checks under the conditions outlined in the bill, and there is a provision that they cannot lie about their age that is referenced in the statute. I have an amendment, AM138, which specifies that young people involved in diversion or probation cannot participate in the compliance checks. I brought this change at the request of the Nebraska State Court Administrator. It also clarifies that

organizations conducting checks do not need to notify the store that they will be conducting the check and cleans up an issue in an incorrect citation in the initial version. During our 2016 meeting with Director Dawson, she shared that our retail violation rate is low, with violations nearly half of what is found in other states. Almost all our retailers who sell tobacco products are doing their part to ensure tobacco does not get in the hands of minors. LB322 ensures that there is a clear and consistent process known to coalitions and retail establishments when these compliance checks are conducted. With that, I'd be happy to answer any questions that you might have.

LATHROP: [00:18:03] I don't see any questions, Senator Crawford.

CRAWFORD: [00:18:08] Thank you.

LATHROP: [00:18:09] Proponents can come forward, first testifier.

AUTUMN SKY BURNS: [00:18:20] There you go. Sorry. Thanks.

LATHROP: [00:18:23] Good afternoon.

AUTUMN SKY BURNS: [00:18:23] Good morning. My name is Autumn Sky Burns; it's A-u-t-u-m-n S-k-y B-u-r-n-s, and I am here to ask you for your support for LB322. I have spent the last several years of my career working in public health, specifically coordinating a community coalition to address the negative impacts of tobacco in Sarpy and Cass Counties. Tobacco use by youth causes both immediate and long-term health impacts. One of the most serious health effects is nicotine addiction which prolongs tobacco use and can lead to severe health consequences. Nicotine addiction has made tobacco the single largest preventable cause of death and disease in the United States. Twenty-five hundred Nebraskans die each year from tobacco or attributable causes. That's

more than the entire population of Milford. That's 48 citizens a day, nearly seven Nebraskans each and every day-- 48 a week, sorry. If current trends continue where a thousand of our kids under 18 become daily smokers each year, 38,000 of our youth will die early from tobacco use. Impressive strides in tobacco reduction have been made in Nebraska, especially in preventing our youth from becoming addicted. In Nebraska, the current use, which is smoking once per every 30 days at least, youth cigarette smoking rates dropped from 34 percent in 1993 to 7 percent in 2017. Youth who use smokeless tobacco and cigar-- cigars and cigarillos decreased as well. Unfortunately, we have seen a dramatic rise in the use of electronic cigarettes by our youth, compromising all the work public health advocates have done over the last 40 years. We must stay vigilant in our efforts. Compliance checks play an important part in eliminating access to tobacco for youth. In 1995, only 57 percent of tobacco retailers checked complied with the law that restricts the sale of tobacco products to minors. Since then, compliance has substantially increased, 89 percent in 2011. It remains near this rate, although the most recent rates are around 91 percent. While this is encouraging, the Nebraska Youth Tobacco Survey found that 19 percent of high-schooler smokers under the age of 18 reported obtaining cigarettes by buying the cigarettes themselves in 2015, and that number increased to 21 percent in 2017. For the same age range and time period, cigar smokers reported buying them-- cigars themselves at a rate of 26 percent and 24 percent, and smokeless tobacco users bought themselves at a rate of 24 percent and 32 percent, respectively. I have data in there that I won't read that you can see, but it says in both years high school smokers purchased cigarettes most freely from gas stations, convenience stores, and grocery stores. Cigar smokers most freely purchased at gas stations and convenience stores. And high-school tobacco-- smokeless tobacco is usually purchased at gas stations. So this has proved to us that our work isn't done and that some retail locations are selling to minors. We must continue to check compliance for tobacco license holders and LB322 establishes a uniform process for tobacco compliance check to be performed, ensuring that communities can work together. And all of the references are at the bottom if you'd like any more information.

LATHROP: [00:21:26] Thank you. I don't see any questions for you. Thanks, Autumn.

AUTUMN SKY BURNS: [00:21:32] Thanks.

LATHROP: [00:21:32] Next proponent to testify. Good afternoon.

JEANNE BRANDNER: [00:21:41] Good afternoon, Chairman Lathrop and Judiciary Committee.

My name is Jeanne Brandner, J-e-a-n-n-e, last name is B-r-a-n-d-n-e-r, and I'm employed by the Nebraska Supreme Court Administrative Office of the Courts and Probation overseeing juvenile probation. I'm here today to testify in support of LB322 as amended. Typically, Probation would fully support justice-involved youth having the same opportunities as their peers. However, when youth come to the attention of the juvenile justice system, we want to set them up for success-- for success, excuse me. Therefore, asking them to participate in compliance checks, even when doing so under the guidance of trusted adults, may confuse the message or disrupt their rehabilitative process. I would like to thank Senator Crawford for offering the amendment and I'm happy to answer any questions that you might have.

LATHROP: [00:22:35] I don't see any questions. Thank you for your testimony.

JEANNE BRANDNER: [00:22:37] Thank you.

LATHROP: [00:22:37] We appreciate you coming here today. Anyone else here wishing to testify in support of LB322? Anyone here in opposition? Welcome.

KATHY SIEFKEN: [00:22:48] Chairman Lathrop and members of the committee, my name is

Kathy Siefken, K-a-t-h-y S-i-e-f--k-e-n, here as the executive director and the registered lobbyist for the Nebraska Grocery Industry Association in opposition to LB322. Actually, FDA regulates all tobacco products. And as of 2010, FDA came up with new rules and regulations that retailers are required by law to follow. That means we must card anyone that is under the age of 27 and we are not allowed to sell to anyone that is 18 years of age or younger. And the use of minors isn't really necessary because we're already in violation if we don't card at the age of 27. So I'm not sure why we need to put minors in a position where they would be going into a situation that you really don't need to put a miner in because we're already regulated by federal law. In addition to that, the Nebraska State Patrol has guidelines that they have established. They've been established for years and years. They follow those guidelines with-- for all of the compliance checks, so there really isn't a need to do more than what State Patrol has already stepped up and is doing. So for those reasons, we are opposed to using minors in compliance checks when they are not with law enforcement. If you have any questions, I'd be happy to answer.

LATHROP: [00:24:42] Senator Brandt.

BRANDT: [00:24:45] Thank you for testifying today. It's my understanding from reading this that third parties would conduct these checks. Is that correct?

KATHY SIEFKEN: [00:24:53] That is also my understanding and that they would be able to do them without law enforcement and that is really the issue.

BRANDT: [00:24:59] Yeah, so, and I guess that's where I'm a little confused too. So you send a 16-year-old in there and they successfully buy a tobacco product. Are they not in violation of the law? I mean the purpose of this is to absolve that, but it sort of seems like maybe entrapment. I don't know.

KATHY SIEFKEN: [00:25:20] I'm not sure I would call it entrapment because it is illegal for us to sell-- for retailers to sell. However, if they sell to a 16-year-old, they are in violation of two laws. One is they did not require an ID from a 27-or-younger person, and the second would be actually selling to a minor. And the violation-- when you're in violation of both-- I mean it's two violations and the penalties are substantial.

BRANDT: [00:25:52] So if-- if this third party is conducting this check, do they turn this business into the State Patrol and say they've violated this law?

KATHY SIEFKEN: [00:26:04] I don't believe this addresses that. Again, I'm not sure why you would have someone out putting minors in-- they can send people that are over the age of 18 in to purchase and if they-- if they're under the age of 27 and they haven't asked for an ID, they're still in violation. You don't need to use a minor. I guess that's my point.

BRANDT: [00:26:30] OK. Thank you.

LATHROP: [00:26:33] Kathy, I do have a couple questions. When you say that they have to card somebody if they're not 27, is that federal law or a state law?

KATHY SIEFKEN: [00:26:42] That is FDA federal guidelines.

LATHROP: [00:26:44] OK. So we're not enforcing federal law here. We're talking about enforcing the state law that prohibits sales to minors. Right?

KATHY SIEFKEN: [00:26:56] Yes, that's true.

LATHROP: [00:26:57] OK.

KATHY SIEFKEN: [00:26:58] But you still don't need a minor to go in to make the checks.

LATHROP: [00:27:03] In fairness, you represent the retailers, right?

KATHY SIEFKEN: [00:27:06] Yes.

LATHROP: [00:27:07] So I assume you're here because your concern is about the retailers and not the minors.

KATHY SIEFKEN: [00:27:13] Actually I'm more-- I'm concerned about the minors. And of course, I'm-- I'm concerned about the retailers. But to have a non-law enforcement agency coming in to do compliance checks?

LATHROP: [00:27:26] OK. So that's a different issue, though, from the minors, and-- and I appreciate that. But the-- are you OK with the bill if we use 19-year-olds or-- well, then we're-- then all we're doing is enforcing federal law. But if we're enforcing state law to determine whether or not you're carding somebody and breaking the law in Nebraska, selling the tobacco products to a minor, we pretty much have to have a minor to do that.

KATHY SIEFKEN: [00:27:51] We do our own compliance checks on alcohol and we do not use anyone under the age of 21. When you're going in to do compliance checks, it's very easy to determine if the sale is going to be made because they have to put-- they-- they either swipe a driver's license or they have to input information into the point of sale and if they don't do that and

they just take your money, you know what they're doing. Now in our case, we don't use minors and that's the main objection here.

LATHROP: [00:28:22] You don't have a problem with the-- with some enforcement in addition to the industry's self-policing?

KATHY SIEFKEN: [00:28:29] I think that law enforcement needs to be in the stores and-- and running compliance checks.

LATHROP: [00:28:37] OK. So your concern is that this can be done by groups other than law enforcement, I understand that.

KATHY SIEFKEN: [00:28:44] Um-hum.

LATHROP: [00:28:44] Right? And that--

KATHY SIEFKEN: [00:28:44] Using minors, yes.

LATHROP: [00:28:47] OK. Then you're OK with it?

KATHY SIEFKEN: [00:28:49] As long as they don't use minors. They can-- there's nothing that would stop them from coming in and doing a compliance check using someone that's 18 years of age or older.

LATHROP: [00:28:59] OK. I--

KATHY SIEFKEN: [00:29:00] There's nothing in law now that would stop that.

LATHROP: [00:29:01] I think I understand the issue. All right. Thank you for your testimony. I don't see any other questions.

KATHY SIEFKEN: [00:29:08] Thank you.

LATHROP: [00:29:08] Appreciate you being here today. Anyone else here in opposition? Anyone here in a neutral capacity wishing to be heard? Seeing none, Senator Crawford, you may close.

CRAWFORD: [00:29:20] Thank you. And thank you to Autumn Sky Burns and Jeanne Brandner who came to testify in support of the bill. And I just wanted to emphasize that the minor that is involved in this process is-- does have to do it in cooperation with a state or local law enforcement agency or the Department Health and Human Services or a tobacco prevention coalition for the United States Food and Drug Administration or a licensee. So they are-- they have to be cooperating with someone and if it's a private contractor who's doing the license check, it can only be conducted in consultation with law enforcement agency. So there's an effort to make sure the law enforcement agency is cooperative in this, in these checks, and determine-- I'm-- determine-- I'm not sure what their practice is in terms of their physical presence, but their-- the checks have to be done in cooperation with law enforcement.

LATHROP: [00:30:19] Can I ask, Senator Crawford, why we have private groups doing this, why it's not simply a law enforcement function?

CRAWFORD: [00:30:28] Well, one-- one of the provisions in the bill allows a private contractor who's part of self-compliance checks, so if-- if a-- if licensees want to just hire somebody to make

sure they're complying, that's what the private contractor is for.

LATHROP: [00:30:42] So it's the licensees--

CRAWFORD: [00:30:44] Right.

LATHROP: [00:30:45] --that would hire a private--

CRAWFORD: [00:30:45] This allows licenses to have a private contractor to do these kinds of checks only in compliance with the-- only in compliance with the law enforcement.

LATHROP: [00:30:51] But the group-- the group that you represent or the group that was here today, they're not going to go off on their own with minors and start doing compliance checks?

CRAWFORD: [00:30:58] They're-- they're required, again, to do that in cooperation with law enforcement.

LATHROP: [00:31:05] OK. OK. Senator Brandt.

BRANDT: [00:31:08] Thank you, Senator Crawford. And I guess maybe you can clarify this question. It's the same one I had of-- of Ms. Siefken. And so this third party goes in and somebody tries to sell cigarettes or tobacco product to a minor. Does that third party-- are they obligated then to turn that business over to law enforcement?

CRAWFORD: [00:31:31] I do not know the answer to that question.

BRANDT: [00:31:34] Thank you.

CRAWFORD: [00:31:35] We can check that, yeah.

LATHROP: [00:31:37] I think that's it.

CRAWFORD: [00:31:38] Thanks.

LATHROP: [00:31:38] Thanks, Senator Crawford.

CRAWFORD: [00:31:39] Thank you.

LATHROP: [00:31:40] That'll close our hearing on LB322--we have no letters for the record--and bring us to LB247 and Senator Bolz.

BOLZ: [00:31:56] Good afternoon.

LATHROP: [00:31:56] Good afternoon, Senator Bolz.

BOLZ: [00:31:58] Good afternoon. I am Senator Kate Bolz, that's K-a-t-e B-o-l-z, and I bring LB247 to you for your consideration. I'm also providing one small amendment that indicates a technical change that I'll discuss later. The intent of LB247 is to increase patient choice and self-determination. The issues implicated in advance planning for mental healthcare are distinct from advance planning for healthcare and end-of-life care. LB247 provides a legal process specific to the planning of advance directives for mental healthcare. Psychiatric or mental health advance directives were first introduced in the 1980s for persons with mental health diagnoses to retain

choice and control over their own mental health treatment during periods of decisional incapacity. Mental health advance directives are typically completed by patients who have chronic-- chronic mental health disorders that periodically impair thinking, judgment, insight and basic perception of reality. Mental health advance directives provide two legal devices, (1) mental health advance instructions, and (2) proxy decision makers that can be used separately or together to refuse or consent to specific types of treatment during a future mental health crisis. Simply stated, these directives contain written instructions detailing the wishes of the person living with a mental health diagnosis about their preferences for their treatment. To date, 30 states have enacted such statutes and new research suggests that there is high demand for this tool. Mental health advance directives are necessary because they close an important statutory gap that allows individuals the right to maintain their voice in their own mental healthcare. A few additional ways in which the provisions of LB247 are valuable include: (1) the directives typically convey treatment preferences much more accurately than medical advance directives or living wills; patients completing living wills or healthcare advance directives often do so having no familiarity with the actual situations or decisions they will face in the future. In contrast, patients with a history of mental healthcare are able to shape preferences defined in mental health advance directives based on previous personal encounters with mental healthcare interventions. Like medical advance directives, mental health advance directives have great potential to help guide difficult mental healthcare decisions for persons lacking the capacity to make these decisions. This tool would provide the means for people to fulfill their wishes regarding their own mental healthcare when they cannot speak for themselves. Mental health advance directives offer a form of self-protection against the potentially adverse consequences of one's own decisions during a future state of mind impacted by acute psychiatric illness. Subsequently, they have been found to cause persons with mental health diagnosis to gain a more authentic appreciation of the personal value of avoiding or receiving particular types of treatment in the future. Mental health advance directives can help prevent unnecessary involuntary commitments and incarceration and they improve individual and public safety. Advocates for

mental health advance directives hope that the very process of preparing these documents will enhance patients' sense of trust and collaboration with providers, thereby improving the therapeutic alliance and engagement with treatment. Mental health advance directives are legal documents that allow a patient to consent or refuse future mental health treatment in the event of an incapacitating psychiatric crisis by documenting advance instructions or appointing a surrogate decision maker. LB427 [SIC--LB247] is intended to support individuals' self-determination at times when they are particularly vulnerable to loss of autonomy, to help them ensure that their mental healthcare preferences are known and to minimize unwanted or involuntary treatment. To put it in more personal terms, an example in which a mental health advance directive might be used is when an individual who has a diagnosis of depression, who knows from their previous experiences that in a depressive episode they refuse medication, by establishing an advanced directive to provide that medication they can care for their own needs in the future. You will hear testifiers who speak from family and personal perspectives, from legal and law perspectives. You'll also hear from some folks who may have some technical changes or suggestions to the bill. We're more than happy to include or change any provisions to make them better work or work better with the Nebraska Statutes. I will share that this language is based on the language from the 30 other states that have established advanced directives, so I think many of those concerns, to the degree possible, have been mitigated. Be happy to answer any questions. Oh, the amendment simply adds psychologist to the list of healthcare providers who may participate in this work. So if there's a page who would--

LATHROP: [00:36:55] I don't see any questions at this point.

BOLZ: [00:36:57] Very good.

LATHROP: [00:36:57] Thanks, Senator Bolz.

BOLZ: [00:36:58] Thank you.

LATHROP: [00:36:59] Proponents can come forward. Good afternoon.

SHANNON SEIM: [00:37:10] Good afternoon. Chairman Lathrop and members of the Judiciary Committee, my name is Shannon Seim, S-h-a-n-n-o-n S-e-i-m. I am a third-year law student at the University of Nebraska. Before entering law school I worked in the human services field in Omaha for five years, including having the privilege of working with Senator Morfeld at Civic Nebraska. I am testifying in support of LB247 because it is the best way to help the more than 47,000 Nebraskans who live with schizophrenia or bipolar I disorder and the thousands of other Nebraskans living with other severe mental illnesses. Personally and professionally, I have tried to access treatment for Nebraskans experiencing psychotic or manic episodes. I can think of a dozen heartbreaking stories of Nebraskan families being told by medical and legal professionals that their loved one was clearly experiencing an illness-induced episode but that they were not dangerous enough to qualify for civil commitment, then having to watch the person as they sought-- that they sought treatment for was arrested for breaking a law purely due to their illness. Although each story is different, key elements remain stagnant. Too many adults end up in prison when they should be in a hospital receiving help. The broken system results in the state forcing young adults with a manageable illness into incompetence, resulting in them needing a guardian. But by the time they are legally eligible for guardianship, so many people who love them have cut ties out of the need for self-preservation that permanently incompetent individuals end up languishing in institutions often on a waitlist for a state guardian, who doesn't even know them, to literally take control of their lives. The National Resource Center on Psychiatric Advance Directives has found that between 66 and 75 percent of individuals living with a severe mental illness would be interested in creating a mental health advance directive but that fewer than 10 percent of these individuals have access. Mental health advance directives would allow individuals living with severe mental illnesses to access

needed treatment without any police or court involvement and without needing to create a public record of their private health. It would improve mental health treatment outcomes. Senator Bolz's mental health advanced directive maximizes access and patient autonomy. It is an opportunity for Nebraska to be a shining light. Thank you and I'm happy to answer any questions.

LATHROP: [00:39:39] Shannon, I don't have any questions. I will make this observation. We've been doing this for two weeks and I think you're about the sixth or seventh third-year law student to come in here and testify, and we appreciate hearing from you and I'm encouraged that law students are getting involved in these kind of issues.

SHANNON SEIM: [00:39:57] Thanks

LATHROP: [00:39:57] So thanks for being here. Other proponents that care to testify? Welcome.

LOREN KNAUSS: [00:40:14] Nice to be here. My name is Loren Knauss, L-o-r-e-n K-n-a-u-s-s. I'm the executive director with the National Alliance on Mental Illness-Nebraska, and I'm here to support the Advance Medical [SIC--MENTAL] Health Care Directives Act. On behalf of the National Alliance on Mental Illness Nebraska and its affiliates, NAMI Central Nebraska, NAMI Lincoln, and NAMI Omaha, I want to thank you for the opportunity to speak in support of LB247, Advance Medical [SIC--MENTAL] Health Care Directives Act. NAMI is the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness in the state of Nebraska. We provide support groups, education classes, and presentations to people living with mental illness and their families. Mental health advance directives provide people with mental illness with a means of communicating treatment decisions in advance at a time when they are-- when they have the capacity to make such decisions. It also provides people with the opportunity to designate in advance who they trust to

make decision-- treatment decisions in their behalf should they lose the capacity to make informed decisions. The process of writing mental health advance directives can facilitate conversations in advance between people with mental health conditions and trusted friends and/or family members about what is helpful or not helpful to them during periods of crisis or worsening symptoms. This can be helpful not only to individuals themselves but also to those who care for them and want to help them. It can also be helpful in avoiding the potentially adverse dynamics of civil commitment proceedings in which families sometimes have to testify against their loved ones. Mental health advance directives provide treatment providers with guidance about a person's preferred treatment and service interventions, including treatments that they view as potentially helpful and treatments that they may have had a bad experience with and would like to avoid. For those people who have written mental-- mental health advance directives, the proposed statute vests discretion with health or mental health professionals to make decisions about the person's capacity or lack thereof during periods of crisis, thereby potentially avoiding costly and time-consuming court proceedings. Mental health advance directives are only effective when they are recognized as valid, utilized and fully honored by treatment providers when possible. Effective implementation of a mental health advanced directives law thereby, therefore, will require outreach and education directed to health and mental health providers as well as people living with mental illness and their families. Once again I want to thank you for your opportunity to speak in support of this legislation and most importantly, I want to thank you for considering legislation that will help people living with mental illness and, Mr. Chairman, also for scheduling this on a day of 40 degrees versus negative 40. That's a long walk from my car to here.

LATHROP: [00:43:24] Yeah. Yeah. I don't see any questions, Loren. Thanks for being here though.

LOREN KNAUSS: [00:43:29] Thank you very much [INAUDIBLE].

LATHROP: [00:43:30] Appreciate your testimony and your thoughts. Next proponent. Good afternoon.

JACOB DAHLKE: [00:43:46] Good afternoon, Chairman Lathrop and members of the committee. My name is Jacob Dahlke, and I'm the ethics director for Nebraska Medicine in Omaha here to testify in support of LB247. As a certified healthcare ethicist, my role in healthcare is to assist patients, families, physicians, nurses and other staff to navigate difficult or complicated medical situations. These situations often involve questions, conflicts or disagreements related to patient and surrogate medical decision making, medical futility, professionalism and healthcare in various contexts involving advance care planning and advance directives. While it remains my opinion that there are larger unresolved issues related to medical decision making legislation in Nebraska, LB247 can serve a valuable purpose and in clarifying advance care planning for a specific patient population, those with mental health diagnoses. I'd like to highlight some of the strong components of the bill and recommend some changes that may further strengthen the bill. In the Greek story The Odyssey, a captain named Ulysses made a pact with his crew as they approached the sirens, who Ulysses knew would seduce him and render him unable to make rational decisions and thus put his crew in danger. Ulysses ordered his men to tie him to the mast and put wax in their ears so they could not hear him make dangerous instructions to them. As predicted, Ulysses went temporarily insane when he heard the sirens' song and indeed struggled to free himself so that he could jump into the sea to join the sirens. His crew could not hear his incapacitated cries for help and thus were saved as well. His contemporary instructions for a known future time of incapacity was an advance directive in its purest sense. In the current state of medical decision making, patients with capacity have the right to consent or refuse to consent to any medical treatment that is offered to them, even if the withholding of that treatment may cause serious harm or even death. Such a right is based on the ethical principle of patient autonomy which extends a person's right to self-determination into

medical decisions. Advance directives help a person to plan for unforeseen circumstances in which the person might lack the capacity to make a decision and thus provides clinicians and family with clarity as to how the person would decide in that moment if they were able to at the time of that decision. These are commonly referred to as treatment directives. Proxy directives in Nebraska, often referred-- referred to as medical powers of attorney, authorize an individual to make medical decisions on behalf of the person, if needed. Treatment directives are often considered to have authority over proxy directives since the instructions in a treatment directive are also-- are directly from the source, from that person, whereas proxy directives include some level of filtered interpretation on the part of the person's surrogate decision maker. LB247 is significant in laying out specific treatment directions in a patient population in which medical situations become often very complex very quickly with a patient's decisional capacity that may wax and wane significantly over short periods of time. LB247 would create a unique document that guides medical decisions as they relate to the brain, as opposed to other traditional directives that tend to relate to decisions on other parts of the body such as whether to have heart surgery, undergo dialysis, or begin long-term medically administered nutrition. The Medical Power of Attorney Act in 30-3401 neither prohibits nor authorizes the use of these "Ulysses" clauses but would authorize clinicians to treat a patient-- person over their objections in some future state if the patient lacks the capacity at that future time to make a decision. In conclusion, LB247 aims to authorize healthcare professionals to provide mental health treatments to patients if the patient lacks capacity at the time and is refusing the treatment. Most importantly, it authorizes them to listen to their patient. These are often highly sensitive moments in time and this bill that provides clarity for healthcare professionals to navigate them is a good thing and one that respects the patient's known values, wishes, and preferences. Thank you for your time today and I'm happy to answer any questions.

LATHROP: [00:47:39] Very good. I see no questions. Did you tell us you had some thoughts on things that you'd like to see to make it better or--

JACOB DAHLKE: [00:47:48] I don't think that's necessary at this time. I think they're specific semantic changes.

LATHROP: [00:47:56] OK. OK, very good. Thank you for testimony and coming down here. We appreciate your expertise on the subject. Good afternoon.

DENISE RIEDER: [00:48:08] Good afternoon. My name is Denise Rieder. I'm a lieutenant with the Douglas County Sheriff's Office in Omaha, Nebraska.

LATHROP: [00:48:16] Can you spell your name for us.

DENISE RIEDER: [00:48:20] D-e-n-i-s-e, last name is Rieder, R-i-e-d-e-r. And I'm here on behalf of the Douglas County Sheriff's Office to support the intent of the bill, of LB247. I'm also here just as a law enforcement perspective and to perhaps answer any questions that you may have related to law enforcement. I have been with the sheriff's office 30 years and the last 8 years have been the mental health liaison with our agency as well as with the other community resources and other agencies within the city of Omaha metro area. I did hear two of the speakers earlier. One of the speakers had mentioned kind of that law enforcement contact and it's more often and frequently that in-- in times of crisis or in situations where there is a mental health crisis, it's law enforcement that's contacted and arrives at the scene. And although nothing criminal may be occurring, we do have that response and at times have to make that decision to make the emergency protective custody. So in times when they present themselves as a danger to themselves or to others, we do take that person to custody and transport them for those evaluations. Another speaker also had mentioned family members have to testify and-- and I-- what I took from that was also kind of on the Board of Mental Health petitions where family members frequently seek out those petitions to have a family

member or someone petitioned by the board again to have the law enforcement pick that individual up and transport them to a facility for an evaluation. But like I said, on behalf of the sheriff's office, I'm here to support the bill or answer any questions that you may have that's law enforcement related or from a perspective of a law enforcement officer.

LATHROP: [00:49:59] I don't see any questions but we appreciate it. You're sort of on the front lines of the folks that we're talking about today.

DENISE RIEDER: [00:50:05] We are, and at any time it would be offered to serve on any committees or answer any questions or-- or provide any information or assistance to kind of help with this move forward.

LATHROP: [00:50:14] Yeah. Well, your-- your position and your thoughts on this topic are valuable.

DENISE RIEDER: [00:50:19] Thank you.

LATHROP: [00:50:19] Thanks for being here today. Anyone else here to testify in support of LB247? Anyone here to testify in opposition to LB247? Good afternoon.

BRAD MEURRENS: [00:50:45] Good afternoon. Senator Lathrop and members of the committee, for the record, my name is still 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. I'm here in opposition to LB247 as it is currently written. Instead of advancing LB247, we would strongly encourage the Legislature to entertain a legislative resolution instead. Given the scope of authority granted by these directives and the gravity of

removing healthcare decision making authority, the Legislature should slow down and engage stakeholders, professionals, advocates and individuals who have a lived experience with psychiatric disability in a broader discussion about what are the key components that must be addressed in these types of directives. As those individuals are the ones who will be most directly affected by these directives, they need to be included in the development of psychiatric advance directives legislation. Our position stems not from opposition to the concept of psychiatric advance directives. Rather, the language in LB247 is often confusing and it raises additional questions about the nature and operation of these directives. For example, express authorization to the agent to consent to inpatient treatment or medication is not required to give the agent authority to consent to these treatments. If the directive fails to address an issue, an agent shall make the decisions according to the principal's instruction otherwise known to the agent--how would we know that?--and if these instructions or preferences are not known, the agent gets to make the decisions anyway. The Substance Abuse and Mental Health Administration identifies instructions and preferences commonly found in psychiatric advance directives such as when to treat, alternatives to hospitals, knowledge of medication effects, adverse reactions, trauma concerns, and treatment parameters for providers and agents. Few of these concepts are in this bill and for those that are, the language is thin, vague, and often confusing. For example, individuals can choose "the standard by which the directive becomes active," but what is a standard? I would direct you to The New York Times article I have included and handed out. The article contains excerpts from advance directives and demonstrates the inclusion of these types of treatment preferences explained in plain language. We also have concerns about the self-binding directive that it has to be an irrevocable directive and if the principal disagrees with the instructions in the directive or refuses treatment spelled out in the directive, that refusal is used to determine and demonstrate incapacity, which is-- seems to conflict with the definition of treatment-- or of capacity earlier on in the bill. We would like to see psychiatric advance directives in place in Nebraska, let's be clear. But we just believe that this bill is not right-- the vehicle at this time and needs to be-- needs to have more things included and issues

need to be addressed in a broader discussion with a wider array of stakeholders, a legislative resolution not a legislative bill. That concludes my testimony. I'd be happy to answer any questions that you might have.

LATHROP: [00:54:14] I see no questions. Thanks for being here, Brad.

BRAD MEURRENS: [00:54:16] Welcome.

LATHROP: [00:54:17] Anyone else here to testify in opposition to LB247? Anyone here to testify in a neutral capacity? Good afternoon.

RAMZI HYNEK: [00:54:39] Good afternoon. My name is Ramzi Hynek, spelled R-a-m-z-i H-y-n-e-k. I'm here today to speak on behalf of the Nebraska Bar Association. By way of background, I'm a partner at Rembolt Ludtke law firm here in Lincoln and I have practiced nearly exclusively in the area of estate planning for the last 12 years. The bar's position on LB247 is that we are in support of the concept of giving a voice to those with mental illness with respect to their medical care to treat these conditions. We're testifying today to provide some impressions of the bill as drafted and to make some suggestions for technical changes. As I read the bill, I see it as accomplishing two main tasks. First, it allows for the signing of an advance directive for mental healthcare. Nebraska law currently allows for a similar document that's specific to end-of-life decisions. For those who may not be familiar with advance directives, this is a document that can be signed today by a person to make binding healthcare decisions in the future. Again, the bar sees the potential merit of an advance directive for mental health. But as drafted, the bill creates some inconsistencies with existing law. For example, it provides definitions of terms that are defined elsewhere. Its signing requirements conflict with Nebraska's existing advance directive law. There are questions regarding revocation of such a document and it creates questions for who can

determine-- make a determination of incapacity. For example, this law would allow certain nurses to make a determination of incapacity, whereas similar Nebraska laws provide that two practicing physicians, doctors must make this decision as important as this. Finally, unlike our other laws, this bill does not provide a statutory form for use by persons. Without a sample form, complying with the requirements of this act would likely prove cumbersome for the average person and for that matter, the average attorney, this would be cumbersome to draft, let alone a healthcare caseworker, well intended. The second main purpose of the bill is to allow for the creation of a power-of-attorney document specifically aimed at mental health-- mental healthcare decisions. Again, the bar is supportive of this concept but our concerns lie only with the proposed method of implementation. In short, there's nothing new within LB247 with respect to the selection of an agent for mental health decisions that's not already allowed by Nebraska's existing healthcare Power of Attorney Act. With that being said, we do see value and merit in tailoring, better tailoring existing laws to make them more specific to mental healthcare. As drafted, the bill does not clearly define where physical healthcare decisions and mental healthcare decisions begin; therefore, if we have two different power-of-attorney documents, with a condition such as Alzheimer's where physical conditions and mental health decisions overlap, we've just created a fight ripe for-- for a battle in court. I have one last concern with regard to this bill that I'd like to share and perhaps it's the most important I've mentioned thus far. Unlike Nebraska's existing bills or existing similar laws, this bill does not provide for a clear mechanism for a person to change his or her mind or at the very least, challenge the determination of incapacity. Our other laws make it clear that a person may be heard in court if he believes himself to be competent. If I may, I have just a couple-- one remaining remark.

LATHROP: [00:58:34] Well, you know what, I think we got the--

RAMZI HYNEK: [00:58:37] OK.

LATHROP: [00:58:37] -- bar's position on this. Let's see if we have any questions. Senator Slama.

SLAMA: [00:58:41] Would you like to add that remaining remark?

RAMZI HYNEK: [00:58:45] Sure. Thank you. I just wanted to conclude by saying that we would like to emphasize the bar is supportive of Senator Bolz's concept of addressing the needs of mental illness but we respectfully suggest to this committee that some amendments to the bill be made before adoption, so that we can ensure that these very important tools work for our clients who seek to use them. Thank you.

LATHROP: [00:59:07] Thank you. Welcome.

KIM ROBAK: [00:59:22] Thank you. Thank you, Senator Lathrop and members of the committee. My name is Kim Robak, K-i-m R-o-b-a-k. I'm here today in a neutral capacity on LB247 on behalf of the Nebraska Medical Association and Nebraska Methodist Hospital System. First of all, I want to say that I've spoken with Senator Bolz and we are, both entities, are very supportive of what Senator Bolz is attempting. And-- and she has been incredibly gracious and agreed to work with us and we would like to work with her. Unfortunately, sometimes this system goes very fast at this time of year, and so we don't have specific things that we would like to be able to suggest in terms of language but we would like to be able to get there. And Senator Bolz has said she is more than willing to work with us, so we're excited about that. I do want to say just a couple of things. When someone's afflicted with a mental illness, that's the time that they need the help the most, and it's often the time when they are either unwilling or unable to get that help, so we think that this is much needed. I do think particularly from a medical perspective we are struggling with what to do and how this type of an advance directive would fit with a current medical advance directive, if they would conflict, are they the same thing, is it the same person, if you have two different people what

do you do. So that's one of the main issues that we have. There are a number of issues dealing with operations that I think are easily-- I won't say easily-- that can be worked out, particularly if they have been worked out in other states. And again, as Ms. Hynek stated earlier, there are some provisions in statute that may just need to be reconciled. But with that said, we would like to see progress on this much-needed piece of legislation made and we are happy to work with the senator in that regard.

LATHROP: [01:01:22] Very good. Thanks, Kim. No questions. Anyone else here in a-- I think we were on opposition.

_____ : [01:01:34] No, it was neutral.

LATHROP: [01:01:39] Neutral?

_____ : [01:01:40] Neutral.

_____ : [01:01:40] It was neutral.

LATHROP: [01:01:40] Was it? OK. Seeing no other testifiers, Senator Bolz to close.

BOLZ: [01:01:42] Thank you for your-- your time and attention on this issue. It's of great importance to me, in part related to personal experience. And so I very much appreciate your considerations here. A couple of things I wanted to point on-- based on previous testimony, I'm more than happy to work with the Bar Association and the other testifiers on the issues that were brought up today. And-- and I heard them, just to quickly summarize, to be, first, the-- the issue of aligning with other statutes--we'd be happy to work on that issue; the determination of incapacity,

let's line those up with other statutes, that's-- that's appropriate. I'm happy to have further conversations regarding the form. I'm not sure that a form, that the best place for that is in statute. But I think there might be ways to direct the creation of a form or direct how a form might be accessed by individuals. I do want to provide a couple of corrections. One item to note, Mr. Meurrens incorrectly described the revocability aspect of this bill. An individual under the bill as written may choose whether or not the-- the advance directive may be revocable. So if an individual chooses that their advance directive may be revocable, that could happen at any time regardless of that person's capacity or incapacity. So I think that provision is pretty solid and is built, again, on what has occurred in other states. I'd like to specifically address the reflection from Disability Rights Nebraska that-- that this would be more appropriate in a legislative resolution. I want to let the committee know that we have done a lot of work on this issue over the interim and we have in fact worked with individuals with-- with mental health diagnoses, the Alzheimer's Association, as you heard testimony, the Nebraska Alliance for the Mentally Ill, family members, individual constituents, the Nebraska Association of Behavioral Health Organizations, the Nebraska Association of Social Workers, child and family therapists, psychologists and many others. So I do think we have done a significant amount of due diligence here, including inviting Disability Rights Nebraska to a meeting that was held on October 19 and providing Disability Rights Nebraska the opportunity to weigh in on a bill draft on November 19. So my door remains open to Disability Rights Nebraska. But I respectfully disagree with the point of view that we have not appropriately engaged individuals with mental illness in this discussion. And I also would point out that that is part of the public process in a bill hearing, so anyone who does have a mental illness who would like to have participated this afternoon would have been more than welcome to do so. I'm sure that Disability Rights Nebraska will follow up with me if there are specific provisions in the bill but would share with the committee that we've done her homework.

LATHROP: [01:04:58] OK. Senator Bolz, before we let you go or before we close the hearing on

LB247, we have bill--letters to read into the record, those in support: Mario Scalora from the Nebraska Psychological Association; Carole Boye, B-o-y-e, from Community Alliance; Daniel--Daniel Esch, Douglas County Board of Commissioners; Jennifer Brinkman, Lancaster County Board of Commissioners; Kaleigh Nelson, National Association of Social Workers; in opposition, a letter from J. Rock Johnson; and in a neutral capacity, Britt Thedinger from the Nebraska Medical Association and Annette Dubas from the Nebraska Association of Behavioral Health Organizations. With that, we'll close the hearing on LB247.

BOLZ: [01:05:48] Thank you.

LATHROP: [01:05:48] Thank you, Senator Bolz. We will go to-- Senator Morfeld will open on LB271.

MORFELD: [01:06:06] Senator Lathrop, members of the Judiciary Committee, for the record, my name is Adam Morfeld, that's A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District, here today to introduce LB271. LB271 attempts to clarify when joint and several liability remains among multiple codefendants reversing-- joint and several liability still remains among multiple codefendants, reversing Nebraska's Supreme Court decision in Tadros v. City of Omaha. In this case, a woman attempted to cross a busy intersection in Omaha. Due to poorly timed traffic lights, Ms. Tadros was only able to make it halfway across the median when the light turned red. Adding to an already dangerous scenario, she attempted to get-- as she attempted to get to the other side of the street, a driver failed to yield and struck Ms. Tadros. She sued the city of Omaha and the driver of the car and both were found negligent. Joined several liability posits that any persons liable are liable for the full amount. And in Nebraska, joint and several liability applies only to noneconomic damages. The Nebraska Supreme Court interpreted our statutes for the first time that because the woman settled with the driver, there were no longer multiple defendants and, therefore,

no joint and several liability. As a result, Ms. Tadros was not fully compensated for her injuries. LB271 overturns this decision and creates some-- and, as it creates some negative unintended consequences, it promotes judicial inefficiencies by forcing plaintiffs to take these cases to trial instead of settling. It places plaintiffs' attorneys in a precarious situation where they may leave money on the table, leaving them open to a malpractice claim, allows defendants to be held hostage to substantial damages and, in this case, fails to make a plaintiff whole. LB271 clarifies that when settling with one defendant, it will not destroy the joint and several liability of any remaining defendants. This helps ensure that the victim is fully compensated for any injuries while at the same time promoting judicial efficiencies by encouraging settlement, which leads to quicker resolution through the legal process. I encourage the committee to vote LB271 out to General File and with that, I'd take any questions.

LATHROP: [01:08:25] I see no questions, Senator Morfeld. Proponents of LB271.

MARK RICHARDSON: [01:08:40] Good afternoon, Senator Lathrop and members of the committee. My name is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n, and I'm here this afternoon testifying in support of LB271. Senator Morfeld accurately described just about everything, although the one thing I would clarify, this only pertains to economic damages that are suffered by a-- by a plaintiff. The noneconomic damages are never joint and several unless there is an actual coordination between the defendants. So this only applies to medical bills. This only applies to lost income, the things that an injured person is actually out of pocket. Senator Morfeld accurately described the situation, the-- the-- the unintended consequence of Tadros. If you read the Tadros Opinion, their basis for the judiciary finding as it did was, one, they believed--as it turns out, incorrectly--that this would encourage settlements, and I can unequivocally state that this has discouraged settlements. The Tadros case is the perfect example. We've had cases. We have-- we had a case in the last two months. It was the perfect example where the-- very similar situation

where the driver was going through a construction zone, something was wrong with the construction zone, it was a pedestrian that was crossing. Again, you have the construction company as one defendant, the driver as the other. The driver only had, I think it was, \$100,000 of insurance coverage in this. The medical bills alone were \$400,000. The driver wanted to get out of the case, had no interest in pursuing it further. We had, you know, had judgment-- judgment-proof driver, here's \$100,000, let's not continue to pay for a defense, let's not continue to pay for experts to defend this case when our liability is tapped out. And Tadros prevents plaintiff's counsel that knows what they're doing, completely prevents us from settling that case against that driver. And that happens more-- more frequently than-- than you might guess that it happens. The other-- the other thing that Tadros said in support of their reasoning was that there was concern about whether or not a defendant might be prejudiced by an amount of a settlement over which they had no control. But the fact of the matter is, joint and several liability already exists. It's just destroyed because you've settled out with what I would call a reasonable defendant. A defendant and the plaintiff were able to come to a meeting of the minds and say we can-- we can make this work. And in-- the other defendant, the other remaining defendant still has the full opportunity to put on their-- their full defense of the case, still has the opportunity to point the finger at the other defendant. The jury instructions are exactly the same that say we're going to apportion this between the defendants. There's no actual difference for the defendants. And again, if you're actually weighing this from a defendant's point of view, it depends on who-- which defendant you are-- you're representing. If you're representing one defendant, you hate Tadros. And if you're representing the other defendant, well, I'd like to keep that other defendant in because that's somebody else to point the finger at. And it's just not an equitable situation. It needed to be fixed for a few years now and that's what this bill seeks to do.

LATHROP: [01:12:02] Very good. I don't see anybody with questions.

MARK RICHARDSON: [01:12:07] Thank you very much.

LATHROP: [01:12:07] Thanks, Mark.

MARK RICHARDSON: [01:12:07] You bet.

LATHROP: [01:12:07] Any other proponents of LB271? Anyone here to oppose LB271? Good afternoon.

MELANIE WHITTAMORE-MANTZIOS: [01:12:36] Good afternoon, Senator Lathrop. How are you? Members of the committee, my name is Melanie Whittamore-Mantzios, M-e-l-a-n-i-e W-h-i-t-t-a-m-o-r-e, hyphen, M-a-n-t-z-i-o-s, and I'm here on behalf of the Nebraska Defense Counsel Association in opposition to LB271. Contrary to what my fellow attorney says, we believe that LB271 is inequitable. Back in 1992, when the comparative negligence statutes were put in place, there was a certain balance that it brought to the case. It did away with gross/slight negligence. In exchange for that, joint and several liability was given up in certain situations. In this bill, it seeks to take that away, and that would be inequitable and unfair to defendants. I disagree that the-- well, let me back up. In Tadros-- or Tadros, however you want to say it-- versus city of Omaha, in that case, the district court had originally decided that it was pro tanto on the settlement agreement, so they deducted the \$35,000. The actual economic damages was like \$1.25 million, so that was only a reduction of 35 percent. The Supreme Court said, no, that's incorrect, it should be pro rata, meaning that-- that it was a-- since it was a political subdivision tort claim, the judge decided the case. It wasn't a jury trial. But he decided that the city of Omaha was 50 percent liable. That was almost a \$600,000 reduction of what had originally been awarded. So this is a big difference. Plaintiff's counsel are smart people and they know when there's a good bargain and when there's not. LB271 penalizes the defendant who does not settle by putting them at risk if the case goes to trial of paying

the entire leftover amount only reduced by some small amount; it penalizes the defendants who have larger insurance policies where the defendant who has a smaller insurance policy limits is-- is going to go ahead and settle. It's inequitable and it's unfair to the defendants. Still, under the law, there's still an apportionment, even with the-- the defendant who settles. The remaining defendant just doesn't get the benefit of that because this amendment seeks to put back in joint and several liability, leaving the unsettled defendant with the bag, so to speak, and we oppose it. Thank you.

LATHROP: [01:15:33] We can agree that Tadros, if we sat here all day, we could go back and forth on the-- the benefits to one defendant versus the other, whether it encourages or discourages settlements with the lesser insured of the two defendants or the one most willing to settle?

MELANIE WHITTAMORE-MANTZIOS: [01:15:54] Correct. In fact, I think if you read the-- the decision in the case, they say it could be that the settling defendant is paying more than their share when it goes to--

LATHROP: [01:16:03] Right.

MELANIE WHITTAMORE-MANTZIOS: [01:16:03] I mean it could go both ways.

LATHROP: [01:16:05] But the-- but the reality is for the first-- for example, in the Tadros situation--

MELANIE WHITTAMORE-MANTZIOS: [01:16:10] Right.

LATHROP: [01:16:10] --where there's somebody who has very little coverage and they want to get out of the case and you probably represent them at times--

MELANIE WHITTAMORE-MANTZIOS: [01:16:16] Absolutely.

LATHROP: [01:16:16] --for them, it discourages settlement because it takes away the opportunity for joint and several liability on the economic damages.

MELANIE WHITTAMORE-MANTZIOS: [01:16:25] Correct.

LATHROP: [01:16:26] It does do that.

MELANIE WHITTAMORE-MANTZIOS: [01:16:26] Right. Right. I mean it does affect-- I mean it's a risk that we take.

LATHROP: [01:16:33] OK. All right. Oh, Senator DeBoer.

DeBOER: [01:16:38] Sorry. I've been trying to think through the scenarios here--

MELANIE WHITTAMORE-MANTZIOS: [01:16:43] OK.

DeBOER: [01:16:44] --of who-- so essentially what this bill does is it reinstates joint and several liability for codefendants, one of whom has settled. Is that right?

MELANIE WHITTAMORE-MANTZIOS: [01:16:59] Correct.

DeBOER: [01:17:00] And so then that leaves the remaining defendant with their apportioned-at-trial portion of the settlement, or the-- the-- sorry, the damages plus whatever is left over? Is that

correct?

MELANIE WHITTAMORE-MANTZIOS: [01:17:18] Well, I think there-- there might still be an apportionment of negligence. They just wouldn't get the benefit of that as it affect-- relates to economic damages. So there would only be a reduction, or a "set off," if you will, of what the settling party has settled. Whereas, if they're-- like let's say the remaining defendant is only 10 percent negligent. They would still be on the hook for the large part of the economic damages.

DeBOER: [01:17:49] Minus whatever small amount of the settlement was.

MELANIE WHITTAMORE-MANTZIOS: [01:17:53] Correct. And there could be a scenario, too, in which there's contributory negligence from the plaintiff, as well, and I think that also points to the unfairness of this in where the plaintiff would get the benefit of whatever their percentage of negligence is being deducted. The remaining defendant does not.

DeBOER: [01:18:13] OK. I think I get it now.

MELANIE WHITTAMORE-MANTZIOS: [01:18:18] OK.

LATHROP: [01:18:18] I don't see any other questions.

MELANIE WHITTAMORE-MANTZIOS: [01:18:19] OK.

LATHROP: [01:18:19] I do understand this issue. It's pretty hard. You can read Tadros ten times and you don't really understand it until you get to Judge McCormack's math at the very end.

MELANIE WHITTAMORE-MANTZIOS: [01:18:29] I think the math makes it crystal clear.

LATHROP: [01:18:31] Math makes it very clear.

MELANIE WHITTAMORE-MANTZIOS: [01:18:33] Right.

LATHROP: [01:18:33] And it probably does-- it does discourage settlements with one of two defendants because you lose the opportunity for joint and several, which is what's happening now and more defendants are being forced to go all the way to trial with a nonsettling, or a defendant unwilling to settle, than would be the case if we made these changes.

MELANIE WHITTAMORE-MANTZIOS: [01:18:55] The-- that could be the case. But, you know, it affects the other defendant as well and, you know, I think that we need to be fair to everybody. Thank you.

LATHROP: [01:19:05] OK. Thank you for coming here today.

MELANIE WHITTAMORE-MANTZIOS: [01:19:07] You bet.

LATHROP: [01:19:08] Anyone else here to testify in opposition to LB271? Welcome, Jack.

JACK CHELOHA: [01:19:24] Hey, thank you. Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Jack Cheloha. That's J-a-c-k; last name is spelled C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha. And I'm not a litigator, but they asked me to appear today in opposition to LB271. First and foremost, in the Tadros v. city of Omaha case, the good news is, from my client's point of view, they prevailed on their appeal. And so unlike last week, this week,

we like the ruling of the Supreme Court. And so we'd like to see it stand and not be changed legislatively, if you will. Some of the points that they wanted me to point out, in this case, the city, once it went to jury and they made their determination, the city was found to be 50 percent liable for the damages in this Tadros case. And with that, they're not severable relative to the-- let me consult my note here-- on the noneconomic damages, but they were on the-- we wanted to keep that for the economic damages, if you will. And like I stated, Omaha prevailed on the case. We shared in the total liability by the amount that was assigned to us. We think that it's fair that a judge or a jury would decide each nonsettling defendant's share of the liability, as the Supreme Court ordered in Tadros. It's not fair to make each nonsettling defendant-- defendant jointly and severally liable for 100 percent of the damages just because one defendant chose to settle. Let's see, I might have one other point, and a lot of these points were already made by the previous witness. Finally, we don't think that we should rush to judgment and make it whoever settles first would get the best deal. If the case can't be settled, then whoever doesn't-- doesn't settle may be punished. And I think that's how the city of Omaha saw this on the district court's ruling in terms of how the damages were apportioned. And that's why back in 2007 the city chose to appeal and the Supreme Court seemed to see-- see it that way that you could still figure out the settling defendants' percent of liability and deduct it from the amount that was owed. And for those reasons, we would oppose changing it legislatively. I'll try to answer any questions.

LATHROP: [01:22:12] I'll just make this comment.

JACK CHELOHA: [01:22:13] Yes, sir.

LATHROP: [01:22:14] I know you don't do these kind of cases and that's not your role with the city. But we're not here really to relitigate Tadros--

JACK CHELOHA: [01:22:21] Right.

LATHROP: [01:22:21] --so much as trying to figure out when we institute a comparative fault in-- in its place used to be the slight/gross standard for contributory negligence and we went to a slight/gross. The Legislature didn't contemplate what happens when one person settles and the court had to sort of fill it in.

JACK CHELOHA: [01:22:42] Right.

LATHROP: [01:22:43] That's what they did in Tadros. So it really is, this bill and this issue, is more about since we didn't think that through back when we went to a comparative fault system, should we revisit that and come up with a scheme statutorily for when one defendant wants to settle and get out of the case, buy their piece, and that's typically for the policy limits, which means they paid everything they-- they may ever--

JACK CHELOHA: [01:23:11] Right.

LATHROP: [01:23:11] --ever pay in the case but--

JACK CHELOHA: [01:23:13] Right. I understand. Thank you.

LATHROP: [01:23:14] Just putting that in the record, perhaps, because it's not an easy concept to understand. In any case, thanks for your testimony.

JACK CHELOHA: [01:23:22] Thank you.

LATHROP: [01:23:23] I see no other questions. OK. Anyone else here to testify in opposition to LB271? Anyone here in a neutral capacity? Senator Morfeld--

MORFELD: [01:23:39] Waive.

LATHROP: [01:23:40] -- waives close. We do have-- let me look and see if we have any letters. We have no letters. That'll close our hearing on LB271 and bring us to LB206, also Senator Morfeld. And before you start, if I may, this looks like a bill that's generated some interest, particularly with the number of young people that are here today. Can I see, just by way of a show of hands, the number of people that are here to testify as opposed to here to watch the hearing? OK. So I'm glad you're here, first of all. We're pleased that you're interested in the topic. Senator Morfeld-- the way this will work is Senator Morfeld will introduce the bill and then we'll take testimony from proponents. That's people that are in favor of the bill. We have a light system. I covered this earlier if you weren't here. That light system gives you three minutes to testify. You do not have to use the full three minutes. But when the-- you'll have a green light for two minutes, a yellow light for one, and when it goes to red, please stop. OK? The reason I-- I bring that up is because we want to make sure that the people--there's a lot of people that want to testify--have an opportunity to testify. I'll also mention that if you don't want to testify but want to register your support and want the record to reflect that you support the bill, you can sign the white sheet and indicate your support. Also, also, if someone else has already said what you came here to say, don't feel like you're obliged to testify. We can see the number of people that are here and that alone speaks to the support this bill seems to be generating among young people today. Do we have people here in opposition? OK. Opposition testimony will not take long; the proponents might. Senator Morfeld, good afternoon.

MORFELD: [01:25:49] Chairman Lathrop, members of the Judiciary Committee, my name is

Adam Morfeld, for the record, spelled A-d-a-m M-o-r-f-e-l-d. And also for the record, I only invited three people to testify, so I-- I wasn't trying to keep the committee here all night. But this is an issue people are passionate about. Also for the record, I have a date with my girlfriend at 6:00 so I, too, want to get out of here on-- at a good time. But again, I think it's important for these young people to be heard and the public to have their voice in our process. I represent the "Fightin'" 46th Legislative District, here today intro-- to introduce LB206, a bill to protect student journalists at high schools and state colleges and universities across Nebraska. The protection of student journalists' First Amendment rights in our K-12 schools and state institutions of higher education is critical in the development of current and future civic leaders. While I was in high school in Sioux Falls, South Dakota, I was nearly expelled for starting an alternative student publication. As a representative of Nebraska's largest university area, I represent many student journalists who will be the next generation of civic leaders to build a strong and robust democracy. This starts with protecting their First Amendment rights in government institutions. The Student Journalism Protection Act works in the following ways. It will guarantee high school and university students have access to their First Amendment rights regardless of whether the media is financially supported by the institution. Furthermore, this bill will protect student journalists from disciplinary action for exercising their First Amendment rights. Additionally, the Student Journalism Protection Act ensures that professors and teachers of journalism cannot be punished for protecting their students' First Amendment rights. Finally, LB206 promotes independence between student media and the educational institution by stating that no publication or expression by the students shall be deemed to be an expression of the institution's policy. Beyond the immediate implications, this legislation will also foster relationships between Nebraska public high schools and postsecondary institutions. As outlined in the bill, high schools shall attempt to form relationships with postsecondary institutions to learn about and train in mass media law and journalistic ethics. It is important to note that there are a few exceptions within the bill found in court in accordance with the First Amendment. Soon journalists will not be protected in instances of libel or slander,

unwarranted privacy invasions, violations of federal law, or inciting violence or substantial distribute-- disruption of the orderly operation of the institution. Various states have implemented legislation to protect student journalists. In fact, North Dakota and Iowa passed similar pieces of legislation in 2015 and '16 respectively. I would like to also note that chaos has not ensued in either of those states and democracy has not collapsed. Kansas, a state with protections on the books since 1992, recently reaped the rewards of preserving First Amendment rights. At Pittsburg High School in southeastern Kansas, the student newspaper, led by incredibly bright and savvy student journalists, published an investigative article that highlighted their principal's faulty credentials and questioned the legitimacy of their resumé, eventually leading to the principal's rightful resignation. This is all because under Kansas law high school student journalists are protected from administrative censorship. Had a similar situation occurred in a Nebraska school, it's very likely that the incredible investigative effort would have never come to light. The First Amendment should not carry with it any political agenda. Instead, the First Amendment ensures free press for young Nebraskans when it comes to exercising their rights in state institutions of K12 and higher education. I know that many administrators and school board members have concerns about this bill because it limits their control that they currently have. I understand that exercising their-- people exercising their fundamental rights can be inconvenient and unpredictable. But it is-- but it is necessary and an important part of our democracy and critical to teach the incredible power of the First Amendment and its consequences at an early age to ensure informed civic leaders. I'd like to think Michael Kennedy from the Nebraska Collegiate Media Association, as well as Frank LoMonte of the Student Press Law Center, who have assisted me in this legislation and contributed their careers to ensuring a free press for students across Nebraska, United States. I would like to also thank the countless students and educators who have reached out to me, many of whom are here today to testify, for their commitment to building the next generation of civic leaders. I'm also pleased that Cathy Kuhlmeier Frey is here to testify in support of LB206. She was party to Hazelwood v. Kuhlmeier, the 1988 Supreme Court of the United States decision that gave high

school administrators their right to censor school-sponsored media. Also here is Hadar Harris, the executive director of the Student Press Law Center in Washington, D.C. I'm looking forward to hearing their testimony, particularly Hadar's, who's got to catch a flight, which is why she's going to go right after me. As paraphrased from one of my favorite songs, Rage Against the Machine, never underestimate the power of a question and that silence is its own kind of violence. It's time to ensure that students have a voice and that it's free and not unnecessarily impeded by state and local administrators, regardless of how well-meaning. I urge your favorable consideration of LB206, and I'm willing to listen to any suggestions or answer any questions that you may have.

LATHROP: [01:31:19] Doesn't look like we're going to start out with any questions, but we'll--

MORFELD: [01:31:23] Thank you.

LATHROP: [01:31:23] take the testimony--

MORFELD: [01:31:23] Thank you very much.

LATHROP: [01:31:25] -- beginning with proponents. And just to remind you that we have an on-deck chair here and if you want to sit in this front row here, if you care to testify, that might help the process go a little smoother. Welcome to our Judiciary Committee.

HADAR HARRIS: [01:31:39] Great. Thank you. Good afternoon, Chairman Lathrop and members of the committee. My name is Hadar Harris, H-a-d-a-r H-a-r-r-i-s, and I'm the executive director of the Student Press Law Center in Washington, D.C. I'm here to testify in favor of LB206. Founded in 1974, the Student Press Law Center works at the intersection of law, journalism, and education to support the First Amendment rights of student journalists and journalism advisers around the United

States. Through our legal hotline, we field thousands, thousands of inquiries each year. Calls range from questions of copyright law to how to file a FOIA request--be careful. Often students call with questions about the legal parameters of defamation or privacy because they want to get the story right. And too often they call in crisis with cases of censorship or retaliation against an adviser. Two days ago we celebrated Student Press Freedom Day and launched the Year of the Student Journalist. More than 50 student newspapers ran editorials or op-eds talking about the need for protections against censorship and image control. You will hear powerful testimony today from student journalists and their advisers talking about why LB206 is needed, retelling their own painful stories of being censored and even being retaliated against. I want to use my short time today to talk about what this bill is and what this bill is not. Let's get started with what it's not. LB206 is not a bill which gives student journalists free rein to publish whatever they want with no oversight. It does not provide them with the same rights and protections as professional journalists. Schools maintain the ability to review and revise student publications according to a clear set of criteria outlined in the bill. As Senator Morfeld said, libelous or defamatory speech, speech that constitutes an invasion of privacy, inciting violence, it reinforces limits on speech that would be, as the iconic *Tinker v. Des Moines Independent School District* decision held 50 years ago, a material and substantial disruption. LB206 does not create a new set of student rights. Rather, it restores the *Tinker* standard of free speech which famously noted that the First Amendment does not stop at the schoolhouse gates. By providing student journalists with basic press freedom rights, LB206 will not lead to a flood of lawsuits. Indeed, 14 states have similar legislation, including my home state of the litigious California which has had such protections in place since the 1970s. There is not a single case available in public databases of court records dating back hundreds of years where a high school was ordered to pay money for harmful material published by student journalists. LB206 is not a legislative overreach and does not unnecessarily legislate where school board policy can suffice. School board policies, while important, are often inconsistent and vague. This bill will provide clear guidance and uniformity to shape the parameters of what is constitutionally protected speech and

where are the lines for governmental overstep in the form of overzealous administrators. It provides clear guidance on what can be viewed rather than relying on the vague, overbroad Hazelwood standard of reasonably related to a legitimate pedagogical purpose, which, as you will hear from students and teachers alike, is used arbitrarily and for purposes beyond its intent. So what is this bill? It's a commonsense, well-articulated set of parameters which provides school administrators, teachers, and students clear guidelines. Most administrators are not trained in media law. Their censorship often stems from image control concerns rather than concern for pedagogy. This bill gives clarity, guidance, and uniformity to the standards with which administrators will review student speech. It's an acknowledgement that censorship does not work. In this era of social media, Web sites, and instant news, the story always gets out, even if the school tries to shut it down. Better to have the story reported responsibly with a commitment to journalistic ethics and commonsense oversight, which is provided by this bill. Finally, it's an important contribution to the civic life of Nebraska, valuing student voices, critical thinking and creativity, and reinforcing the role that journalism education plays in creating vibrant civic culture and engaged citizens. Finally, I was struck when I pulled up to the Capitol Building this afternoon and saw the inscription at the main entrance: The Salvation of the State is the Watchfulness in the Citizen. LB206 is a Nebraskan bill which would help realize that important principle for all Nebraskans, young and old. Thank you very much.

LATHROP: [01:36:21] Thank you, Ms. Harris. I see no questions. Thank you and good luck with that flight.

HADAR HARRIS: [01:36:28] I've got some--

LATHROP: [01:36:28] Thanks for being here today

HADAR HARRIS: [01:36:29] I've still got time. Thank you.

LATHROP: [01:36:36] Welcome, Allen.

ALLEN BEERMANN: [01:36:37] Thank you. Chairman Senator Lathrop, members of the Judiciary Committee, my name is Allen Beermann. I have the privilege of representing the Nebraska Press Association. At the outset I would hope this committee would take judicial notice of the fact that I am one of the young people here testifying. [LAUGHTER]

LATHROP: [01:36:55] So noted.

ALLEN BEERMANN: [01:36:55] So noted, thank you. The 175 newspapers that make up the Nebraska Press Association have all reviewed this bill and we unanimously support it. We think that it gives responsibility to young journalists. You learn responsibility by having the right to have responsibility and to take responsibility. And we think that you only build bench by assisting young people in a craft, in this case journalism. So we would unanimously support this bill. And unless there are questions of me, I would yield the rest of my time to some that are somewhat younger than me.

LATHROP: [01:37:40] I see no questions. But thank you for being here and for input from the Nebraska Press Association.

ALLEN BEERMANN: [01:37:46] Thank you.

MICHAEL KENNEDY: [01:37:50] Thank you, Allen.

LATHROP: [01:37:55] Good afternoon. Good afternoon.

MICHAEL KENNEDY: [01:38:00] Good afternoon, sir. I don't hear well. My name is Michael, M-i-c-h-a-e-l, Kennedy, K-e-n-n-e-d-y. I'm executive director of the Northern Plains Collegiate Media Association-- Association, formerly Nebraska Collegiate Media Association. While I'm employed as a journalism instructor and adviser at a state college, I'm here solely representing our association. Senator Lathrop, esteemed committee members, thank you for the opportunity to testify on behalf of LB206, sponsored by Senator Morfeld. The only thing necessary for the triumph of evil is for good people to do nothing. Albeit slightly altered, that familiar quote, commonly attributed to Irish statesman Edmund Burke, is the reason we're here. Censorship of school-sponsored media is evil. It curbs questions, thwarts creative ideas, stymies critical thinking, hinders civil discourse, and crushes spirits. And you will hear testimony today to that effect. LB206, in LB206 we're asking you good people to end censorship of school-sponsored media in Nebraska's public schools. Shortly you will hear testimony from student media advisers, students, their supporters. You've heard from Hadar Harris and Allen Beermann. Another, you'll soon hear from Cathy Kuhlmeier Frey who, as you know, is Hazelwood Kuhlmeier. And you'll hear her story. Later you will hear from Kylie Hanna, a student editor from Hastings who is today enduring almost identically the same censorship that Ms. Frey experienced 30 years ago. I know at the college level of no censorship taking place in Nebraska, so LB206 will keep it that way. We ask you to prevent censorship from creeping into Nebraska's higher ed institutions as it has in Indiana, Illinois, and Wisconsin in *Hosty v. Carter*, a Seventh Circuit decision which applies *Hazelwood* to college media in those three states only. We are asking you to protect professional journalism educators from being threatened, harassed, and in some cases reassigned or terminated for nothing more than doing their jobs or protecting their students. Now we understand that discussions about free press freedom can make people nervous, spawning fears of what about this and what about that. What about the rogue adviser that's going-- going to take things crazy? Well, what about rogue administrators? And how many legis-- how

much legislation really answers every "what if" possible. In closing, LB206 is a good bill. It's strong and balanced and we believe deep in your hearts that you agree. So we ask you good people to do three somethings: have faith in our youth, have faith in their teachers and advisers, and put a stop to student media censorship in Nebraska, ending the triumph of evil that has-- that it has enjoyed for the past 31 years. Thank you. I'll take questions.

LATHROP: [01:41:14] I see none. Mr. Kennedy, thanks for being here.

MICHAEL KENNEDY: [01:41:17] Thank you, sir.

LATHROP: [01:41:17] Appreciate your testimony.

MICHAEL KENNEDY: [01:41:19] Thank you.

LATHROP: [01:41:27] Good afternoon.

CATHY KUHLMEIER FREY: [01:41:28] Good afternoon.

LATHROP: [01:41:29] Welcome.

CATHY KUHLMEIER FREY: [01:41:30] Thank you. My name is Cathy Kuhlmeier Frey, and I was a student at the center of Hazelwood v. Kuhlmeier, which began in 1983. I am now still the adult trying to stop censorship at the high school and collegiate levels. Our staff so many years ago identified a serious problem regarding pregnancy, divorce, marriage, and runaways in our school and we wanted to address it with our classmates. We wanted to share personal accounts of our classmates' different situations of being pregnant, living in a divorce household, or stress to the

point of running away. We wanted to let our students who maybe felt very alone and let others know that they had similar situations as what they did. We wanted to hopefully improve someone's situation by telling their stories and share with them that there was help out there to maybe avoid being in a bad situation. We were just trying to help our fellow students. Our adviser had taught us the importance of fair and accurate reporting, and that is exactly what we did. We researched our details. We obtained signed consent from the interviewed students, as well as their parents, to verify the accuracy of the statements. And we also included a blurb stating the names in the pregnancy story had been changed. The same story topics had also been covered in that very same paper years before, just under a different principal. We would have never dreamed those actions would have taken us to the U.S. Supreme Court. Perhaps, had our attorney been better prepared and mentioned to the justices those so very important facts that I just mentioned, the outcome would have been very different, at least that is my hope. When we met with the principal the day they censored the paper, he made the comment to us that the articles were too mature for an immature audience. My comment back to him as a junior in high school was, if you're old enough to get pregnant, shouldn't you be old enough to read about it? Why is it at a young age I was able to understand and responsibly address a problem when my administrator couldn't? I believe it was because I was taught well as a journalism student, I had been empowered to think critically; at that same time I had been inspired because of my adviser to be a journalist. But as a result of the outcome of this case, it changed my mind. I thought if this happens as a student, what's it like in the professional world? It's unfortunate because I believe I would have been a good journalist covering all sides of issues. I was threatened as a student journalist to be held in detention when this hit the local media. And then after I appeared on Phil Donahue I was called to the principal's office and told I could be suspended or expelled for not asking his permission to miss school, even though my mom had given me consent. These threats should have never happened. I saw my principal a few years ago at a symposium at the UMKC Law School where he and I were speaking. He told me in front of a very large crowd that he had never actually even read the articles and that every-- even his decision to

pull them was based solely on budgetary reasons. There was an audible gasp, as everyone there knew the case and how it had turned out. How could that even be true? Censorship continues to march on across our country. I was furious three years ago to learn that my own son's newsmagazine was being censored. What are the chances of this happening to my own child? I was appalled to learn of this and at the way it was handled in his school with students again being threatened by their teacher whom they had trusted. The administrators felt they had every right to pull a story and the teacher had no concern for the occurrence when she should have been up in arms to support her students, when in reality she was more concerned that if she supported the students her job could be on the line. Is this really the way we want to educate our students that they have no First Amendment rights, such as Tinker established, or to have advisers afraid to speak up? I should think not, and it is my hope that through New Voices of Nebraska advisers can get back to educating and empowering our future journalists as they should be, without threat. Student journalism is a civic necessity in growing our youth with bright futures, not something they should be afraid of participating in. Please consider passing new voices for the future of our students. Cure Hazelwood. Thank you for your time.

LATHROP: [01:45:27] Thank you--

CATHY KUHLMEIER FREY: [01:45:28] Any questions?

LATHROP: [01:45:29] -- for coming all the way and telling us that story.

CATHY KUHLMEIER FREY: [01:45:31] Thank you so much.

LATHROP: [01:45:32] We don't get many people that have been to the Supreme Court in here so that's--

CATHY KUHLMEIER FREY: [01:45:35] Well--

LATHROP: [01:45:35] -- that makes it particularly important.

CATHY KUHLMEIER FREY: [01:45:37] -- ironically, I didn't get go because the attorney didn't even contact me.

LATHROP: [01:45:42] Yeah.

CATHY KUHLMEIER FREY: [01:45:42] I found out that we lost the case by a reporter from my local community college-- or I wasn't in college-- asking for my comment about losing.

LATHROP: [01:45:51] Oh, that's interesting.

CATHY KUHLMEIER FREY: [01:45:53] Hats off to her.

LATHROP: [01:45:54] I don't see any questions for you today but thank you for your testimony.

CATHY KUHLMEIER FREY: [01:45:57] Thank you for your time.

BENJAMIN RANDALL: [01:46:10] Hello.

LATHROP: [01:46:10] Good afternoon.

BENJAMIN RANDALL: [01:46:10] Good afternoon. My name is Ben Randall, R-a-n-d-a-l-l, and

I'm an 18-year-old senior from Gretna High School. Before I get on with this, I'd like to thank Senator Morfeld and everyone in our conjoined support of passing this bill, and thank you everyone for taking the time what I have to-- to hear what I have to say today. I am both a copy editor and lead senior writer for my school's newspaper, The Voice, and my past experiences within this journalistic community have been nothing but informative, constructive, and phenomenal. But unfortunately several experiences have tripped on my path through journalism. Last semester I wrote a personal column on the topic of fake news and I had to be very cautious in writing it. My words were minced and key names of that editorial were thrown out due to this censorship that I faced at the hands of my administration. I vividly remember the day I was called down to the office and sat down to discuss a singular red mark on my paper. Circled was the name "Donald Trump" and I was told the name was unnecessary in my writing. It was a key part of my paper and emphasized the point I was trying to convey. So taking it out was challenging for me. But student journalists in Nebraska are forced to make tough decisions and write stories that adhere to an administrator's liking. Altogether my decisions to go into a journalism career were questioned by my school's authority. A reasonable argument against this bill is that students are naive, we are inexperienced, or that we are careless, that we make irrational decisions, we misuse commas, and sometimes write blurred versions of the truth. I'm here to tell you that, yes, we are all of these things. But we are also the next generation and we hold the keys to the future of our country. Opponents of this bill will say that these kids making these errors are reason enough for keeping things the way that they are. They say that turning Nebraska into a state without administrative review will put a burden on them and their schools and create chaos. Basically the opposition believes that the passing of this bill would be too costly and too risky for the betterment of our state. Fortunately there is evidence this bill will aid journalism and not cause chaos, as Senator Morfeld said, and it lies right at the state borders in Kansas, Iowa, and Colorado. There are 14 states total in our country that have passed similar bills that have given students their voice, giving more power to the students and limiting review by school administrators and it only makes sense to me. Think of

the time we live in, times of massive disarray within the journalism community. And what are we doing now? Our state is moronically behind the times, regressively shifting further and further back with standards so that things will be better or are back how they always were. This bill must pass to ensure fake news will not happen. The longer we allow our kids to fall back on their administrative review, the further we dig ourselves a hole. By censoring young journalists, we are not preparing them for the harsh reality of real-world journalism, a world where we write what we deem is timely and face the consequences, be them good or bad. We live in an age where our President is active on Twitter, where global warming is a debate rather than a science, in a time where people have astronomically more experiences on their cell phones than with real people in real life. Additionally, "fake news" is a term thrown around without care. We live in a time that now more than ever our journalism must be noble and it must be concise and it must represent both sides of every story thrown at us. I will ask you, what are we doing about it right now? Our current journalism system allows students to write what their administrators are willing to or not censor. In doing this we are teaching kids to disregard creativity, teaching kids not to not understand the basis of journalism. And what is that basis? Well, that's the beauty of it. Journalism is truth, it is timely, and it is justice. But most of all journalism is the writing that we use to express ourselves. Have you heard the phrase "a story can be trill told a million different ways"? With our current journalism structure we are telling stories one way, a way that gets censored. We are being unrealistic. if we expect our youth to understand high journalistic standards when they have not been given the basic right to truly learn these standards themselves. With the passing of this bill we are respecting journalism and respecting the students of Nebraska and fighting the good fight in eliminating fake news. It is important because it protects our and our teachers' rights. But it is of the most critical importance in that it will commence the learning process of the next generation of ethical and truthful journalism. A democracy is nothing without its people's say, so let's pass LB206 to rightfully ensure that our young voices will be heard without restraint. Thank you.

LATHROP: [01:50:27] I see no questions. Thanks.

BENJAMIN RANDALL: [01:50:29] Sorry for going over in time.

LATHROP: [01:50:30] Yeah. Let's keep an eye on this, only because we have so many people and we want to give the people that do care to testify an opportunity. So when you get to the red light, if you would finish your thought. Thank you. Welcome.

KYLIE HANNA: [01:50:46] Hello. My name is Kylie Hanna, K-y-l-i-e H-a-n-n-a. I'm a high school senior from Hastings. I'm the editor-in -chief of my school newspaper. From September to December of 2018, a teaching assistant was engaging in an inappropriate texting relationship with a student. She was then fired from the school district and arrested. Because it was-- this was an event that happened in my school with a faculty member, I felt that it needed to be covered by our media outlets. Respectively, I acquired the affidavit for the arrest and wrote the story strictly from that document. However, I was censored by my administration, and I'm currently in the middle of that censorship battle, for a claim that the story violated the privacy of the student. Nowhere in this story did it mention the name, age, or gender of the student, so this accusation was virtually implausible. We as student journalists are under the impression that-- impression that what we write is not important. As a student who wants to continue in the field of journalism after high school, I do not feel adequately prepared to write the things that are necessary to be successful. Our job as the newspaper is to cover the news and write things as accurately and timely as we can, whether the news is good or bad. I speak before you today frustrated with how frequently students are being censored. I feel as though our voices are not heard. I represent only myself today because my adviser fears the repercussions that may come from mentioning her or the publication in my testimony. We are not protected and we are not advocated for. Our administrators lead us to believe that because we are young and still learning, that we are not capable of writing in a professional

manner. So they censor us and fear that we will bring bad publicity to the school. But that is the thing. We are learning. We're learning about the First Amendment and about the issues of libel and privacy. We know not to include these things in our writing and that's something that is continually expressed from our advisers. What is not helping us, however, is the censorship battles that continue to arise whenever a controversial issue surfaces. We are the journalists of the future and if we are not taught how to cover these issues now, while we are students aiming to succeed and carry on the field of journalism, when will we get the opportunity to learn and how will journalism continues to succeed in the future?

LATHROP: [01:52:34] Very good. Thanks, Kylie. I see no questions.

KYLIE HANNA: [01:52:39] Thank you.

LATHROP: [01:52:39] Thank you very much for your testimony. Welcome.

MADI POHLMAN: [01:52:46] Hello. My name is Madi Pohlman, M-a-d-i P-o-h-l-m-a-n, and I'm here in support of LB206. In 2016 I was a senior in high school, editor-in -chief of my high school newspaper, a grocery bagger at my neighborhood Hy-Vee, and a bit of a rebel, or as my high school administration likely referred to me behind closed doors, an annoyance. In February 2016 a version of a bill similar to the one we are here for today had a hearing. I found out about this hearing and the bill itself just two days before and I begged my mom to let me skip school so I could come testify in support. She said yes. So on the day of the hearing I drove down by myself from Omaha. The hour car ride was spent thinking of what I was going to say, revising it in my head, and many urges to pull off at the next exit, turn around and go home. You see, the interesting thing about that bill in 2016 was that it didn't apply to me at all. The bill only included protections for college students and that was it. I was not a college student and I wasn't planning to study journalism once I

was one, but that wasn't important. What was important and what is still important today is that all across Nebraska, throughout your districts, high school students were and still are being censored. They're being told that their voices aren't important and that their main purpose is to make the school look good. Things that question school policy or topics deemed too inappropriate for a high school newspaper are pulled before it is sent to press. So instead of causing change, within the school, issues are covered up, ignored, and allowed to continue happening. I'm confident that if you walked into a high school journalism classroom anywhere in Nebraska, you would find some of the brightest, most dedicated and most responsible students the state has to offer, and they would likely have censorship stories that are just like mine. If you walked into a journalism classroom in Kansas, Iowa, Colorado, North Dakota, or any of the other states that have bills like this, you'd find very similar kids. The only difference is that they live in states that protect their rights. This is my third time testifying in support of this bill. I don't have a future as a professional journalist, a high school journalism adviser, or a senator like yourselves. But there are kids across this state that do. There are kids in your districts that are being told their voices don't matter, that it doesn't count and that they are just a student publication whose real purpose is nothing more than a newsletter for parents and not worthy of the journalistic integrity that they work so hard to put into it. And honestly, that gets exhausting as a 16-year-old to fight over and over again. But they do it anyways because they know that their stories are really important. Senators, will you empower and encourage these students to continue fighting for what is right, for change, for bettering their schools and communities and themselves, or will Nebraska remain a state that doesn't value and protect the free speech of its students, its future journalists, its future journalism advisers and future senators? I hope that this bill continues to have the support from the many of you that have given it over the last few years and that together we can protect the students to help create a more free and educated society. Thank you.

LATHROP: [01:55:34] Very good. Thanks, Madi. Welcome.

McKAYLA VERMEER: [01:55:45] I would first off like to thank the committee for giving me time an opportunity to testify today and specifically extend thanks to Senator Morfeld for introducing this bill. My name is McKayla Vermeer, M-c-K-a-y-l-a V-e-r-m-e-e-r. I am a junior at Bellevue East High School and I have been on the newspaper staff for two years, spending this year as editor-in-chief. The only reason I can find in which there would be opposition to this bill is simply miseducation, specifically miseducation about the role of journalists and the role of student journalists. To steal a line from my adviser, a journalist's job is to investigate the truth and report it, nothing more, nothing less. If students are being taught proper journalism and how to be proper journalists, then there should be no concern as to what they are producing and there should be no need for censorship. If the concern is what students producing-- is with students producing content that would need censorship, then the concern is actually with the lack of quality and accuracy in the education that the students are getting. Again, the concern here would be the miseducation of student journalists. Additionally, it has come to my attention that many administrators, those who are censoring student publications, are simply unfamiliar with what journalistic values are and what truly makes a piece worth publishing. If they were fully educated on what exactly journalists do and what exactly are the standards by which they produce their work, then there would be not an issue at all. Once again, miseducation is the problem. The only real opposition that I can see is that administrators or others in charge are simply uneducated on the moral values of a journalist or, even more simply, the job of a journalist, even a student one. I would wholeheartedly prefer to produce a piece that may later see-- receive backlash than to not even be able to think of a piece at all because I know it will be censored. How will I learn to handle backlash when I cannot learn to experience it in the safety of school, a place specifically for learning? School news publications do not serve to act as a way to spread the beliefs and concerns that the school itself may have. We serve to share the truth, and nothing but the truth, to those in our school and community regardless of whether or not it aligns with the administrators' beliefs. Respectfully, I would like to have the opportunity to

experience and utilize my full First Amendment rights as any other journalist would. Thank you.

LATHROP: [01:57:52] Thank you, McKayla. I appreciate your remarks. Thanks for being here today. I seem to have a lot of editors, editors-in-chief, which is good, the experienced student journalists. Welcome.

EMILY NELSON: [01:58:07] Hi. I'm not an editor-in-chief but [LAUGHTER] I'm a reporter, so.

LATHROP: [01:58:11] Of course not. Welcome. Welcome.

EMILY NELSON: [01:58:13] Thank you. My name is Emily Nelson; that is E-m-i-l-y N-e-l-s-o-n. I want to start by saying thank you to those who came to show support in the committee for hearing every single one of us. It is inspiring to see so many people here and it reminds all of us as student journalists that our voices can and will be heard. I'm a reporter for the Bellevue East Tom Tom and I've known since my freshman year that I wanted to be a journalist. From voicing that to family members I've received a lot of "good lucks," though I never fully understood the well-wishes until this year. Our last in-depth was originally a spread on the use of Native American mascots, focusing in on Bellevue schools, but was later changed to focus on the history of Natives in the area. Our reasoning for changing was to avoid censorship, not that we were scared but because as a staff we decided we did not want to have our piece circulate around "controversy" when our goal was to focus on the Native American influence in Bellevue. My original article was the history of the mascots and how they came to be. I-- I emailed an administrator asking for document verification of the tribal permission to continue the use of Native mascots. Before I heard back from the administrator-- administrator, I was called into the principal's office the same day and I was informed that the document did not exist. The principal questioned my intentions for said article, asking if I was only writing it because I wanted to push my opinions onto the student body and

because I apparently did not like the answer that had been given two years ago when the mascot topic had previously been brought up. For the sake of time I will spare you the entirety of that conversation. But what I can tell you is that at that moment I felt more voiceless than I ever have in my 17 years on this earth. No, I was never told I could not publish the piece. But the message was obvious. It was at that moment I came to realize my principal does not fully understand what journalism is. In-- oops, sorry. And I fear other principals in Nebraska don't as well. My intentions were never to push my opinions onto my peers. That is not what journalists do. I've always been taught to seek truth and report it. Investigating topics that are relevant and important to society and asking difficult questions to people in positions of power are important skills for journalists. And being able to write on it is one of the best feelings a journalist will experience. To have that questioned and not fully understood is disappointing, to say the least. Student journalists must not be afraid to ask questions. To pass this bill means to protect student journalists from feeling voiceless as they pursue the truth. Not passing the bill would continue fostering a climate where students self-censor and shut down their critical thinking as a student press becomes merely a channel for official thought. Thank you.

LATHROP: [02:00:44] Thank you, Emily, appreciate your testimony today.

EMILY NELSON: [02:00:48] Thank you.

LATHROP: [02:00:48] Thanks for coming here. Good afternoon.

COLE BAUER: [02:00:57] Good afternoon. My name is Cole Bauer; that's C-o-l-e B-a-u-e-r. I'm also an editor-in-chief and I'm a college senior, which makes me feel like I might be one of the older people here testifying, though probably not the oldest. I was here to testify last year for LB886. You could say that in a few months this will no longer affect me because I won't be a

student anymore, I hope. But I disagree. I think that student media is important to the entire Nebraska community. My freshman year at Doane, the softball team hazed some of its new members. No one was physically injured and the incident was handled entirely by our safety office. The only media outlet to cover this was Doane student media. If we hadn't, if we had been censored, nothing would've been known except for rumors and hearsay, and we all know how reliable that is. Now if there wasn't student media to cover this, who would? Major media outlets rarely get involved in small schools unless it's something serious like a death or major injury. With student media here to report on these smaller stuff, not to say it's less important, it keeps the school honest, it keeps the school on top, and it keeps the school from feeling like it can get away with incidents like this. Fortunately we were not censored because we have a clause that protects us in our student handbook. However, our school president had apparently never read this handbook or hadn't gotten to that part because a few years later he required our adviser to read all of our articles before publication, which our adviser flatly refused. Now he told me later that he fully expected to lose his job after that. Thankfully, he did not. He pointed to our handbook and we-- we remain uncensored for the time being. The problem is, though, the people who control the student handbook are usually not the biggest fans of student media because it's our job to watch them, it's our job to question them. It wouldn't be too hard for them to change it if they put their minds to it. I understand there is reluctance to give students this much freedom. Students make mistakes but that's part of the learning process. We can't learn-- learn from our mistakes if we aren't allowed to make them in the first place. This bill would keep high schools, colleges, and universities honest and open, as well as giving student journalists the tools they need to become professionals. Thank you.

LATHROP: [02:03:25] Thank you, Cole, appreciate your testimony. Good afternoon.

TERRY PITKIN: [02:03:36] Good afternoon. My name is Terry Pitkin, and I'm not an editor-in-chief. I'm the-- the journalism adviser at Scottsbluff High School. It's a position I've been in for over

40 years. And I'd really like to thank the members of the Judiciary Committee for allowing me to testify this afternoon and I really want to give my overwhelming support to Senator Morfeld's bill, LB206. As a veteran journalism adviser I am well acquainted with the struggles the staffs across this face.

LATHROP: [02:04:01] Can you spell your name for us?

TERRY PITKIN: [02:04:05] Sorry.

LATHROP: [02:04:05] Yeah.

TERRY PITKIN: [02:04:06] T-e-r-r-y P-i-t-k-i-n. It's on the paper. We are well aware of the struggles that staffs across the state face every time they put together an edition of their school newspaper. This constant struggle is between school administrators and journalism staffs regarding the content. In my experience, while school administrators encourage their advisers to teach student journalism ethics and to prepare those students for successful careers in the field of journalism, they would deny them the basic right to print the most important stories affecting the students in their school. They are far more interested, in my opinion, in protecting the image of their schools and themselves than they are in allowing students to practice the fundamental right of a free press. According to the policies at our school, every story appearing in the school newspaper must be reviewed by the principal. And while I have a good working relationship with my principal, we often just do not agree on what should go in that school newspaper. Unfortunately, I have very little recourse when he chooses to censor a story. To refuse to follow his directive is insubordination and that puts my job at risk because I can be terminated for not following his wishes. If I may, I would like to show one example of censorship I just recently faced during this school year. Schools across the country are currently facing an epidemic with young people who are "JUULing" or vaping.

After lengthy discussions with the kids on my staff, they decided they wanted to write a story about the topic and their primary goal was to talk about the dangers of "JUULing" and what was actually happening in our community. The story, as I suspected it would be, was censored and the accompanying explanation from my principal was brief: We were not going to print that story. Adding to the irony of this situation, from my perspective, was the fact that school officials had already suspended numerous students for "JUULing" on school property. And perhaps even more insulting to my staff was the fact that a week later teachers were instructed to pass out letters to students to take home warning parents about the dangers of "JUULing." To prove the hypocrisy of this action, a week later I asked my editor-in-chief to write a letter condemning "JUULing" and, as I suspected, the principal didn't give it a second glance and passed it along. I am well acquainted with most of the high school newspaper advisers from across this state and, to a person, they are working tireless to-- tirelessly to teach their kids the principles of quality journalism. But it is one thing to teach kids a skill. It's quite another if they cannot practice that skill that they're being taught. I would urge the members of this committee to pass LB206 out of committee and on down to the Legislature. It's time for student journalists in this state to be able to tell all the stories that are happening in their schools, not just the ones that leave their schools and administrators in a positive light. Thank you.

LATHROP: [02:07:04] Thank you, Mr. Pitkin. Welcome.

ANGELA WOLFE: [02:07:13] Hello. Thank you for letting me be here. My name is Angela Wolfe, A-n-g-e-l-a W-o-l-f-e, and I am here as a journalism adviser from the Omaha Public Schools. I am a certified journalism educator through the Journalism Education Association and I have two degrees in print and broadcast journalism. I'm also here representing the Nebraska High School Press Association, and that is the statement that I am submitting to you guys today. We overwhelmingly support this bill. The NHSPA is a network of advisers from all over the state and

we are a strong network of advisers. There are advisers from Scottsbluff to Omaha to Grand Island to all over, all the-- all the towns that you can even think of. And our main goal is to be a resource for advisers. We are there to field questions on law and ethics. We're there to field questions on how do you cover this, I don't know how to use this camera this certain way. I do know there's a lot of times, even in the Omaha Public Schools, where an English teacher is just told you're going to teach journalism and that's where our organization comes in. We can say, if you are not experienced in this, let us step in, let us give you resources, let us answer your questions. And just being a journalism adviser is a very lonely job. There's only one of you at a school most times. And so now we can unite these people to know that they're not alone and to have resources. I will tell you that one of the other things I do as an executive board member is I field questions and concerns from advisers and I overwhelmingly in my four years on the executive board have fielded concerns about censorship. I would say the majority of e-mails that come through our organization are, "My students want to write this story but my administrators won't let them, what do I do?" And this is rampant across the state. It's small schools; it's large schools; it is the Panhandle; it is next to the Missouri River. It's everywhere. I personally this year was threatened to be written up. I had a student get pulled into the principal's office and questioned for over an hour until she cried to the point where I had to call her mother and have her mother come save her from our principal. And I will tell you the worst thing that I see as an adviser is how this affects the students. And they come back later and they don't have the fire and they're scared and they say things like we can't write that, they're not going to let us. And so I would really urge you to consider this bill. It's very important for our school communities, for our students. One of the last things that is in our statement is it says is, not only is this bill in the best interest of students, but it's in the best interest of schools in the communities these journalists will impact. And if the school administrators are the only ones controlling the-- the image of the school, is that the truth? And we need these student journalists to be there to tell the truth. And so I would just urge you to give your support to this bill. And I just thank you very much for your time.

LATHROP: [02:10:31] Thank you, Ms. Wolfe. We appreciate your testimony. Next testifier.
Welcome.

JUSTINE GARMAN: [02:10:38] Thank you. My name is Justine Garman, J-u-s-t-i-n-e G-a-r-m-a-n. This is my second time testifying for this bill. Last year I sat here with a two-week-old baby and I waited and I waited because it's important, and it's important again, and that's the reason why you saw me up here with her. I'm an adviser at Omaha Benson High School. I'm very proud of it. I'm proud of my students. I'm proud of my community and proud of my school. Testified last year what it was like for me under my old principal and for my students, how we were retaliated against, how my students would look down the hallway to see if the principal and her minion were there. And if they were, they would walk up a flight of stairs to the other end of the building to go down a flight of stairs to go to their classes, and that's because they were targeted. They would have snarky comments written on their work. They would be accused of things. My yearbook editor disagreed with my principal about a picture of a bellybutton ring being featured in the yearbook under piercings and a month later she was kicked off the dance team. I've been called into the principal's office over and over and over and my union has had to step in to advocate for me. I don't write the stories. Instead, I encourage them to make sure that they're telling the truth and I help them so they're not biased and I give them advice, you know, go get another source, is this the best person you think you should ask about the story. I want to tell you now about the-- my first day back to work in April. I have a new administrator and it was my first day back and before lunch, I was called into the assistant principal's office and the principal's. My students had put out an issue of the paper that it came out the day before. They wrote a story on how certain administrators in my building give different disciplines to different students and there's inconsistencies. And they interviewed every administrator, they interviewed students, both sides of the story. They interviewed our principal and my principal called me in and the first thing he said was just, you

know, I think they did a great job with that story, it needed to be told. And I agreed with him. But what he was upset about is my students went to our in-school suspension room and they took a photo of the kids who happened to be in there that day. They had asked the students their permission and they were given it. They took the photo. They featured the photo with the story. The photo was of four minority students in my building and my principal was more upset with my students for taking that photo than for figuring out why we have four minority students being disciplined and no white students. And that's all I could think about. But I can't say that. I like my job. I like my students. But that day I could have been fired. At the end of the year I could have been reassigned. Right now, instead of being a journalism adviser, I could be the world's best freshman English teacher because they could find the worst job for me. [LAUGHTER] But that's what you guys need to think about is the retaliation that comes with it. They-- they're printing the truth. They're doing their jobs. But they need protection so they can keep doing what they're supposed to do. Thank you.

LATHROP: [02:14:04] Thank you. I don't see any questions. Yeah. Thanks for your testimony. I appreciate that. Good afternoon. How we doing on testifiers? How many are left? Are we down to just a few? OK. If you want to get in the on-deck circle here, we'll try to cycle people through and hear what they have to say. Welcome.

ADRIANA MARTINEZ: [02:14:28] Thank you. Good afternoon. My name is Adriana Martinez. A-d-r-i-a-n-a M-a-r-t-i-n-e-z. I am the proud editor-in-chief of Omaha Bryan High School newspaper, The Orator. It's my third year on staff and I'm afraid it may be the most tragic. I've heard stories about other publications being censored, but I never thought that that fate would befall us. Our principal continues to have our back. But recently our administration has turned against us. Right now we're at the mercy of an administration who cares more about appearances than the truth. As of this issue, my fellow staffers and I are required to submit any stories or quotes that they deem

controversial for review. Even if it's factual and ethical but administration does not approve, we are banned from printing. It all starts somewhere and I am terrified that this is the beginning of a regressive era for my school's journalism program. With this bill we can protect student journalists like me and their publications from losing their First Amendment rights. I ask the committee to think. How honest can the news be if we are forced to edit out the truth because it displeases those in power? Journalists weren't meant to please the higher-ups but to stand strong in their true mission to provide the truth. The Orator and its sister newspapers in Nebraska need protection. We need to ensure no adviser could ever have any harm from allowing their students to tell the truth and we need assurance that administrations like my own cannot attempt to censor us. LB206 is our best shot at maintaining the honesty and integrity of all high schools and postsecondary publications. And now to go a little more in depth about our upcoming issue which I'm afraid is going to be censored. For our upcoming, issue my staff and I are looking into the security measures of our school. The Orator is a credible, factual, and ethical newspaper and we treat every story the-- as such. My biggest concern is that our administration will try to stop our issue as a PR move. An article has already been called on for administrative review and I'm afraid that it'll be turned away because it does highlight the lack of security in our school and the lack of preparation in the case of a school shooting. We have never shied away from the hard stories. Last year we ran a story on the overpopulation of students in the building and while we faced backlash, we were not stopped. If we were under the same rules that we are under now, our story would have never went to print. We will never stop. The truth deserves to be out there. And I'm asking the committee to help students like me write the truth without fear of being blocked from printing or fear for our adviser. Thank you.

LATHROP: [02:17:06] Thank you, Ms. Martinez. I appreciate your testimony.

ADRIANA MARTINEZ: [02:17:09] Thanks.

MICHELLE HASSLER: [02:17:22] Chairman Lathrop and members of the committee, my name is Michelle Hassler, M-i-c-h-e-l-l-e H-a-s-s-l-e-r. I'm an associate professor of practice at the University of Nebraska-Lincoln, and executive director of the Nebraska High School Press Association, which has been supporting the state's high school journalism teachers and advisers since 1931. As our board member Angela Wolfe noted in her testimony, the NHSPA offers a number of educational programs and resources for both students and teachers, including a mentorship program for new advisers. I wanted to mention some additional resources that are available for high school teachers. The College of Journalism and Mass Communications offers what we call the "a la carte" program in which teachers can pick from a variety of educational workshops. Faculty members then conduct those workshops in the classroom. We often work with teachers to create workshops that are tailored to their specific needs. The college also encourages high school advisers and their students to attend the special educational events and guest lectures it holds throughout the year. One example is happening next week when a national trainer with Google will provide a free half-day workshop and 40 high school students and teachers are expected to attend. The college and the NHSPA also work closely with our amazing professional partners, the Nebraska Press Association and the Nebraska Broadcasters Association, to help provide educational resources and support. The NBA, for example, recently provided workshops for teachers interested in learning more about broadcast journalism. Scholastic journalism in Nebraska is strong and robust. In my three years as executive director, I continue to be impressed by the dedication and enthusiasm of the state's journalism teachers. They take their educational mission very seriously. You only need to look at the numbers. In addition to the 700 students and teachers who attend the NHSPA's educational conference in the fall, a similar number compete in the spring state journalism championships. Some 100 students and teachers attend an NHSPA summer camp that brings in national speakers. And 12 Nebraska high school journalism programs recently won a variety of national awards. But censorship and the threat of censorship weaken the teaching of journalism and demoralize both teachers and students. As a state I would think we should-- we

should be doing everything we can to keep scholastic journalism strong and work to make it even stronger. LB2-- LB206 is an important effort to ensure that scholastic journalism continues to thrive in Nebraska. Thank you.

LATHROP: [02:20:24] Thank you, Ms. Hassler. Good afternoon and welcome to the Judiciary Committee.

TREVOR LUECK: [02:20:34] Thank you. Hello. My name is Trevor, T-r-e-v-o-r, Lueck, L-u-e-c-k. Before I start, I would like to thank you, Senators, for taking time to listen to my story and for helping push for our rights as student journalists. I'd also like to give Senator Morfeld a special thank-you for giving students the spotlight with legislation that will impact student journalists in Nebraska for years to come.

LATHROP: [02:20:54] Trevor, can you pull that Mike a little closer to you so everybody can hear you.

TREVOR LUECK: [02:20:59] As a member of the former Millard West Pawprint staff I learned invaluable information that I cannot thank my adviser, Ms. Lisa Lukecart for enough. She taught me everything I-- everything I know, in a journalistic sense, of writing. She taught me how to become an award-winning writer and to, after her removal, rebuild the Millard West newspaper. That's right. I, along with another former student, were the co-editors-in-chief of the new Millard West Catalyst during the 2017-2018 school year under a different adviser-- adviser after Ms. Lukecart was unfairly removed. Despite this, she still helped us behind the scenes. Everything we had done in the last year to remake the name of the paper was taught to us by a woman that the school removed from her eight-year post long as adviser of the Millard West Pawprint. In her time as adviser, Ms. Lukecart helped published many stories deemed controversial, making administration

and the board upset. From stories about athletics versus activities to stories about having another entrance to the school, the administration had issues with all of them, yet at the end of the day, they all caused positive changes in the school. There is now a second entrance to the school in the back of the building and an equal representation of all Millard West activities at pep rallies. Our story even prompted the superintendent to investigate issues with laptops and because of it, these issues were fixed. If Lukecart didn't fight for these stories, these constructive changes to our school would never have happened. This bill would ensure student journalists can make the school better. Who doesn't want that? Why would anyone fight against that? That is the point of journalism, to invoke a change in the way things that are unjust are run. When my coeditor and I renamed the newspaper, we were stuck between two names. We chose to go with The Catalyst because in chemistry a catalyst accelerates a reaction or a change in form of the compounds or elements. I wanted that to be the basis of our new paper, to incite a change, to accelerate the-- the reaction, and to make a real difference in our school. Last year on February 8 I sat in front of the committee pleading for this legislation to be-- to pass. I made a prediction about the-- the story I would write about this bill that it wouldn't be published. After a week-long-- sorry. After leak-- after a week-long writing process, the hard news story was torn apart because it went against the position of the school board and in the end I was told that it did not fit in the new paper. So a skill that I learned-- so with skills that I learned as an editor on our Web site, I created my own. I rewrote my hard news story into an opinion article, and I published myself. When it did not have the ability to reach as many viewers as a hard-- as my hard news story would have, I was able to show people the necessity for this bill and its effects of administration controlling the narrative. In this age of fake news, journalists not being taught to write with integrity, truth in facts. They are taught to write what they are told, when they are told, and this idea begins in the earliest stage of their growth as writers, high school. Thank you.

LATHROP: [02:24:03] Thank you, Trevor. Appreciate your story and your testimony. Good afternoon.

KAITLYNN JOHNSON: [02:24:19] Hi. My name is Kaitlynn Johnson; it's K-a-i-t-l-y-n-n J-o-h-n-s-o-n. I'm currently a sophomore at the University of Nebraska-Lincoln double majoring in psychology and journalism. I graduated from Millard West High School in May of 2017 and I was an editor on staff of the Pawprint newspaper. First I would like to thank the senators for considering this bill and taking the time to hear my story. I joined Millard West student newspaper, at that time the Pawprint, my senior year of high school. I took intro to journalism my junior year with the newspaper adviser, Ms. Lisa Lukecart. She encouraged me to join the staff for my last year of high school. Unfortunately by the end of the year the newspaper would be shut down and Ms. Lukecart would be removed as adviser, all because of the staff of the Pawprint and Ms. Lukecart supported a free press. No less, joining has been one of the best decisions I've ever made. Ms. Lukecart's dedication to journalism and her students was evident in everything she did. Within a matter of weeks, she taught us how to write different types of journalistic stories and how to utilize on multiple Adobe programs to enhance our writing. Students of any type of passion could find something in advanced journalism. From artists and writers to sports fans and coders, everyone had a part. Personally, Ms. Lukecart improved my writing skills, pushed me past my comfort zone in interviews, and challenged me to develop new skills in photography and in design. In one instance she even threw a draft of my column in the trash because she felt I could do better. I rewrote it and I wrote one of my favorite articles in that whole class. She encouraged us to leave a legacy wherever we went. Behind her desk was a legacy wall displaying pictures of previous years of Pawprint staff. She always said: Leave a legacy at Millard West and then leave a legacy out in the world. The legacy wall showed how the class grew in size from just 4 students and how it grew to over 20. She built the program from the ground up, adding broadcasting and live commenting to the curriculum. The awards piled up underneath her guidance, including multiple national awards, two state titles, and two state runners up, all this in just a short eight years. On another wall former Pawprint staffers wrote quotes and advice. Today the legacy wall now resides in her English classroom while

the wall quotes and advice has been painted over. The journalists in our class didn't want to cover the everyday happenings in our hallways. We-- we wanted to spark change. However, many of these articles that later on would create a positive change for our school faced backlash from the school administration as they felt the stories made them look bad. However, as we wrote about politics, transgender bathrooms and sexual education throughout the year, the chokehold on the Pawprint grew tighter and stories became stripped from our Facebook page, the principal fearing that it would make-- it would anger the school board or the superintendent. Soon our stories were being censored and looked over before we could publish them and-- and-- sorry-- and impaired our ability to conduct effective journalism, because instead of reporting and writing and learning, we are defending our stories and later conversing with lawyers on how to protect our freedom of press instead of learning in the classroom. When our editor-in-chief's editorial on prior view was refused publication, we went-- because he felt it went against school board policy, we turned to the SPLC. It was only after they intervened and we fought for our rights. that both the stories were published. Lukecart showed us that fighting for our rights and having a voice mattered. But two weeks after the editorial was published she was removed from her position. After eight years of her hard work, including two state championships two state runner-ups, they are taking it away. So thank you.

LATHROP: [02:27:53] Yep. You're very welcome. And, Kaitlynn, thanks for being here.

KAITLYNN JOHNSON: [02:27:56] Thank you.

LATHROP: [02:27:57] We appreciate your testimony. Looks like we have more-- four more proponents and that should do it for proponents, so we'll take opposition after these four testifiers.

LAURIE THOMAS LEE: [02:28:12] All right. Good afternoon. My name is--

LATHROP: [02:28:15] Good afternoon.

LAURIE THOMAS LEE: [02:28:15] -- Laurie Thomas Lee. It's Laurie, L-a-u-r-i-e, Thomas, T-h-o-m-a-s, Lee, L-e-e, no hyphen. I'm a professor at UNL in the College of Journalism and Mass Communications and I'm here speaking as president of the Academic Freedom Coalition of Nebraska, AFCON, which supports intellectual freedom for teachers and students and librarians and researchers in our Nebraska schools, colleges, and libraries. In our over 30-plus years of defending academic freedom, we have repeatedly learned of and addressed issues of student press censorship in secondary and higher education across Nebraska. We've supported similar bills like this and AFCON strongly supports LB206. This is a matter of academic freedom, which means intellectual debate without censorship. Journalists in particular know all too well the issues of censorship and it's why journalism educators, including student media advisers, teach about the First Amendment and the rights of American citizens, which includes journalists. Academic freedom protects these media advisers who are the experts in their subject matter and must be able to teach, model, and protect these rights for their students. Academic freedom also protects students who have the right to master the subject material. To be constrained by censorship clearly flies in the face of their education for this profession. Do we really want our young people to prepare for a profession thinking that government censorship is OK? That said, you may ask, you know, why do we need such a law when we have the First Amendment? Well, there's two reasons, at least two reasons. First, students and teachers shouldn't have to go to federal court to defend their First Amendment rights when these violations occur. Nebraska schools and colleges should be required under Nebraska law to respect free expression, at least to the extent required by the First Amendment. And second, a state may certainly legitimately decide to protect free expression beyond the constitutional minimum set by the First Amendment. Well, LB206 does go beyond the First Amendment in its protection of student press freedom but only by simply restoring a First Amendment standard that governed public education that was set back in 1969 in the *Tinker v. Des*

Moines case and up until 1988 when the First Amendment protection for curriculum-based expression was removed in-- in the Hazelwood case. Protection for student free expression must be restored. It's good social policy. It's up to all of us to defend intellectual freedom in our academic institutions and stand up for the rights of these young people as they pursue a profession of truth seeking and truth telling without government censorship. Please pass this bill. Thank you.

LATHROP: [02:31:14] Thank you, Ms. Thomas Lee. Welcome.

GRACIA LANTIS: [02:31:24] Hi. My name is Gracia Lantis, G-r-a-c-i-a L-a-n-t-i-s. I am currently the photography editor for North Platte High School's student newspaper, The Bulldogger. And I had this really long letter. It was like 3 minutes and 20 seconds when I timed it. But I think I'm just going to get to the point. So why does someone, someone being administrators at my school, with less knowledge, experience, and training in journalism have to validate something that I already know to be completely credible and accurate? Well, it's because it's not about whether it's accurate. It's about whether or not the story is good for my school's image. Knowing that schools are supposed to teach democracy and civics, this makes no sense to me. I'm tired of questioning whether the complete raw truth is worth losing our paper or my adviser losing her job. Vote favorably-- favorably for LB206. Thank you.

LATHROP: [02:32:27] You got right to the point. [LAUGHTER] Thank you. We appreciate that very much. And thanks for coming all the way from North Platte.

LORI LARSON: [02:32:43] She had some great words. I'm a little sad.

LATHROP: [02:32:47] All right. Welcome.

LORI LARSON: [02:32:48] Hi. I'm Lori Larson, L-o-r-i L-a-r-s-o-n. And good afternoon. Thank you for your patience and listening to our testimony. We all feel very passionate about it. I am the journalism adviser at North Platte High School and the 2018 Nebraska Distinguished Adviser of the Year in journalism. I'm a Fulbright Scholar in teaching and my students consistently earn high achievements in the contests they participate in. Prior to teaching, I have been the school district's public relations director and a professional reporter. I've worked in TV, radio, newspaper, written for a blog which has also won awards. My point in sharing my CV with you is this. I know what journalism is and I know what public relations is. Sometimes they mesh but they are not the same thing. The motto of North Platte's journalism program is: Our integrity, your voice. We are ethical journalists who treat our sources as human beings deserving of respect. We avoid conflicts of interest. We take responsibility for our work and above all we seek the truth and report it. The problem is, sometimes the truth highlights a thing the district may not want to have the spotlight on. For example, in 2015 the students said-- you're going to probably know this a lot. The students said that vaping in the boys' bathroom was so bad it had been nicknamed "the vape lounge" and you could see billows of smoke coming out each passing period. Before I finish, I'd like to tell you that speaking today makes me nervous for my job security. I'm good at teaching and-- and discussing the not-so-sunny parts of my district is a thing that I've seen firsthand that holds the choice-- the chance of serious retribution. I was diagnosed with cancer last year and I need my insurance, so. I don't know how to describe the reality of the current state of student First Amendment rights without sharing our history though. I am here so you can make an informed vote, not to bash on my district. So two months after the vaping story was printed, I was called into the principal's office and was told that I could only run positive cover stories from this point on. If I didn't, I was told that my principal would get rid of the newspaper. He also told me that my students weren't The New York Times. The intimidation was serious enough that the Student Press Law Center advised me about my job and how the student staff could handle the threat. After the vaping story, the censorship grew to a monthly occurrence. We were censored on stories about special education, the changes

the student journalists felt were unsafe for their special-ed peers. We were censored on school district policy about start times. We were censored about marijuana use and teen pregnancy. We were prohibited from printing a story about the hidden racism at our school where we quoted a popular African American freshman who was being called an "Alabama wind-chime," a slang term for lynching. That-- that draft story is included in the papers that I gave you. It got to the point where the principal said he didn't like the color the paper-- the color of the paper in the yearbook. That paper was white. Despite the censorship, school officials have never demonstrated in any of these instances a reasonable educational justification for their altering, holding, or cutting of student work. This fall we did another story on teen e-cigarette usage. We have a new principal. He handled the story in the opposite fashion. He complimented the students on addressing a need they felt fit to highlight, spoke of its informative nature and balance of opinions. It's a new story but holds the same aspects as the previous one. School officials are in a power position. Administrators do not have extensive training in journalism or public relations, yet their decisions are allowed to supersede without much consistency or educational justification. This is a big deal. It's a big deal for me to risk coming down here and telling you how the present state of high school First Amendment rights isn't working. I want my students to do hard, thoughtful, critical work. I do not want to dumb down the curriculum just to make everything look pretty. You've heard our voice. Please use your integrity and support LB206.

LATHROP: [02:36:53] Ms. Larson, thanks for coming here today.

LORI LARSON: [02:36:57] Thank you.

LATHROP: [02:36:57] I appreciate that.

LORI LARSON: [02:36:58] Don't tell anyone I was here. [LAUGHTER]

LATHROP: [02:37:08] Good afternoon.

SYBLE HEFFERNAN: [02:37:09] Good afternoon. My name is Syble Heffernan. I am a graduate of North Platte High School and former staff member, editor-in-chief and NSAA award winner for the North Platte Bulldogger newspaper publication. I lived abroad as an exchange student in Brazil last year and I'm now a student at Nebraska Wesleyan University. I'm here today to testify to the Judiciary Committee on behalf of journalism students to the vitality of extending and protecting freedom of the press among student-led publications through LB206. As my adviser Lori Larson previously discussed, my junior year of high school, our publication covered increased reports of students vaping on school grounds. The administration initially approved it as a cover story. However, the controversy of the topic generated backlash from parents and community members and two months later our staff was confronted by the administration with new regulations for our publication. They stated that we were only permitted to run positive stories on the cover from that point on and any attempt at cover stories that could generate negative feedback would result in immediate termination of our publication. The following year as editor-in-chief I was faced with the task of establishing a fair and high-functioning relationship between the administration and our publication. My adviser and I organized several meetings with the associative superintendent, the director of secondary curriculum, and the school principal, which were met with great apathy as the administrators spent most of the time scrolling on their phones as I was giving propositions. This demonstrated that the administration took little interest in the goal of factual and ethical journalism, viewing the newspaper primarily as an instrument-- instrument for PR, as was directly stated to me by our former high school principal. Throughout my time on the newspaper there continue to be run-ins over administrative discomfort in running certain stories, specifically stories over controversial topics such as racism and school policy alterations. The administration was not well educated in the meaning of effective and ethical journalism and, therefore, did not realize the

importance of allowing their student-led publication to participate freely in the journalistic experience of sharing well-researched, well-rounded, newsworthy content with the community and student body. Their discomfort and limited understanding of journalistic values led to censorship, which was a direct infringement on our First Amendment rights. The freedom of the press is one of the primary listings in the First Amendment of the Constitution and one of our core rights as citizens of this country and it should be treated as such. My experience on the newspaper's staff provided me with opportunities for leadership, discovery, and adapting to a fast-paced and constantly evolving work environment. The experiences I had in this academic setting helped shaped me into the woman and leader I am becoming today. However, the infringement my staff received on our First Amendment rights through censorship sometimes limited our freedom in sharing accurate news and telling the stories that, quite frankly, needed to be told. Luckily we were able to overcome these adversities. However, the experience of staff members on student publications will be maximized if they are fully granted their constitutional right to freedom of the press. Students deserve the freedom to gain everything possible from their academic experience, journalistic experience, and experience as citizens of this country. This is why it is imperative for these students to receive unwavering protection of their First Amendment right of freedom of the press and why I'm here today in full support of LB206. Thank you.

LATHROP: [02:40:32] Great. Thank you very much for all the testimony from the proponents. This committee recognizes that many of you came from a long ways away to express your view and we appreciate that very much.

PANSING BROOKS: [02:40:49] I just want to say something.

LATHROP: [02:40:49] Oh. Senator Pansing Brooks.

PANSING BROOKS: [02:40:51] Thank you. Thank you, Ms. Heffernan. Also I just wanted to thank everybody for coming, such well-written, well-spoken words. And it gives us all such hope for our future and-- and the-- the important constitutional rights, freedom of press and-- thank you very much.

LATHROP: [02:41:10] Senator Chambers.

CHAMBERS: [02:41:13] I am not going to say everything that you young people inspired in me. I felt like-- let me say it like this. I had an urge to compliment each one of you as you spoke, to tell you why I appreciated what you said and the respect that I have for your coming here and saying it so well. That would have kept us here till midnight. So I decided to wait until everybody had spoken and it wouldn't seem, if I had picked one here and one there, that I favored some over others. All of you are to be complimented. You are telling your truth and you should let nobody kill that urge in you. They might can silence you while you're in school. I'm in the Legislature and I say what I believe and they've tried to change the rules to stop me and they couldn't. So the people-at-large found a way to silence me, they thought. They acknowledged that they got term limits to put me out of the Legislature. That's the greatest compliment somebody can pay you. [LAUGHTER] But you see that I came back. So they might be able to constrain and restrain you now, but the truth that you're telling will come out. They might compress and compress and compress, but what they do by compressing you is create enough explosive power that you can explode and that which is trying to constrain you cannot do it anymore. For us as adults to encourage you to tell the truth, to be honest and forthright, and then suppress you when you tell it is like giving birds wings and telling them don't fly, putting fish in the water and forbidding them to swim. You all are going to have to not let anything discourage you. Believe in yourself. And no matter how many people tell you what you say is not true, that does not make it so. You have to believe in yourself. And before I get carried away, I'm going to tell you what my mantra is and I got it from--I always have to put it

this way--the greatest thinker/philosopher ever produced by America and that is Popeye the Sailor Man. He said, I am what I am and that's all that I am. So be what you are. and don't let anybody take from you what you've demonstrated here this evening. And every statement that was presented, I'm going to keep it, I'm going to review it, and you all will know that you at your young age had a profound impression on an octogenarian--that means somebody at least 80 years old.

[LAUGHTER]

LATHROP: [02:44:26] OK. With that, we will take up the opponents who care to testify. Good afternoon.

JUSTIN KNIGHT: [02:44:39] Good afternoon. Chairman Lathrop, members of the Judiciary Committee, my name is Justin Knight, J-u-s-t-i-n K-n-i-g-h-t. I'm an attorney here in Lincoln with the Perry Law Firm. I'm only testifying today on behalf of myself. A large part of my practice, probably the majority of my practice, is working with school districts across the state. I'm here to express concerns with the text of the bill itself. I'm only concerned with Section 2 of the bill which relates to school districts. The definition of the term "school-sponsored media" in the bill as drafted includes any material that essentially is written, published, or broadcast by a student journalist. As I read that, that would include a student's personal social media accounts, Facebook page, Twitter account. If a student is the one authoring the material, at least as I read that definition and in my interpretation, that would-- that would be encompassed within the bill. (2)(a) of Section 2, the first sentence is that all school-sponsored media are deemed to be public forum. A public forum in the legal definition under the First Amendment is like a sidewalk or a park where it's very difficult to impose any type of-- of constraints. And so if all school-sponsored media, which would include the school district's own Facebook account, not student newspaper or student-sponsored Facebook account but the school-sponsored Facebook account, we've run into issues of-- of trolls and those individuals wanting to put their commercial promotional materials on the-- the Facebook page to

promote it. That would be a concern, if-- if the Legislature determines that everything is now a public forum, how we would-- we would go in and address that. Under Section (b) of section (2) of Section 2, the student journalists would have the ability to have control over advertising content and with-- with school accounting and finances and things like that, there would be a concern about where that-- where that money is going and how to account for that. One of the exceptions is-- is unwarranted invasion of privacy. I'm not sure of the distinction between a warranted and an unwarranted invasion of privacy. And then finally number (6) I believe there's an immunity provision for a high school, members of the school board, and employees of the school board pursuant-- or a publication pursuant to Section 2. I-- as I read it, I wasn't sure whether that immunity would apply if a publication met one of the exceptions in Section 3. So for the protection of school board members or the district, that would be something that-- that I wasn't sure of and thought we would probably try and address if-- if we could. Thank you.

LATHROP: [02:47:55] Thank you, Mr. Knight. I don't see any questions. Oh, I'm sorry. Senator Chambers.

CHAMBERS: [02:48:02] This gentleman has presented another part of the object lesson. Whenever there is a public issue of great concern, great importance, not everybody sees it the same way. But when you have people, even if they seem to be diametrically opposed but each one is thinking, each one is sincere, iron sharpens iron. They will get together. They will discuss it. They will come to what is the best conclusion. Then, if they still disagree, the one with the ultimate power is the one who will prevail. Before it reaches that point, however, I think there can be some discussion. I have a tremendous amount of respect for words. They should say what we mean them to say and when we put words in the law, we do have to be very careful. So I don't want you to be cast in the role of a villain because you are saying what may be the ultimate goal is good but we have to be very careful when we write a law in how we reach that goal. So I appreciate your

coming, just as I did the students'.

JUSTIN KNIGHT: [02:49:11] Thank you.

LATHROP: [02:49:12] OK. Thanks, Mr. Knight. Next opponent testifier. Good afternoon.

MARION MINER: [02:49:30] Good afternoon, Chairman Lathrop, members of the Judiciary Committee. Excuse me. My name is Marion Miner, spelling M-a-r-i-o-n, Miner, M-i-n-e-r. I'm here representing the Nebraska Catholic Conference which advocates for the public policy interests of the Catholic church by educating, engaging, and empowering public officials, Catholic laity, and the general public. I'm here just to remind you or-- or make you aware, if you're not already aware, that there are kind of two sides to the First Amendment coin that-- that need to be looked at with regard to this bill. We expressed at a hearing on this issue last year and have reached out to Senator Morfeld's office about this again this year in recent weeks that LB206 in its application has problematic constitutional implications as applied specifically to private religious universities and colleges, and we respectfully oppose this aspect of the legislation. LB206 would force private educational institutions to assist in the production and dissemination of speech with which they disagree. Such a compulsory act violates the First Amendment free speech clause right not to be compelled to convey messages with which the institution disagrees. LB206 would also deprive a private educational institution of the freedom to take adverse action against members-- members of its community who engage in expression contrary to the beliefs and mission of the institution. This is violative of the institution's free speech clause right to expressive association. Further, LB206 would deprive a religious educational institution of the ability to discipline a student media adviser or the student who engages in conduct contrary to the mission of the school, which violates the institutional autonomy of the school as protected by the free exercise and establishment clauses of the First Amendment. Where these involved are ministers, it also violates the ministerial exception

recognized unanimously by the U.S. Supreme Court-- Court in the Hosanna-Tabor case of 2012.

Finally, while the bill proposes to limit the rights created by the bill, those limits hardly begin to address those constitutional issues as applied again specifically to private educational institutions.

We request that the legislation, therefore, strike any reference to private postsecondary religious institutions. That will conclude my testimony. Thank you for your time and consideration.

LATHROP: [02:52:02] Senator Chambers.

MARION MINER: [02:52:04] Yes.

CHAMBERS: [02:52:04] For the record, in order that private will mean private, that there will be a sharp dividing line between the state and the church, do you mean that you feel so strongly about this that no taxpayer money, which is public money, should go to benefit any private schools or entities such as those you mentioned, like the lending of textbooks and other things of that kind?

MARION MINER: [02:52:37] The constitution doesn't require that level of separation and I'm not really prepared to discuss the nuances of-- of that.

CHAMBERS: [02:52:44] I'm not talking about the constitution. I'm talking about you. You came here to state a position and I'm asking you, is your position that there is such a sanctity about private schools, that the state should have no say-so over them, that we carry it and say that then no public money should go to these private institutions? I don't want any of my tax money to support any of them, so I feel as strongly in my view as you feel about yours. And when I say you, I know you're representing a client or-- or a principal, if you're a lobbyist. But I want you to keep that in mind. You don't even have to answer.

MARION MINER: [02:53:33] I would like to answer.

CHAMBERS: [02:53:34] Oh, fine. Let me finish. Let me finish.

MARION MINER: [02:53:35] Sure.

CHAMBERS: [02:53:37] I'm going to get a transcription of what you said. Then whenever any proposal comes up in the Legislature that would make any public money available for any of these private institutions, I shall use your words to buttress the arguments that I give right now anyway to stop that. They used to have what they called a PEEP program, P-E-E-P. It was an acronym. And I broke that up. So remember this, my friend. Once the battle is joined, it's going to be a two-way street when I'm one of the participants. And however you choose to respond, you can and I'm not going to be argumentative. So feel free to express as fully as you want to your response, whatever it is.

MARION MINER: [02:54:25] Sure thing. Thank you, Senator Chambers. My position is that the statutes passed by the state of Nebraska should comply with the requirements of the U.S. Constitution.

CHAMBERS: [02:54:36] That was short. [LAUGHTER]

LATHROP: [02:54:41] OK. I think that's it. Thank you, Mr. Miner, for being here.

MARION MINER: [02:54:45] Thank you.

LATHROP: [02:54:46] Is anyone else here wishing to testify in opposition to LB206? Anyone

here that wishes to testify in a neutral capacity? Seeing none, I'm going to read a few letters into the record before Senator Morfeld closes. In support we have letters from the following: Stephenie Conley; Ranae Duncan; Jenni Benson, Nebraska State Education Association; Clay Stone; Anam Vaziri; Quincey Epley; Ainsley Nichols; Jon Brouillette; Morgan Fischer; Julie Rowse; Sean Renner, Media of Nebraska; Coleman Riggins; Timm-- pardon me, Jim Timm, Nebraska Broadcasters Association; Emily Seaton; Jakob Fisher; Angelina Sanchez; Josie Preece; Amy Miller, the ACLU of Nebraska; Deborah Levitov; Elsacia Buck; Sophia Walsh; Corey Hadfield; and in opposition, Paul Turman, Nebraska State College System; Colby Coash, Nebraska Association of School Boards; Michael Dulaney, Nebraska Council of School Administrators; and Jack Moles, Nebraska Rural Community Schools Association. And with that, Senator Morfeld to close.

MORFELD: [02:56:27] Thank you very much, members of the committee, for taking the time to listen to the testimony today. And I just want to thank all of the students and advisers and other individuals that came out today. This is really compelling testimony and when I introduced this bill last year, I had no clue. I knew what I was getting into because I'd been dealing with this as a high school student myself, but I had no clue the caliber and quality of testimony and advocates that would come in support of it. and it's really inspiring. You know, in terms of working on some of the language, I'm happy to do that. I did want to point out one thing that the attorney from, I believe was, Perry Law Firm noted. In line 14, page 4, all school-sponsored media are deemed to be a public forum. I think you need to read the-- I think what alleviates his concern is the actual definition of school-sponsored media which starts on page 3, line 31. I just want to note this for the record. School-sponsored media means any material that is (i) prepared, substantially written, published, or broadcast by a student journalist at a public high school, (ii) distributed or generally made available to members of public body, and (iii) prepared under the direction of a student media adviser. So that's generally not going to be a random Facebook post on the Facebook page or

anything like that. So it's a much more narrow definition, if you read the actual definition, than what is in the lines below. The other thing that I'll say is, you know, if I was a school administrator, I'd understand why I'd be concerned about this. This restricts their ability to control content and other things that may be discomfoting to certain individuals in their community. But that being said, I-- one thing that's somewhat disappointing to me is I've had school administrators tell me, not publicly but behind closed doors, that, well, if you pass this, you know, good luck because we're just going to shut down our paper and our journalism program. That's really disconcerting and disappointing. And, you know, if that happens to be the case, then maybe what we'll do is build into the school aid formula that they fund a student journalism program to a certain amount or otherwise they can forfeit their state aid. And so we can look at other, you know, options to compel them to have a student journalism program and do their job. And I think the importance of this is such that, particularly in this time period when media is in flux, when journalism is in flux, when the facts aren't always clear, what-- what they are and what they are not, that we have even stronger journalism programs that we are dedicating more resources and we are strengthening protections for student journalists and other journalists across the country. And with that, I would be happy to answer any questions and close my testimony. Thank you for your time.

LATHROP: [02:59:06] I see no questions that will close our hearing on LB206. A big thank-you once again to those of you that have appeared today to testify and particularly those of you that have come from a long ways away. And that'll close our hearings for today. Thank you.