

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 27, 2020

LATHROP: [RECORDER MALFUNCTION] and I'm the Chair of the Judiciary Committee. I also represent Legislative District 12 in Omaha. Inside the door on the table, you will find yellow testifier sheets. If you're planning on testifying today, please fill one out and hand it to the page when you come up to testify. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. For future reference, if you're not testifying in person and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the last workday before the hearing. Keep in mind that you may submit a letter for the record or testify in person at the hearing but not both, and only those actually testifying in person at the hearing will be listed on the bill's committee statement. We will begin testimony with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, anyone who wishes to be heard in the neutral capacity. We will finish with a closing statement by the introducer if that senator wishes to give one. We utilize an on-deck chair. Those are the chairs immediately behind the testifier's table. Please keep the on-deck chairs filled with the next person to testify in order to keep the hearing moving along. We do ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can make more. If you are submitting testimony on someone else's behalf, you may submit it for the record but will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The-- when the light turns yellow, it's your one-minute warning, and when the light turns red, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings. Senators, however, are permitted to use them to take notes and stay in contact with staff. At this time, I'd ask everyone to make sure their cell phones are in the silent mode. Also, verbal outbursts and applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill being heard. Senators may have some bills to introduce in other committees or have other meetings to attend to. Before we begin, I'll ask the members to introduce themselves, and we'll start with Senator DeBoer.

DeBOER: Hi. My name is Wendy DeBoer. I represent District 10, which is Bennington and northwest Omaha.

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BRANDT: Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

SLAMA: Julie Slama, District 1, Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

LATHROP: We are assisted today by our committee clerk, Laurie Vollertsen and, or as well as, Neal Erickson, one of our two legal counsel. Our committee pages are Ashton Krebs and Lorenzo Catalano, who have served us-- today, as you may know, is our last hearing day, so these two young men have done a great job for us all year long. We appreciate that. They're students at UNL. We've been joined by Senator Morfeld. And with that, we'll take the first bill, which is LB1115 and Senator Matt Hansen. Welcome to the last day of hearings, Senator Hansen.

M. HANSEN: Thank you. I believe I was here on the first day of hearings, too, so.

LATHROP: You were on a lot of them in between as well.

M. HANSEN: All right. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Matt Hansen and I represent LD26 in northeast Lincoln. That's M-a-t-t H-a-n-s-e-n. I present for your consideration LB1115, which proposes an adjustment to the Nebraska Uniform Real Property Transfer on Death Act. This bill is quite simple and it is narrowly tailored to address a small issue in Nebraska's statute related to transfer and death deeds. Nebraska adopted the Uniform Real Property Transfer and Death Act in 2012. When Nebraska passed the bill, however, there was one change made that deviates from the uniform act. Members of the Nebraska State Bar Association's real estate, probate and trust section prepared LB1115 to address those concerns that have arisen given that deviation. So the bill makes two minor adjustments to the Nebraska statute. First, it removes a requirement that deeds must revoke a previously recorded transfer-on-death deed may not be filed within 30 days of execution. This 30-day requirement is unique to Nebraska and does not comport with the uniform act. Further, the 30-day requirement gives rise to a few traps for both attorneys and title abstractors that are easily avoidable. Instead of a 30-day window, this bill would revert to maintaining consistency with the uniform act and requires simply that the deed be recorded before the grantor's death. Second, because of some recording-- recording challenges somewhat unique to different Nebraska jurisdictions, the bill would provide a window for recording that might go-- extend beyond the grantor's death if the grantee is a

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bona fide purchaser for value. This protects the grantee's interest when consideration has been exchanged for purposes of real property in those instances where immediate reporting might not be possible. There are Nebraska-- there are representatives of the Nebraska State Bar Association here to testify, who might be able to handle the technical questions better than I can. With that, I will end.

LATHROP: Thanks.

M. HANSEN: I'd be happy to take any questions.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Hansen, for introducing this bill. And you are an attorney, is that correct?

M. HANSEN: Yes, although I [INAUDIBLE] that question.

BRANDT: OK. So page 2, line 14, "An inter vivos deed"--

M. HANSEN: Yes.

BRANDT: And I'm trying to bone up on my Latin. What is that? What does that term mean?

M. HANSEN: An inter vivos deed is a deed that is granted during the lifetime of the grantor, so you're alive when you sell the property, basically.

BRANDT: OK, good enough. Thank you.

M. HANSEN: Thank you.

LATHROP: The great question would have been, how's a dead guy deed something? But that's different Latin. [LAUGHTER]

M. HANSEN: Right.

LATHROP: All right. Thank you, Senator Hansen. I think that's all the questions we have for you.

M. HANSEN: Thank you.

LATHROP: Proponents of the bill?

WARD HOPPE: Good afternoon.

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LATHROP: Good afternoon.

WARD HOPPE: My name is Ward Hoppe, W-a-r-d H-o-p-p-e. I'm an attorney living at 1600 Stonyhill Road in Lincoln. I'm here representing the Nebraska Bar Association and the Nebraska Realtors Association. In 2019, the real estate practice guidelines committee of the bar revised and updated the Nebraska title standards. They'd not been reviewed since '95, I believe. Mike Matejka of Omaha, John Hanson of McCook, and I were the chairmen of the-- and editors of that revision process. The reissued title standards were approved in October of 2019. Nebraska title standards, as the name implies, set the standards for the transfer of real estate in Nebraska. In the process of the review, we analyzed the transfer-on-death deed statutes and recognized problems waiting to surface. This bill corrects the flaws. Transfer-on-death deeds are a tool for a property owner to transfer property at death, much like a will or joint tenancy, and not requiring probate. The statutes provide that during lifetime the owner may do what he will with the property, including selling or transferring it. The statutes list three ways to revoke or change the testator's mind on the transfer-on-death deed, generally by-- by creating another deed to be filed at the register of deeds, and under the statute that must be within 30 days of the execution of such revoking deed and prior to the transferor's death. This bill removes that 30-day filing requirement. The filing requirement has no bearing on the intent of the owner to revoke the transfer-on-death deed. It is just a trap for an unwary abstractor or attorney reviewing the title record. The problem is that if the grantor obviously wants to revoke the transfer-on-death deed, if the filing is not timely made, the revocation is irr-- ineffective and the TOD beneficiary grantee gets the property, defeating a buyer and defeating the grantor's intent. And remember that the grantor has nothing to do with the time of the filing of the deed after the transfer occurs. Further, our group recognized a problem of an owner grantor intending to rev-- revoke a TODD by-- by selling a property to a bona fide purchaser defeated by the death of the grantor on the way home, for instance, from the closing, thus, in addition in the bill, two things in the bill: one, to eliminate the 30-day requirement for filing; and two, to give a bona fide purchaser 30 days after a closing on a bona fide purchase of a property that has a previously filed TODD 30 days in which to file their deed and yet transferor may die, so--

LATHROP: OK.

WARD HOPPE: --two things in it. We would appreciate you moving forward with this bill. It corrects a problem.

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LATHROP: Always exciting when we come in and talk about deeds and probate. [LAUGHTER] I know everybody was looking forward to it.

WARD HOPPE: I'm just glad you put us first.

LATHROP: Thank you for being here today.

WARD HOPPE: Any questions?

LATHROP: We appreciate the explanation, Mr. Hoppe.

WARD HOPPE: Yeah. Thank you.

LATHROP: Any other proponents? Anyone here in opposition? How about neutral capacity? We have no letters and the sponsor just waived, so that will close our hearing on LB1115. Thank you for being here and for your testimony. With that, we will close our hearing on LB1115 and bring us to LB1094 and, Senator Murman, you may proceed to introduce your bill.

MURMAN: Good afternoon, Chairman Lathrop and members of Judic-- of the Judiciary Committee. My name is Dave Murman, Senator Dave Murman, spelled D-a-v-e M-u-r-m-a-n. I represent District 38, counties of Clay, Webster, Nuckolls, Franklin, Kearney, Phelps, and southwest Buffalo County. Today I bring LB1094 for your consideration. LB1094 was developed from a concern that a constituent of mine had dealing with a child support and the placing of a ten-year lien if the child support isn't current. This constituent tried to sell his home but couldn't due to a lien. He was thoroughly confused because his child had already turned 19 and he wasn't even paying child support anymore. I understand this could be fixed with a conversation between both parents, but not all parents get along after a separation. Therefore, he had to hire an attorney to fight the lien with a lawyer and court fees. I have passed out an article to the committee that also spells out concerns. I bring AM2606 for your consideration today after some further consideration and conversations with interested parties. The concern was that if we removed the language of "and such lien shall not be reinstated," then it would-- it would essentially put child support on equal footing with all other civil judgments and child support would be subject to regular judgment dormancy and reviver status-- statutes. Removing "and such lien shall not be reinstated" would create a sense of uncertainty around the point for industry-specific groups. Ultimately, what this bill rectifies is the issue of a parent currently has a property lien in place and they are current on their payments. The lien will be lifted once the child dies

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or turns the age of majority, instead of waiting for ten years after the judgement was imposed. I'll do my best to answer any questions you might have.

LATHROP: Any questions for Senator Murman? Yes, Senator DeBoer.

MURMAN: Yeah.

DeBOER: Do you-- is someone coming to testify after you about some of the specifics of the legal?

MURMAN: I'm not sure about that.

DeBOER: OK. So one of my questions is, this ten-year waiting period, is this to clear up-- is this so that there's time to clear things up? Do you know what the purpose of the ten-year period was?

MURMAN: No, I-- I'm confused as to why there would be a ten-year period, because if the last child has turned 19 and they're-- or dies, and is current on their payments, that should clear it up.

DeBOER: OK. I'll see if there's someone who can--

MURMAN: OK. Thank you.

LATHROP: I-- Senator Wayne.

WAYNE: Thank you for bringing this bill. I actually did not know you introduced it or I would probably have cosponsored already. This is a huge issue and I really appreciate it. I do practice family law and this is becoming more and more an issue, even 30 years after they're divorced and their kids are grown. They're just-- and what happens is-- it's not really a question, but if we have questions about the legal matter, we can talk about it off line. But there is an issue that you do have to go back into court constantly just to have the judge set aside to lien so you can sell the house because title companies won't go forward because of how our state statute is written. So it does cost extra money for people, 30 years, kids are grown, but the title company doesn't know the kids are grown, doesn't know anything else. They just see this lien, so you have to go in. And even judges hate it. They just feel like-- they sign it. But I do know why it's there. I do think we should be able to fix this, and I'm glad you brought this bill. And if it's not a part of a package next-- this year, next year, if I'm lucky enough to get reelected, let's-- let's work on it.

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MURMAN: OK. Thanks a lot. I appreciate that.

LATHROP: I don't see any other questions. Thank you, Senator.

MURMAN: Thank you.

LATHROP: Are there proponents here to testify in support of LB1094? Seeing, none, are there any opponents? Oh. I know what I said the last time this happened, and I'll be very careful this time. Welcome.
[LAUGHTER]

TIM HRUZA: Chairman Lathrop--

LATHROP: That might have been on an open mike the previous time.

TIM HRUZA: --members of the Judiciary Committee, my name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of Nebraska State Bar Association in opposition to LB1094. Let me first begin my testimony by saying that the Bar Association thanks Senator Murman for reaching out to us on this issue prior to the session starting. He was kind enough to circulate a draft of the bill to the family law section of the Nebraska State Bar Association. We provided some feedback at that time and-- and got a number of-- a lot of feedback from a number of members of the bar, the family section of the Bar Association. I've had conversations with Senator Murman's staff about this bill. Let me be clear. We do not oppose the intent of the legislation. I think the concerns from lawyers that have looked at this is about the practicality of how it would-- how it would be-- how it would be effective or whether it would be effective. The bill purports to provide that a lien for child support would automatically cease to exist once that the child support becomes current and the child-- or the child has reached the age of majority. I think, to Senator Wayne's earlier question here, the current process is that you go in front of the district court judge in the matter and you have-- you-- you show to them that the child support payments are current, that-- or that the lien should be released, and they enter an order releasing that lien. It's pretty standard that that has to happen for-- for real property to be transferred, and many title companies require that that lien-- that judgment be issued before the-- the real property can be transferred. I think the concern attorneys have is that by simply putting in the language that the lien would cease to exist still is probably going to require you to go back to the court and get an entry of judge-- an order from the judge with some legal authority determining the child support is current, right? So the provision of the bill or whatever that allows-- or the provision of the current

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statute that allows the filing of the petition is in sub (3). And I'm working off the amendment here, but it starts at line 25 on page 1. And-- and-- and I think that the-- the concern that we have isn't that this isn't functional, but it's simply that you-- you need-- because the lien a ten-year existing lien, you need some sort of authority to establish clearly and without question that the lien-- the child support payments are current and that all obligations are satisfied. The lien is there to protect the needs of the child, right, and to ensure that the-- the child support obligor makes payment accordingly. So we've put the lien on the real property to make sure that there's some sort of security for that interest. In-- in any event, I think the attorneys believe that you'll-- even with this language, you'll still be going through the court process to get the judgment. We are happy to work with Senator Murman. We are committed to working with him for some-- some potential way forward. I will tell you right now, though, that after our discussions, I'm not sure that we have a consensus about the-- the-- the way to word this so that it works appropriately. With that, I'm happy to take questions that you might have.

LATHROP: Senator Wayne.

WAYNE: I'm trying not to. OK, so currently, if somebody is delinquent on child support, they can lose their license, right?

TIM HRUZA: Ooh, you're-- you-- let me be-- to-- I am no expert on family law issues. I-- I do know enough to be dangerous in this-- on this bill.

WAYNE: So that-- OK. So currently, yes, there's a whole fourth court-- fourth-- fourth floor in Douglas County on the north side-- on the east side is-- is family court, right? So what happens is if you're delinquent on child support, you can lose your license. Then we get a whole bunch of people who are convicted of driving under suspension and are thrown into a system for simply child support. That's issue number one that I have. You're not-- this bill doesn't touch that, but that's a whole nother issue. But then on a separate side of that, you have people who are ready to sell their homes. They get ready to-- they get an offer on their home. They do their title search. And because Douglas County is dealing with murders, robberies, etcetera, they can't get in their home for 60 days, so they lose that opportunity to get their household. And it happens every time there's a child support order. It isn't just-- most of the time, you can go to the other person and say, can you sign off on this as being current? But if those two individuals don't get along, you essentially will

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always lose your first offer on your house, every time. We can't come up with a solution to that?

TIM HRUZA: Senator, I-- I appreciate and I fully understand the concern and I-- I understand the issue. I mean, with-- with a lien against the property, it-- it encumbers the real estate, and frankly, that-- that is the intent of the provision working like that. The concern, I think, by simply stating that the lien ceases to exist upon-- at a certain point in time, right, you still have to have some sort of determination that what-- what the child support payor is-- says or-- or asserts is correct, accurate, up to date. And so I think that the issue is that if you still can't get the other person to sign off on it and saying that they're paid, you're still going to have to go back through sub (3)-- the sub (3) process and petition the court for entry of an order releasing that lien.

WAYNE: Coll-- I understand. Colleagues, I promise I won't answer [SIC] any question on the rest of the bills today because-- but-- but my-- my issue-- my issue is--

TIM HRUZA: Yes.

WAYNE: --and this is why I'm really kind of disappointed in the bar's position on this, is because-- why is there a lien at all when the fact of the matter is you can be-- you can lose your license? Why not just get rid of the lien altogether? You-- you literally can lose your license. People do 60 days for a purge order if they're behind on child support, in jail, which they lose their-- which they lose their job, and then we're back to not paying child support, and it's this vicious cycle. Why are we ever attaching it to the property?

TIM HRUZA: Well, Senator, I obviously have not been around as long as that public policy has been in place. I have to assume, I guess, that the intent is to ensure that the child support is paid for the benefit of the children. I assume that it is there provide as much protection to ensure that the children are-- are--

WAYNE: I understand. It's an unfair question.

TIM HRUZA: --provided for.

WAYNE: It's an unfair question. I'm just--

TIM HRUZA: Yeah, I--

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WAYNE: I'm just-- I practice in family law and it's just-- this is one of these provisions that are very frustrating because literally people can't sell their house, and then if you do get a judge to sign off on it on day one and you don't get another offer until day 90, guess what? You have to go back in front of a judge--

TIM HRUZA: Yeah.

WAYNE: --because nobody's going to believe that the title is still OK for three-- three months. So you're-- you're in this cycle of never selling your property.

TIM HRUZA: Right. And-- and again, to be clear, I have-- I have promised to work with Senator Murman. I'm happy to work with you. We have a group of family law attorneys that have been discussing this since the bill was introduced, and-- and we will continue to work on it this year. I'm here in opposition not to the concept but to the fact that we don't-- we don't think this is going to solve the issue of having to go in front of a judge, and to the extent that we're going to create a lien on the property, it's probably in the best interests of both parties, right, the person-- the payee and the payor, that a judge review the record and ensure that it's as-- it's current like it's supposed to be.

WAYNE: I really want to ask questions on the later bills, but I won't because I wasted all my questions right now, so thank you. I will be quiet.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. I don't have a limit on questions, unlike Senator Wayne here. So if we were to pass this bill, would that not eliminate the requirement in the example, and you probably didn't see the example that he passed out, where they had to try and track down the individual that had placed that lien? If we would just go ahead and pass this, it eliminates a hurdle for somebody trying to sell a house because if they owed back child support, like Senator Wayne had indicated, the-- the courts know that.

TIM HRUZA: That might be a better question for-- and I don't know enough about from the title standards or the title abstract or title insurance side. The attorneys that have given us feedback have still raised concerns about whether or not simply putting in the statute that it-- that it ceases to exist without some sort of affirmative conduct by a court of law or by some sort of authority that would

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establish or by signing off by the person, the creditor, right, the person who is owed the money, without some sort of affirmative conduct by them, they're-- it's not clear that title would be clear. So, I mean, I-- I suppose maybe in some situation a title insurance company could ask the-- the payee-- or the payor, excuse me, to-- to submit an affidavit saying they're current on their title-- on-- that all of these qualities are met and then they might release the-- allow the sale to go through. But you have to do something affirmatively to release the lien, and I think that's where you're still, if you can't get the other person to sign off on it with mutual agreement that it's paid or that the obligation is no longer owed, you still have to go through the subsection (3) process and get a court order to do it.

BRANDT: It just looks to me like the bill takes care of the affirmative part.

TIM HRUZA: It takes care of the standard question, right, the question of is there anything owed or will there likely be anything owed in the future, but there's still-- the lien is already in existence on the property. This, you have to do something to affirmatively clear it, if that makes sense.

BRANDT: Thank you.

LATHROP: I don't see any other questions. It seems to me this is about not getting the recipient of the child support to sign a satisfaction when the youngest child reaches the age of majority and all the child support is paid. If you had that and stuck it in the district court file, this problem wouldn't exist.

TIM HRUZA: That is correct, Senator. When both parties are mutually working to each other's benefit and-- and amicable, this issue should not arise.

LATHROP: OK. Well, I understand how that doesn't happen really
[INAUDIBLE]

TIM HRUZA: Oh, believe me-- believe me, yes, sir.

LATHROP: I mean, if they got along that well, they probably wouldn't be in district court in the first place--

TIM HRUZA: Yes.

LATHROP: --paying child support. OK. Thank you, Mr. Hruza. It's our last day of hearings and apparently we're getting a little punchy.

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Anyone else here to oppose Senator Murman's bill? Anyone here to speak in a neutral capacity? Seeing, none, Senator Murman, you may close.

MURMAN: Thank you enough-- or thank you very much, Chairman Lathrop and members of the committee. At least, if nothing else today, we found out how we can work-- with whom we can work together in the future to improve this legislation, this bill. So I'd take any questions you have.

LATHROP: They come out of the woodwork.

MURMAN: Yep.

LATHROP: All right. Well, you've got an ally in the Judiciary Committee. I don't see any other questions. Thank you for being here today.

MURMAN: Thank you.

LATHROP: That will close our hearing on LB1094 and bring us to LB1091 and Senator Vargas. Senator Vargas, you may open.

VARGAS: It's good thing we don't have a time limit for introductions. OK. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I have the pleasure of representing District 7, the communities of downtown and south Omaha, in the Nebraska Legislature. Simply put, LB1091 would ban the use of facial recognition technology in the state of Nebraska. Under the bill, no governmental entity would be able to access or use facial recognition technology, and data collected from face surveillance technology would not be able to be used as evidence in any legal proceeding. For those of you who are less familiar with what facial recog-- facial recognition technology is, I'll try to give a brief primer. But I'll be honest, this is not area of expertise for most individuals. It's very new, still new. Face surveillance is considered to be any computer software or application that uses automated or semiautomated processes to identify or gather information based on physical features or face. Unlike many other biometric systems, facial recognition can be used for general surveillance in combination with other sources, like public video cameras, in a passive way that does not require the knowledge, consent, or participation of the individual. The biggest danger and the most extreme circumstance is that the use of this technology could lead to a dystopian society where facial recognition technology will be used as a tool of oppression for general and suspicionless

surveillance-- suspicionless surveillance systems. Now the problems of facial recognition technology are well documented. Research on facial recognition technology has revealed the biases that exist in the different technologies, all of which mistakenly identify people of color, women, and children and seniors, at more frequent rates, in some instances at a rate of more than ten times of other demographic groups. A more famous instance that was reported in 2018 showed that Rekognition-- that's Amazon's facial recognition technology-- misidentified 28 members of Congress as matching mug shots of individuals who had been arrested for a crime. Putting the issues of accuracy in the technology aside, there are other serious things we must consider, including its infringement on our constitutional rights to free speech and assembly. A more notorious example of this was police use of technology during the protests in Baltimore after Freddie Gray's death, where they partnered with a tech company to feed images from social media, matched them against images in the crowd, faces in the crowd, and used that as a way to arrest people who they believed to have outstanding warrants. In 2016, the Government Accountability Office revealed that nearly 16 states, including ours, let the FB-- FBI use facial recognition technology to compare faces of suspected criminals to their ID photos without knowledge or consent of more than 64 million Americans. And just earlier this month, the U.S. Department of Homeland Security announced future plans for face surveillance at airports, including using the technology to surveil all 2 million passengers who pass through TSA security checkpoints every day. Additionally, U.S. Customs and Border Patrol has said it plans to start running passenger photos through a biometric watchlist, which only stands to increase the number of Americans who get mistaken for somebody else on those watchlists. Now, despite the call from national organizations, tech companies, and other stakeholders, our federal government has failed to enact regulation or oversight on facial recognition technology. That means it's up to us, especially in our states, our laboratories of democracy, to navigate these waters on our own and figure out what kinds of protections we feel are necessary for Nebraskans. Now a few states and cities have enacted laws that ban the use of facial recognition technology in different ways. This is the first time we've talked about it on a statewide level, so I understand that there will be a lot of education discussion that is needed. This bill is-- is drafted very broadly to serve as a starting point for these discussions. My hope is that we'll all learn more about how this technology is being used and, more importantly, begin to think through what uses we feel are appropriate and where we need to be more careful. I look forward to the remaining testimony, and there will be people-- people testifying in support and against, and

towards working with the committee and other stakeholders on this issue moving forward. The only thing I'll say is I think sometimes we introduce legislation with the intent to begin to create a set of statutes and rules and regulations that ensure that Nebraskans are-- are safe and we're anticipating technology at times. What I hate to do is that we wait and see. That approach in-- in-- in law doesn't always work and is a concern that if we wait and see with technology like this that is currently being used all over the country, that we open ourselves up to a whole set of unintended consequences. With that, I'm happy to answer any questions. There will be others testifying, both in support and against.

LATHROP: I don't see any. I will make this observation. I remember when Senator Schumacher brought a bill dealing with drones, and I thought it was completely nuts and I-- I had no idea that we were-- that it was even a thing. And this kind of falls in that category where it's pretty hard to anticipate exactly how this might be regulated, but I can certainly see the-- the dimensions of the concerns. So thanks for bringing the bill.

VARGAS: Thank you.

LATHROP: We'll look forward to your close. Those that are in favor of the bill can come forward if they wish to be heard.

SPIKE EICKHOLT: Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB1091. We want to thank Senator Vargas for introducing the bill. He did, I thought, a very good explanation of the reasons to at least introduce this bill to have this discussion. I mean, the ACLU is concerned with privacy, digital privacy, and the rights of people to sort of be free from constant surveillance and intrusion by their government and other entities. We are living in an age of dramatic technological progress. We already have other sort of intrusive surveillance systems out there. We have, if you have any kind of a smartphone, there's a GPS device in there, so the government can always track where you are with it. We have the ability to monitor email communication, text communication, and phone communication very easily. This is even more intrusive in a different slight type of way because it allows for the passive and general way to immediately identify people, almost as if you're walking around with some sort of a sign that says your name, maybe where you live, how old you are, and that sort of thing. The way I understand the-- the surveil-- the-- the-- the facial recognition technology, it's almost like-- the way I think about it conceptually

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is almost like a thumbprint, a high-digital-quality photograph of your face is taken, and then there's a computer algorithm that sort of takes a face print, if you will, of that, that can somehow identify that very easily, sometimes by looking at other photographs, sometimes video and that sort of thing. The problem that you see in the privacy setting is when the-- when the technology works poorly, right, when you get people misidentified, and Senator Vargas gave some of those examples. There's a 2000-- or December of '19-- 2019-- I should have brought it-- from the Washington Post article that talked about how people of color, African Americans and Native Americans, were up to 100 times more falsely identified with a lot of the common technology. The other concern is when the technology is working very well, and that is you essentially don't have the right to be not identified anywhere you happen to go. As Senator Vargas indicated, there-- there are plans and there are already some existing scenarios where this technology is being used regularly at airports to identify people as they leave and exit the areas. And there really isn't any sort of statutory or regulatory control over this at the national or even state level. There's been a handful of states that have proposed similar legislation and there's been a number of different cities, including San Francisco and a number of cities in Massachusetts, that have tried to get a handle on this. But as Senator Vargas indicated, this issue is-- is important and we would invite the committee to at least consider this and think of ways to sort of address it. I think if you look at the fiscal note, particularly, it looks like we're already sort of behind the curve, if you will, because, the way I read the DMV's fiscal note is they are already sort of using some sort of facial recognition technology, and presumably, and I think according to what Senator Vargas may have said his introduction, maybe sharing this information with other agencies, other state or federal agencies. So it's something at least that is worthy of considering. We'd encourage the committee to do so.

LATHROP: OK. Any questions for Mr. Eickholt? I see none.

SPIKE EICKHOLT: Thank you.

LATHROP: Thanks for being here. Wouldn't be the last day of committee hearing this without having you testify a couple of times. Any other proponents? Any opponents?

COLIN FURY: I'm a proponent [INAUDIBLE]

LATHROP: Proponent?

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COLIN FURY: Yes, sir.

LATHROP: OK. Sorry, I might have gotten to the opponents too quickly. Welcome.

COLIN FURY: Thank you, Chairman. Members-- Chairman Lathrop, members of the committee, thank you for your service here today. And thank you, Senator Vargas, for bringing LB1091. I'm Colin Fury, C-o-l-i-n F-u-r-y. I'm with Restore the Fourth. We're a Boston-based 501(c)(4) nonprofit corporation dedicated to restoring the Fourth Amendment to the U.S. Constitution and ending unconstitutional mass surveillance. Restore the Fourth welcomes people of all peaceful political beliefs. FRT, facial recognition technology, reform unites everyone. This month, Restore the Fourth joined Fight for the Future, the ACLU, FreedomWorks, and the Black Alliance for Just Immigration in opposing the use of FRT on college campuses. Restore the Fourth has worked with Senator Peter Lucido this session in Michigan to pass, by a 32-4 vote, an FRT ban by law enforcement in Michigan that's being discussed in the house. We're also supporting a moratorium brought by the Democrat majority leader Cynthia Stone Creem in Massachusetts. I understand I only have a few minutes, but I'd refer you all to a number of articles that have been written by Tobias Hoonhout in National Review, William F. Buckley's magazine on how the Chinese government is using facial recognition, and I apologize for the enunciation, in Xinjiang Province in China to suppress the Uighur population, whether it's confiscating Quran, citing them for jaywalking or taking them-- identifying Uighurs and taking them to reeducation camps. In Hong Kong there's been facial recognition technology towers that have been torn down. And the mask industry in Hong Kong, a lot of people are now buying and selling masks. And the social credit score marketplace in China is breeding a lot of controversy. The U.S.'s National Institute of Standard Technology has indicated that facial recognition technology is ten times more likely to misidentify darker-skinned females as compared to lighter-skinned females. And the ACLU had a report that showed that facial recognition technology misidentified 28 members of Congress, including Congressman John Lewis. It is easy to see how this well-meaning use of this technology can evolve out of control quickly in the next 1 or 10, 15 years. Future generations deserve to grow up free, and Restore the Fourth believes in stifling the use of FRT and asks that protections from unreasonable searches be respected. We asked that the committee members vote yes on LB1091 or, at the very least, since you have a lack of time this session, maybe have an interim study to review the issue and have maybe a temporary moratorium as the issue is studied further. Anyways, thank you for giving me the time to testify here today, Chairman.

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LATHROP: You came from Massachusetts?

COLIN FURY: No, no. I-- I-- I'm here in Nebraska.

LATHROP: OK.

COLIN FURY: I-- I'm just--

LATHROP: I was going to say, that's a long ways for three minutes.

COLIN FURY: With-- you know, with-- with technology, we have a lot of phone conference meetings and, you know, members from Pennsylvania, Florida, Michigan.

LATHROP: OK.

COLIN FURY: So--

LATHROP: Well, we appreciate the fact that--

COLIN FURY: Our chairman was just in Patagonia this week, so he couldn't come out to testify, so.

LATHROP: OK. Well, we appreciate your testimony.

COLIN FURY: Thank you, sir.

LATHROP: Thanks for being here today. Any other proponents? Any opponents wishing to testify? Good afternoon.

DRAKE JAMALI: Afternoon. Afternoon, Chairman, members of the committee. My name is Drake Jamali. That's D-r-a-k-e; last name is J-a-m-a-l-i. I am with the Security Industry Association in opposition to LB1091. We're a nonprofit trade association representing businesses that provide a broad range of security products for government, commercial, and residential users, including businesses with employees and operations in Nebraska. Our members include many leading developers of facial recognition technology, as well as those incorporating that technology into a wide range of security and public safety applications. SIA believes all technology products, including facial recognition, must only be used for purposes that are lawful, ethical, and nondiscriminatory. Specifically, we believe this technology makes our country safer and brings value to our everyday lives when used effectively and responsibly. The tremendous benefits of the technology are well established. Government agencies across the nation have made effective use of it for more than a decade to improve

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homeland security, public safety, and criminal investigations. For example, it has been used to identify over 9,000 missing children and over 10,000 traffickers in North America. In one case last year, a law enforcement officer in California saw a social media post about a missing child from the National Center for Missing and Exploited Children. After the law enforcement officer used the technology, the victimized child was located and recovered. In another example last year, NYPD detectives used the technology to identify a man who sparked terror by leaving a pair of rice cookers in the subway station. Using the technology, along with human review, detectives were able to identify the suspect within an hour. The chief of detectives was quoted by saying to not use this technology would be negligent. NB1091 [SIC] would immediately take these critical tools off the table for law enforcement officials throughout the state and prevent their use in the future, putting the safety of every resident at risk, and it is clear that the bill would go far beyond law enforcement to be in other established uses, like access control or secured employee access to buildings and software that detects fraud against government programs, to name a few. In fact, because the problematic definition for the technology is so broad, the ban of face surveillance prohibit any government official, employee, contractor or vendor from using any technology capabilities, including social media sites and smartphones. Before taking extreme-- instead of abating all possible government applications of the technology, we urge policymakers to thoroughly examine how the technology is used. For example, SIA believes transparency and accountability measures can be identifiable that would ensure responsible use of technology without unreasonably restricting tools that have become central to public safety. And regarding bias, the National Institute of Standards, which is through the Department of Commerce, has recently found that current technology performs far better across racial groups than widely reported. SIA believes there needs to be continual improvement, but the context is important. Here, NIST also documents that the software is over 20 times more accurate than it was in 2014, and studies in December of 2019 reported-- found close to perfect performance by high-performing algorithms, with miss rates averaging 0.1 percent. The accuracy of this technology is only improving every single day, and for that, we think that the technology should be utilized for investigative purposes. For these reasons, SIA urges you not to advance LB1091. I'm happy to take any questions and talk with you in the future, so thanks.

LATHROP: OK. Senator Brandt.

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BRANDT: Thank you, Chairman Lathrop. Thank you for coming today. How accurate is this system? I mean, does it ever misidentify anybody?

DRAKE JAMALI: So the top NIST, which is the National Institute of Standards Technology through the Department of Commerce, released a study in December of last year that the top 20 algorithms either had a 0.1 percent inaccuracy rate, or error rate, which is 1 in 1,000. So this is highly related-- I mean highly technically safe technology. When it comes to accuracy, it's at 99.9 percent when it comes to doing one-face-to-another-face identification, and same thing with other groups from, you know, darker-skinned individuals, women of color, so forth.

BRANDT: So you're saying you only have one-tenth of 1 percent error rate. Is that correct?

DRAKE JAMALI: In the-- so NIST has over-- around 200 algorithms that were tested, and anybody can submit an algorithm, so that could be a small mom-and-pop shop that just developed the technology last week. They could submit it to NIST for testing. But the top 20 algorithms are used by law enforcement agencies, the federal government. They use only the top 20, 30 technology algorithms, and those are highly accurate and have found no significant bias for racial demographics.

BRANDT: OK, so back to my question.

DRAKE JAMALI: Yes.

BRANDT: You're saying it's one-tenth of 1 percent error rate--

DRAKE JAMALI: Be a 0.110 percent-- I mean, sorry, 0.1 percent.

BRANDT: So then they compare these against driver's license pictures? You have to compare it against something to identify something.

DRAKE JAMALI: Right. So I think some agencies do use it on driver's licenses. I believe several states do use it with their DMV records. But other states use either nonprofit databases, so, for instance, the-- the Missing Children's in California that I was talking about, that's through a nonprofit called Thorn, which is actually-- remember Ashton Kutcher?

BRANDT: OK.

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DRAKE JAMALI: I'm sure you're familiar with him. They actually take social media photos to help locate missing children, and so they use that as a database, but, you know, depends on how each state uses it.

BRANDT: But in the case of the missing children, I'm sure the parents have submitted these pictures--

DRAKE JAMALI: Yes.

BRANDT: --willingly.

DRAKE JAMALI: Yes.

BRANDT: In the case of the-- the public, where did they get my picture if they didn't ask me?

DRAKE JAMALI: That, it just-- it depends on-- I-- in Nebraska. I'm not totally aware of how it's utilized, but that is something I can look into and get back to you on.

BRANDT: And then one final question. How long do you typically keep the files?

DRAKE JAMALI: This-- again, it-- it just depends on how the agency is using the technology, or even a commercial agency, for instance. I'm not sure who using in Nebraska, but I can get back to you on that one. All right?

BRANDT: Thank you.

LATHROP: You were just asked where they get Senator Brandt's image if he doesn't give them permission. Are they getting this stuff off of Facebook and social media?

DRAKE JAMALI: I-- I'm--

LATHROP: Or they go on and they look for-- they get a picture and it's identified as Tom Brandt. Do they put that-- if they-- if they have enough confirmations, do they put that in as the Tom Brandt standard?

DRAKE JAMALI: I-- again, I'm not sure how they use it in Nebraska. I know that some agencies have their own databases, whether it be through--

LATHROP: No--

DRAKE JAMALI: --you know, a mug-- or--

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LATHROP: --this is-- these are-- this is a-- something vendors are offering. Is that true?

DRAKE JAMALI: To, yeah, law-- law enforcement agencies.

LATHROP: To law enforcement agencies?

DRAKE JAMALI: Um-hum.

LATHROP: So I'm not talking about what they do with it in Nebraska but where they get the image. How do they know that the--

DRAKE JAMALI: Those--

LATHROP: --image that they are peddling to a law--

DRAKE JAMALI: Right.

LATHROP: --enforcement agency is, in this case, Tom Brandt?

DRAKE JAMALI: If it's through a law enforcement agency or a state agency, it's either their own database that they have accrued through photos, either through mug shot photos or through maybe DMV photos, but it just depends on the agency that's using the technology. It varies on all 50 states.

LATHROP: Do some of them get the original image from social media?

DRAKE JAMALI: I-- I'm not sure. I can get back to you on that. Yeah.

LATHROP: OK. All right. Senator.

WAYNE: I just Googled Tom Brandt and did images. It's-- there's a lot of different faces of you out there. [LAUGHTER]

LATHROP: I think that's all the questions we have for you. Thank you.

DRAKE JAMALI: OK. Thank you so much.

LATHROP: Anyone else here to testify as an opponent? Good afternoon.

JEFF LUX: Good afternoon, Mr. Chairman, members of the committee. My name is Jeff Lux, first name J-e-f-f, last name Lux, L-u-x. I'm a deputy Douglas County attorney, representing the Nebraska County Attorneys Association in opposition to LB1091, basically just out of an abundance of caution at this point. The-- the language that's used in the-- in the bill is-- is pretty broad, and I think that's been

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stated earlier. We met with Senator Vargas and his staff, and we'd like to thank you for that. That was-- we appreciate him meeting with us where we kind of brought up some of our concerns about the language being pretty broad and it might even just encompass just regular digital cameras, surveillance video that we would use to identify a shoplifter, that kind of thing. You know, police officer departments have programs that, you know, spit out photo arrays and they spit out and they use mug shots that are similar to the suspects and they spit out a photo array using, you know, a computer program, you know, using the-- the-- anything for an Amber Alert, trying to find someone who might be driving down the interstate and using the-- the highway's camera system that the Department of Transportation has. All these things that we don't think would really fit under, you know, we're not-- where there isn't an algorithm that's being used and maybe a hash value being applied to somebody's face, the-- the-- the definitions are so broad that we think it would encompass just, you know, regular, you know, security video that we'd use to identify someone that trespassed or st-- you know, stole a saw blade from Menards because of the broadness of the definitions. So that-- that's our kind of our main concern out of the gate is just that, the broadness of it. And I-- I've-- I've relayed that to Senator Vargas and talked to the ACLU about that as well. And then it's just kind of just basically like an all-out ban from even court. You know, if some-- if an ID isn't reliable, it's not going to make it into evidence before a judge if it's-- if it's an unreliable process that was used to identify somebody. So, I mean, I think we've already got a process in place for that, for the court type of scenario, but I guess just basically out of an abundance of caution, because these definitions are pretty broad at this time, that we came out in opposition.

LATHROP: OK. I do not see any questions for you, but thanks for being here today.

JEFF LUX: Thank you very much.

LATHROP: Anyone else here on opposition? Anyone here in a neutral capacity? Good afternoon.

RHONDA LAHM: Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Rhonda La-h-m, R-h-o-n-d-a L-a-h-m, and I'm director of the Nebraska Department of Motor Vehicles. I'm appearing before the committee today to testify in a neutral position on LB1091. I appreciate Senator Vargas' willingness to work with the department for clarification. The provisions of

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LB1091 would make it unlawful for any government entity to use a face surveillance system or information derived from that system. The definition of face surveillance as stated in the bill means an automated or semiautomated process that assists in identifying an individual, capturing information about an individual based on the physical characteristics of an individual's face, and the definition of-- of a face surveillance system means any computer software application that performs face surveillance. As stated in the above definitions, it's not clear that the facial recognition system used by the Department of Motor Vehicles to prevent identity theft and fraud would be exempt. Should the interpretation be that the department's facial recognition system is not exempt, it would place Nebraska in the category of an identity theft state. Facial recognition is an important tool used to prevent identity theft in the process of issuing driver's licenses and identification cards. It's also a tool used to prevent fraud in the testing process. The department sees identity theft used for a variety of criminal behaviors, for example, opening bank accounts or obtaining credit in the victim's name, purchasing an automobile or real estate, draining a victim's financial accounts, creating erroneous driving and criminal record entries, securing fraudulent benefits, or obtaining employment. We share Senator Vargas concerns regarding the use of any technology which we-- may be biased based on race, gender, or any other group of people. The DMV uses facial recognition, which is a vector-based algorithm, which places measurements and compares the images along a score, versus facial classification or estimation, which is a model-based algorithm and compares a single image to a class representation learned by a model. A study conducted by the U.S. National Institute of Standards and Technology in December of 2019 shows high accuracy for facial recognition software. The facial recognition software used by the Nebraska DMV was specifically cited by NIST as showing no differentials in terms of race or gender. Thank you for the opportunity to share technical concerns with the committee regarding the legislation for face surveillance. I urge the committee to make clear the bill would not include the facial recognition technology used by the department. I'm happy to answer any questions the committee may have.

LATHROP: Senator Wayne.

WAYNE: Sorry, colleagues, I misspoke. I didn't lie. I misspoke. Does the DMV share images with ICE, FBI, any other go-- government agencies?

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RHONDA LAHM: So the law in Nebraska is very specific about images, and images can only be shared with law enforcement or other departments-- other motor vehicle departments. And when you talk about-- I'm going to clarify a couple of things. Our system is only accessible by the people who have access to it, very limited. Nine-- we have nine work stations in the state. We have an MOU with Omaha Police Department, we have an MOU with the Nebraska State Patrol and the Lincoln Police Department, and they have to have an active case to compare an image if they believe-- for criminal purposes, and it cannot be used as a sole reason for arrest. It can be used as-- to help with their case work, but it can't be used, and that's our understanding. And in fact, our MOU has been cited by best practices as being a model MOU. It's also been cited by an investigative journalist group as being somebody who has proper controls in place for this type of technology.

WAYNE: So let's walk through that theory then. So if-- if-- if ICE goes to Omaha Police and they're doing a sting operation, do you share images with Omaha Police, who in turn give it to ICE?

RHONDA LAHM: So if-- so I'm-- I'm not trying avoid your question, but I'm-- so if Omaha Police Department has an active case invest-- investigation, then they can acc-- they can access our system and compare an image, so it--

WAYNE: I guess the question is, what is an active case? Is there a warrant? Is there just-- they're-- they have a locate out? And a locate isn't a warrant. It's just they want to talk to somebody. What-- what do you define an active case?

RHONDA LAHM: Well, I mean, that, I-- I don't-- and I'm-- I'm sorry. I can't answer that question--

WAYNE: That's all right.

RHONDA LAHM: --before you because I don't know in their terms. And we don't-- we don't check every case that they're investigating to make sure it's an active case before they-- when they're checking our system.

WAYNE: OK. Thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Ms. Lahm, for testifying today. Your concerned about Nebraska becoming an identity theft state.

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RHONDA LAHM: Right.

BRANDT: That's what you-- what you-- as am I. So last December, the front-- front page of the newspaper, it said that Nebraska gave its DMV information-- it was the only state to give that for the census. Is that correct?

RHONDA LAHM: Well, we're not the only state now, but at the time we were. That is correct. It wasn't photos.

BRANDT: OK. So what did they get from us then if they didn't get the photos?

RHONDA LAHM: So I don't recall all the things off the top of my head, but the Uniform Motor Vehicle Records Disclosure Act is what governs the disclosure of data in Nebraska, our data in Nebraska. So the Uniform Motor Vehicle Records Disclosure Act states that we shall share images with other government agencies for the per-- or not images-- I'm sorry, I misspoke- we shall share data with other government and state agencies in the-- or local in the-- or contractors with those, for that matter, in the performance of their duty. So we receive the request, as we receive many requests from government entities, from-- well, I shouldn't say many, but from time to time. We evaluate them the same way. Do they have a use that's consistent with what their job is, and is it excessive-- is it permissible by the state law? And then we execute an MOU or an agreement as to-- as to how that can be done.

BRANDT: But my concern is, once that image leaves-- it's just like the horse-- you're closing the barn door enough for-- the horse leaves. Once that image is in some government database, it's there forever. They are--

RHONDA LAHM: So--

BRANDT: They don't purge it, do they?

RHONDA LAHM: Images are-- it's two separate things. Images are not the same. They're handled very differently than maybe an OLN number, operator's license number, or that. Images are separate. There's a separate statute that governs images that they can only be shared with law enforcement and with other DMVs.

BRANDT: OK. Thank you.

RHONDA LAHM: They-- that's different than other data.

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BRANDT: OK.

LATHROP: So you've been asked questions about what you do with images taken at the DMV.

RHONDA LAHM: Right.

LATHROP: My question is going to be a little bit different. Are you purchasing or do you have a contract with anybody that's trying to sell you any facial recognition?

RHONDA LAHM: We do not purchase any images from anybody else. Our database consists of the images we've taken and we have some jail images in our database. That's the only images in our database.

LATHROP: OK. You were-- you-- in response to questions by Senator Brandt, you talked about a request by the federal government to provide information, data on--

RHONDA LAHM: The-- for the Census Bureau.

LATHROP: --for the Census Bureau. What's the purpose behind that?

RHONDA LAHM: So the purpose that they told us was to conduct the census in-- the 2020 census.

LATHROP: Yeah, but they-- OK. That's all that-- that's all you got: for the purpose of conducting census, we want the DMV information from Nebraska?

RHONDA LAHM: We got additional information from them, but I don't recall all that off the top of my head as to what their statutory authority was under the federal government. And I don't remember those federal title [INAUDIBLE]

LATHROP: Who authorized that?

RHONDA LAHM: Authorized the release of that--

LATHROP: Sharing the information with the federal government pursuant to their request.

RHONDA LAHM: I did.

LATHROP: Did you go up the food chain--

RHONDA LAHM: So--

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LATHROP: --and specifically to the Governor, to get permission to share DMV data with the Trump administration?

RHONDA LAHM: No. The request came in from-- I don't remember the person's name-- from the U.S. Census to me. We looked at it in terms of what are our criteria in state law, and that decision was made by me. I do not need his permission to share data, and nor do we check with him on any other requests, for that matter.

LATHROP: Have you shared data with the federal government on any other matter or is this it?

RHONDA LAHM: We have req-- we have-- we have a request currently pending, but we don't have a contract that meets our requirements yet for our-- to have access to verify identity for the issue-- for the issuance of passports from--

LATHROP: The request for information that came from the federal government that was to aid in the census, that's a-- some correspondence that went to you?

RHONDA LAHM: Yes.

LATHROP: Was that correspondence the first you knew of that?

RHONDA LAHM: No.

LATHROP: Did you have some conversation with administration, federal administration officials, before that correspondence reached your desk?

RHONDA LAHM: No, I got-- I got a phone call that said that I was going to be getting that request.

LATHROP: Who did you get that phone call from?

RHONDA LAHM: From the chief of staff.

LATHROP: Of whom?

RHONDA LAHM: The Governor.

LATHROP: OK. So the Governor knew it was coming before you got the letter.

RHONDA LAHM: Right.

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LATHROP: You got the letter. Has anybody tried to secure a copy of that letter through a Freedom of Information request or otherwise?

RHONDA LAHM: It was in an email. It wasn't a letter. Yes, we've provided it to at least two different people that have requested that.

LATHROP: OK.

RHONDA LAHM: Um-hum. Yeah.

LATHROP: OK.

RHONDA LAHM: Yeah.

LATHROP: That's all the questions. I know that's a little bit off topic but--

RHONDA LAHM: Yeah. I mean, it's not a--

LATHROP: --we don't often get a chance to talk to the head of the DMV.

RHONDA LAHM: It's not-- I mean, it's not-- it's a public record. It's not a secret, so it's fine to answer-- ask questions about it.

LATHROP: Oh, right. Senator Wayne.

WAYNE: So if I want to change my picture because I don't like it, can I get that done? [LAUGHTER]

RHONDA LAHM: We can do anything for you, Senator Wayne.

LATHROP: Again, last day of hearings in Judiciary Committee. I think that's going to do it. Thank you, Ms. Lahm.

RHONDA LAHM: Thank you.

LATHROP: Anyone else here in the neutral capacity? Seeing none, Senator Vargas, you may close. We do have three letters of opposition, one from Todd Schmaderer, chief of police in the Omaha Police Department; a second from Jeff Bliemeister, chief of police, Lincoln; and third, from Tyler Diers, D-i-e-r-s, TechNet, T-e-c-h-N-e-t. Senator Vargas to close.

VARGAS: OK. I did say my-- in my opening that this is broad in how it was defined and-- and how we wrote it together. Couple of things I want to react to. Senator Brandt asked a little bit about what happens with this data. So this is part of the question, right? We don't have

any-- we don't have statutes, to my knowledge, right now that dictate or govern what they can and cannot do with that data. In some instances, you define it as like biometric data, you know, your likeness, your-- images of your face and other things that come along with that, physiologically and behaviorally. We don't know what they do with all the data that's collected. We do know that there are data centers all over the country that are housing tons and tons of data. So the question I have, and this gets to Senator Lathrop's question, is for a subcontracted technology app or company, when they're-- when we're purchasing something that they're utilizing, what do we have in place that dictates what they can do with the data they collect? We don't know. We don't have anything. There's no statutes that dictate or govern that right now. That's the-- that's the biggest concern I have in this space is this technology exists and does not have-- there are rules around privacy, but there are not regulations right now in the state of Nebraska specifically around facial recognition technology. So the question you have on whether or not they have to get my consent for my picture, the answer right now is, no, they don't have to. All those pictures that Senator Wayne Googled, technically, those are all-- you might be looking at them again. That's fine.

[LAUGHTER] All those pictures can just be taken and-- and technically be utilized. It's-- it's-- it's open. It's considered public data and it can be utilized as part of a database of pictures that help them identify you. And they didn't answer the question very directly from the association that came and testified. There are-- and I can't speak to every single one of the technology companies that are part of the trade association, the Security Industry Association. There are many of them that utilize pictures that are beyond just databases that we think of like the DMV. There are databases-- and I-- I'm using the term loosely. They use Facebook; there's Twitter; there's LinkedIn; there's Instagram. Many different things, if they are public, they can use those pictures. And if it's an app and it's a-- basically a contracted company that they're utilizing, they're purchasing that-- that-- that actual technology. If the entity that is purchasing technology is like us and is creating some policies on what they can and cannot do with the data, then I would be more encouraged and I'd be fine. But my-- to my knowledge, that is really left up to the contracts. The state of Nebraska, we don't have anything, and we do have facial recognition being utilized right now in some way, shape, or form. One of the letters of opposition, LPS-- Lincoln Police-- LPD-- L-- Lincoln Police Department uses facial recognition right now. And the question I have is, when a-- when an entity is utilizing it, what rules, what laws do we have in place that ensure that the privacy of Nebraskans is with the utmost of importance? I do have some of the

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content here from the Security Industry Association, and some rules, and the Security Industry Association believes all technology products, including facial recognition, must only be used for purposes that are lawful, ethical, and nondiscriminatory. The problem-- that's-- that's fine. That's great. The problem with that is we don't have laws, so it is open game. And the only laws that they're referencing would be laws that have to do with security. But here's the problem that I have. They put in there's a perception of a false choice between privacy and security. And what I'm asking you to think of here when we move forward into the next year and we're looking at legislation and crafting something is, what is that line for you? I am more concerned with privacy. Why are we focused on security? Colleagues, I-- I hope we've had a good conversation here. We can look at some of the more information and data that's provided. I'm happy to educate more on some of the intricacies of this. But my concern is this is the Wild, Wild West and we already have somebody that's utilizing it in our state, and what's stopping any other public entities from starting to utilize this? And I will tell you, there's technology all across the country right now that's being purchased, subcontracts for-- or contracts with this technology, with law enforcement and many other entities. And my concern is consent, privacy, information being gathered. There are so many questions I have. I hope we can do something on this because if we don't, we're going to wait until something happens, and I don't want to wait, wait and see.

LATHROP: OK. They-- thank you, Senator Vargas. I think that will close our hearing-- it will close our hearing on LB1091 and bring us to Senator Blood and LB750. Good afternoon, Senator Blood. Welcome to the Judiciary Committee.

BLOOD: Well, good afternoon, Chairman Lathrop and to the entire Judiciary Committee. My name is Senator Carol Blood, and that is spelled C-a-r-o-l B, as in "boy," -l-o-o-d, as in "dog," and I represent District 3, which is composed of western Bellevue and southeastern Papillion, Nebraska. Today I am here to present LB750.

LATHROP: Hang on a second.

BLOOD: There's a lot of activity going on.

LATHROP: We have a troop movement.

BLOOD: They figured out it was a really exciting bill.

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LATHROP: Thanks for being here. OK, let's start over and try it again.

BLOOD: Oh, you want me to start from the very beginning?

LATHROP: Let's try it.

BLOOD: All right. My name is Senator Carol Blood. That is spelled C-a-r-o-l B, as in "boy," -l-o-o-d, as in "dog," and I represent District 3, which is composed of western Bellevue and southeastern Papillion, Nebraska. Today I'm here to present LB750. LB750 extends full protection against discrimination to individuals having liability for service in the armed forces of the United States and Veterans. As you can see, we're adding this to the part of statute that lays out what discrimination Nebraska finds to be unlawful. The new law makes it clear that members of the armed forces and veterans should have the same opportunity to obtain employment and to obtain all the accommodations, advantages, facilities and privileges of any place of public accommodations, including publicly assisted housing accommodation and other real property, without discrimination. The aim of this bill is the same for veterans as it is for the other demographics currently existing in state statute in that we want to help ensure a fair and balanced Nebraska for all. The bill also makes it clear that members of the armed forces and veterans can still be refused services and goods, as long as it is for reasons other than the fact that they are military or veterans. Many believe that the Uniformed Employment and Reemployment Act of 1994 provides this protection, and you are partially correct. The USERRA creates a protected class based on military service. Remember that USERRA, a federal law, preempts any state law that is less protective of the employment and reemployment rights of uniformed service people; that is, if Nebraska law is less protected than the USERRA, then the rights given by USERRA will apply and not the less-protective Nebraska law. But if Nebraska law is more protective, then the Nebraska law will apply. Nebraska law currently prohibits an employer from discharging an employee because of his or her membership in the National Guard or fulfillment of military duty in the active service of the United States or Nebraska. Violators are guilty of a Class IV misdemeanor and also must restore the employee to a position of like seniority, status, and pay. That's in Nebraska State Statute Revised Section 55-166. Nebraska has adopted much of USERRA for application to all employees performing duty in active service of the state. In addition, these employees cannot be discharged without a cause for one year after reinstatement. That's in Nebraska Revised State Statute Section 55-161. All state employees, including elected officials of the state or any of its political subdivisions who are members of the National

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Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve are entitled to military leave of absence without loss of pay. What this bill does is bring the effort full circle, taking what was initially implemented in Chapter 55 of state statute and further defining individuals who serve in the armed forces of the United States and veterans by offering equal opportunity and experiences for that demographic as we strive to move Nebraska forward as one of the best states for our veterans to live and raise their families. With that, I'd be happy to answer any questions you may have and will stay for the closing. Thank you for this opportunity.

LATHROP: Senator DeBoer.

DeBOER: Is this something that's happening with any kind of regularity in Nebraska? I mean--

BLOOD: It is.

DeBOER: What--

BLOOD: It is. I--

DeBOER: What are the kind of contexts in which we see this happening?

BLOOD: Well, I think the context that I started researching went all the way back to the Vietnam War, to be really frank, and you may actually have a letter that pertains to that. And-- and how I got the idea is that people are unknowingly sometimes-- I don't think that it's necessarily a conscious thing that they can be discriminated against because they think, OK, you're a veteran and you were active duty and you were in a particular conflict that was especially harsh, I'm guessing maybe you have PTSD, I don't know if I want to hire you. There's a lot of thoughts that go in people's minds when they work with veterans. And because they're very personal stories, to be really frank, we could have lined people up to bring them in to testify. But I want to stick to why I think this is right, and why I think this is right is that we're trying to make sure that we have a fair Nebraska for all. So, yes, it happens.

DeBOER: So-- so I'm-- I'm having a little trouble with the example of they may not realize they're doing something like that, because if I'm trying to prove a case of discrimination, then I would have to show that it was because of that--

BLOOD: That there was bias.

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DeBOER: I mean, if you-- if you shift the burden onto-- to the employer to show that it wasn't that, I mean, I still think there's an intent issue with determining whether or not the-- I'm concerned you might have some kind of mental problem that would make you unfit to do my job.

BLOOD: Right. And so it would not be any different than I'm concerned that you are a person with a disability, although I may not be aware of that disability. I'm a-- I am concerned that you might be biracial, but I may not be concerned that-- I may not be in full knowledge that you are biracial. I think that this what you're saying already applies to every person that's already-- excuse me, every demographic that's already mentioned in this bill. And to be really frank, I was trying to be polite. So people purposely violate veterans' rights when it comes to things like employment, but I like to give people the benefit of the doubt and be polite when I'm talking about Nebraskans. So I hear what you're saying. And I'm telling you that, yes, it does happen.

DeBOER: OK. Thank you.

LATHROP: I see no other questions for you, Senator. We'll see what the proponents have to say. Proponent testimony, please. Yeah, how many people are going to testify on this bill? Looks like three. Any proponents? Anyone here in opposition? Good afternoon.

JOHN CHATELAIN: Good afternoon, Senator Lathrop and other members of the committee. My name is John Chatelain, J-o-h-n C-h-a-t-e-l-a-i-n, and I speak on behalf of the Metro Omaha Property Owners Association, and also we affiliate with the Real Estate Owners and Managers Association in Lincoln, the Gage County Landlord Association in Beatrice, and other groups across the state. Seven-- LB750 would amend the Nebraska Fair Housing Act and the Residential Landlord and Tenant Act by adding a couple of more protected classes. First of all, I want to make it clear that our association has nothing but respect, honor, and gratitude for our men and women who have served in the military. We applaud the spirit of this proposed law, too, by the way. And our group opposes any expansion of protected classes, however, regardless of-- of the demographic involved. We specifically oppose the portions of this bill which propose to amend the Nebraska Residential Landlord and Tenant Act. I think that's Statute number 76-1495. And also, it appears Statute 20-318 might impact on-- on our industry. While we wish to assist veterans in addressing their housing needs, this bill would create another class of persons who could file fair housing complaints and commence litigation against landlords. As a matter of

my law practice, I have represented many landlords who have been forced to respond to fair housing complaints before the Nebraska Equal Opportunity Commission and in court, and some of these cases are nonmeritorious, yet the small business owner is forced to expend considerable time and money defending themselves. And additional burdens of compliance come with a cost, and if landlords are to stay in business providing affordable housing in our state, the costs of doing business must be passed on to the very people I believe this bill is trying to help. Our association is all for helping veterans, especially those who have become disabled in some way due to their service in our nation. Those who are disabled, however, would already be covered under fair housing laws. Quite some time ago, our association entered into a program with Douglas County Housing Authority to encourage landlords to work with them in providing housing to veterans in need. Members of our groups participated in that. The point I would like to make about that, however, is that was totally voluntary on the part of the landlord. And we think it best for relationships between landlords and tenants to remain private, as opposed to being mandated by the government. It's best if that type of cooperation comes from the heart and not by a mandate which could cause resentment. We already have federal laws that occupy this area and we-- those laws have been tested in the courts. We support them. And for purposes of uniformity, we would-- we would ask that those groups not be expanded.

LATHROP: OK. I do not see any questions for you, but thanks for being here today, John.

JOHN CHATELAIN: OK.

LATHROP: Oh, I'm sorry. Senator Brandt.

BRANDT: Yeah. Thank you, Senator Lathrop. Real quick, do you know what kind of participation you had from your landlords to provide housing to veterans in need? Do you know how many units or what percent?

JOHN CHATELAIN: I don't know how many participated, but I know some of our members did so and it was totally on a voluntary, private basis. We entered into that program. We had a speaker from Douglas County Housing Authority who is working specifically with veterans, and she came to speak to our group. And I know some of our members agreed to participate in the program.

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BRANDT: Do you know if the veterans' needs are being met by the-- the Housing Authority or your group? Do we have a lot of veterans that-- that can't find housing?

JOHN CHATELAIN: You know, I'm not aware of that. I think there is particularly a problem with disabled veterans who have been injured in some way, either physically or mentally, but those would already be covered under existing law.

BRANDT: All right. Thank you.

LATHROP: I don't see--

JOHN CHATELAIN: OK.

LATHROP: --any other questions. Thank you. Any other opponents to testify? Good afternoon.

GENE ECKEL: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Gene Eckel; that's G-e-n-e E-c-k-e-l. I'm a board member with the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska. We intended here just to be in a neutral capacity. We do support our men and women in the military. Our only concern was with Section 7 of the bill that wanted to add military veterans as a protected class. We were unaware that this might even be a situation in the industry. I'd never heard of it. Our members have never heard of our military being discriminated against. In fact, some of our members even give discounts on rent to the military members. But we just don't think there should be an expansion of a protected class. If the federal government hasn't expanded it, and I believe some of the programs for military veterans have been around since the 1990s, and if Congress hasn't done that, I don't think we should be adding to that. But, you know, again, we'd be willing to work with Senator Blood on this issue to get some more information, educate our members more on it, and see what we can do to work with the veterans. But right now, we just-- that's our concern. I'd be happy to answer any questions.

LATHROP: OK. I don't see any questions, but thanks for being here, Mr. Eckel.

GENE ECKEL: Thank you, Senator. Appreciate it.

LATHROP: Anyone else here to testify in opposition to LB750? Anyone here to testify in a neutral capacity on the bill? Good afternoon.

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MARNA MUNN: Good afternoon.

LATHROP: Welcome.

MARNA MUNN: Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Marna Munn, M-a-r-n-a M-u-n-n. I'm the executive director for the Nebraska Equal Opportunity Commission, and I'm here to testify in a neutral capacity on LB750. LB750 would add to the protected basis of military or veteran status to three of the laws we enforce: the Fair Employment Practices Act, the Fair Housing Act, and the public accommodations law. I'm mostly here to assure the committee that our agency is capable of processing cases under the language this bill proposes. We submitted a statement of no fiscal impact because we believe the NEOC can absorb any additional work generated by this bill into our existing workload. While this bill does expand the possible universe of claims that could come to our agency, the nature of the work is not qualitatively different from the other investigations conducted by the agency. I would note to that it is a state-based only claim, however, so it could push out some of the other work where we get reimbursement from our federal partners. But again, it's difficult to quantify what that would look like. I have no hard data to provide regarding how many claims we're likely to field. However, I can tell you, anecdotally, we were able to run a report where there were mentions of military status over the last few years and we do have some right now, which is interesting considering it's not an enumerated protected class. We've been able to assist some of those individuals because, as the discussion earlier noted, some of those also involve a disability issue that runs parallel to the military veteran status. So we were able to process those claims under the disability protected class right now, but we had to turn some away because-- because we don't have that military and veteran status as a specifically protected basis right now. But again, I don't have any hard numbers for you. We-- because other-- there are numerous other states who have enacted antidiscrimination legislation in addition to what the federal protections are. So again, we have no concerns about being able to investigate claims that would come in under this basis because there are guidance-- there's guidance available under the states that have been doing it. And again, it's not qualitatively different than the kinds of things that we currently investigate. To that end, I would probably try to address Senator DeBoer's question, which is all of the protected bases have an element where we have to discern intent.

DeBOER: Yes.

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MARNA MUNN: If things aren't explicitly stated, like we don't serve anyone who's a mil-- who's a veteran here, that's of course explicit. We have to do other things to try to discern intent. For example, if there is a workforce of sales folks and they cut five people and they all happen to be veterans and no one else that, you know, no anyone-- they didn't cut anybody but veterans, that can go towards suggesting intent. They do-- you know, a business might still have opportunity to counter with a legitimate business reason. But those are the kinds of things where we look at comparators. So we have to do that under all the other protected bases. We would do something similar under this one to discern intent. Then I always feel honor bound. I have to-- I have to put this out in response to one of the-- to the testimony. It costs nothing to file with the Nebraska Equal Opportunity Commission, nor does it cost anything to defend against a complaint filed with us, though people can choose to use a representative if they want. And I'm open for questions.

LATHROP: Any questions for Ms. Munn? I see none. Once again, we appreciate you coming in on these bills and sharing your perspective in a neutral capacity. Anyone else here to testify on LB750? Seeing none, Senator Blood, you may close. We do have two letters of support, one from Dalton Meister, National Association of Social Workers-Nebraska Chapter, as well as Mindy Rush Chipman with the Lincoln Commission on Human Rights. Senator Blood.

BLOOD: I appreciate the opportunity to be able to sit and listen to the opposition, because what I heard was the same type of opposition when we brought in other protected classes. It's the same song, same dance. It hasn't changed. And to my knowledge, the sky has not fallen by allowing us the ability to not discriminate and to make an equal and fair Nebraska for all. I don't understand how it will be a bigger expense to the property owners because I've not seen it become a bigger expense when, again, we allow those other demographics to be part of state statute that we protected. I do appreciate the fact that they are protecting their own. I can't imagine being a property owner because it's not an easy job, but I feel that this bill comes from a good place. It does a good thing. We will not be the only state that does this. It's been done successfully in seven other states. And I ask that you please give it serious consideration, even though it is the last day of the hearings and your plate is very, very, very full, but please consider this bill.

LATHROP: All right. I don't see any questions. Thanks, Senator Blood.

BLOOD: Thank you, Senator Lathrop.

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LATHROP: Appreciate you being here today. We are down to our last two bills. They are related topics. And in keeping with our tradition, we will have Senator Scheer and Senator Briese open on those bills and afford the witnesses or the testifiers an opportunity to testify on both at the same time. We will begin. Senator Scheer, you may-- we did it by bill number. You happened to jump in ahead of Senator Briese, so we'll let you--

SCHEER: All right.

LATHROP: --open on LB1118. This is a joint hearing-- for the record, it's a joint hearing on LB1118 and LB1190. Good afternoon.

SCHEER: Good afternoon. Thank you, Mr. Chairman Lathrop and members of the Judiciary Committee. I would be remiss if I didn't note that I think in the eight years that I have been in the Legislature, I have probably been in the Judiciary a grand total of once. So this is my finale, which is twice. And, Senator Chambers. I think, if I'm not correct, this will be my last hearing that I participate in, and I assume this might be your last hearing as well, so we will have a swan song together, my friend. I'm here to introduce LB1118, which amends Nebraska's grandparent visitation law governing-- a grandparent can petition the court for a grandchild visitation over the objection of child's parents. You know, I've got this all written down. I do this a lot, so I'm not-- I'm not going to do this because I'm not an attorney. I'm just a normal guy, and I think we've got a discrepancy in the law. And there may be someone that testifies after me in relationship to against the law, and that's fine. I mean, everybody has got testimony against it. The difference-- you want to throw these out for me, please? But if you look at the statute, by and large, and I'm maybe being oversimplistic but I don't think so, it all stems if your child is married to the person they're living with, if you have access to the courts to get visitation. I'm not trying to imply every grandparent should have visitation rights. That's not the meaning of this. There are probably some people that should not have visitation rights, but there probably are some that should. But based on how our statute reads, if my child, he or she, is married and they have a child, I have no standing with the court, and for whatever reason the parents choose not to allow me to visit that grandparent. [SIC] However, if my child, he or she, is not married and has a child with a significant other and I want to visit that child, according to our statute, because they are not married, I now have stature, I have standing with the court, and the judge can interview me or do whatever they do-- again, I'm not an attorney-- when they choose to do this and decide-- then the judge decides then if that grandparent has the

opportunity to have any contact with their grandchildren. I think that's sort of a flaw. I don't see what difference a marriage certificate has to do with if a grandparent should have access to see a grandchild. Again, I'm-- I'm not here to promote that every grandparent should have unfettered access to any grandchild they want. But in the cases where there may be whatever problems within the family unit that causes that discrepancy, I don't think the grandparent should have automatic access, but they should have access to the court and let the court make those decisions if they are permitted or not. And right now, we already permit that, but you only permit it to the grandparents if the parents of that grandchild are unmarried. If my son or daughter are married and they have a child and I have the exact same problem, I have no standing. I can go ask a judge, please, help me, you know, take the time, you can interview me, I'll take whatever tests you want, I'll have, you know, visitation with-- a supervised-- super-- visitation. But the fact of the matter is, these are-- the judge will say, he or she, you have no standing, you know, I'm sorry, hit the road. Now I have been told that there's some federal case that the State Bar finds that falls in this manner, and that's fine. If the federal courts have deemed it one way, then change the statute, because right now the judges in Nebraska aren't going by that federal ruling. They're going by our statutes. And I have a couple that has tried to access the courts through that same statute and have been told they do not have standing. And why? Because their child is married. That makes no sense to me. You know, you either treat all grandparents the same, but not separately because of a marriage certificate. And that's really what this says, again, I think it says. I've asked some attorneys. That's what they've related to me that it says. But you folks are the Judiciary Committee. Most of you are attorneys or thereabouts, or close, or are-- just decided never to be part of the bar. But regardless, your informational base and educational base is far more than mine, but I-- it-- just to show you, and these-- some of these-- these scenarios that you're seeing on the paper are true, the-- where if their parents have passed away, the other set of parents adopted the children, the new grandparents have refused access to the other set of grandparents. Now you'd think, well, they died, so they have access. Court said, no, that's not true, because now those child-- that child or children's parents are the grandparents. They're not your children. They're the parents. They're not grandparents. They're the parents. You have no access. It's still the same child. It's their grandchild. So if-- if we're going to have a statute, and as Senator Pansing Brooks, every time she comes to the mike, tells me that we are equal under the law, by God, we're not, and we're not because of a fricking marriage certificate. That makes no

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sense. And if we're going to continue to have the statute, then please amend the statute so that all grandparents have the same standing, not just half of them. I just think that makes sense. I'll be glad to try to answer whatever questions you have. I will-- as noted, this is the last day, this is the last bill, so anyone that happens to think that a Speaker's position maybe gets them special treatment, if that were the case, it would be in January that I would have been had this hearing. And as you can tell, I am here now, on the last day and the last hearing. So for those that are watching, there is no special privileges for my position at all. In fact, you get dumped on.

LATHROP: At least here in Judiciary Committee.

SCHEER: Corr-- well, at least-- at least with you, Senator, that's right.

LATHROP: At least in Judiciary Committee.

SCHEER: Yeah. But anyway, I will be glad to try to answer any questions. I-- there may be others that want to testify and-- and whatever is testified, I'll be glad to respond to in closing.

LATHROP: OK.

SCHEER: But that would be my two cents' worth. And if there's any quick questions otherwise, I'll let Senator Briese do his.

LATHROP: I don't see any questions--

SCHEER: All right.

LATHROP: --at this time, Mr. Speaker.

SCHEER: I will remove myself from the chair then. Thank you very much.

LATHROP: All right. Thanks. Senator Briese, welcome to the Judiciary Committee and our last bill.

BRIESE: Oh, thank you. It's-- it's--

LATHROP: And we've put you jointly with the Speaker so that--

BRIESE: Well, I was just going to say, at least the Speaker was only second to last, so anyway, No, but it's an honor to be here. And-- and the Speaker really summed up the issue that you know--

LATHROP: Let's have you do your name and--

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BRIESE: Yeah. Tom Briese, T-o-m B-r-i-e-s-e, represent the 41st District, presenting today LB1190. But the Speaker's bill and this bill are really trying to address the same issue, slightly different language and-- but slightly different approaches. But the Speaker did an excellent job summing up the issue we're trying to address here, and I-- I appreciate his comments there. And I think what I will do is offer to answer any questions if you have any, but I'll have some further comments after-- or at closing.

LATHROP: OK.

BRIESE: Thank you.

LATHROP: Any questions for Senator Briese? I see none at this point. Thanks, Senator.

BRIESE: Yeah.

LATHROP: That will open the floor for proponent testimony. If you're in support of either bill, or both of them, you may come forward and testify.

LEON WEILAND: I'm Leon Weiland. Thank you for listening to me this afternoon.

LATHROP: Can you spell your name for us, Mr. Weiland?

LEON WEILAND: Leon, L-e-o-n, Weiland, W-e-i-l-a-n-d.

LATHROP: Very good.

LEON WEILAND: I here as a proponent for the-- for this legislation because I think there's-- there's-- there's certainly legal grounds that could be argued for it. But this, not only does it-- is it a legal thing, this-- this is a personal thing. This affects children. It affects children. My-- in listening to-- to Speaker Scheer and Senator Briese, I certainly understand what they're saying. But I have-- I have a granddaughter who-- who my wife and I raised, OK, until she was about eight years old, and then our daughter-- and we had a lot to say in-- in-- in her-- in her upbringing. In fact, we-- we were there all the time. We were there every day to-- to-- to help her and to raise her, to get her ready for school, to do-- to do the things that parents do. And then she got married. Now she has some-- she-- she has some-- some mental issues not necessary to go into here. But when she got married, all of a sudden we were no longer allowed to have access. In fact, when we-- we tried to have access just lately

and she-- she filed a restraining order against us to keep us from seeing our granddaughter, whom we raised. And-- and in that-- and in that-- and in that hearing, or in that-- the-- the judge told me three times, three different times, he said, you have no rights, your granddaughter has no rights, the parents have all the rights, your granddaughter has no rights, you have no rights. And he also said three different times when he chided us for trying to access our granddaughter, because we shouldn't have done that because we didn't have any rights, we're really nobody as far as the state-- the statute in the state of Nebraska. He said, bring me-- bring me a-- a-- a court order; if you want to do something about this, bring me a court order. Well, we know the only-- you can't get a court order in the state of Nebraska. The statute doesn't allow it. So this affects children. And again, I don't believe that every grandparent ought to have access to the grandchildren. But it seems to me that we would-- should at least have access to the law. We should have access to have someone-- to the right to have someone listen to us. And that's all I want. That's all I'm asking for. I mean, in this particular case, it's very personal to my wife Jean and I. It's very personal to us. It's very personal to our granddaughter too. When you-- when you raise a little girl until they're eight years old and all of a sudden you no longer have access, and not only not access to-- to-- to-- to her grandparents, but access to about 15 cousins and 10 aunts and uncles, all of which were very close prior to that time. Things like this can happen, but, holy cow, there ought to be some-- there ought to be some recourse that grandparents can-- can-- can-- can have at least to be heard. And the--

LATHROP: OK.

LEON WEILAND: And the light just turned red.

LATHROP: Yeah. We'll see if there's any questions. Senator Chambers.

CHAMBERS: For that situation to arise, there has to be bad blood. And since it's the parents' primary responsibility to rear the child, the grandparents can go have another child, if they want one, or adopt. And I'm not trying to be cold, but I've seen situations where there was-- well, the mother is here, the father is there. There are two sets of grandparents. The grandparents don't get along with each other, and the child becomes a battleground for the grandparents. And this child is to be reared by her parents, or one parent if there is only one parent. And grandparents can be vicious. I'm a grandparent. Being a grandparent doesn't make you a better person than you were prior to your child having a child. So whenever compulsion is

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involved, especially through a court situation, to compel a parent to allow people access to her, his, or their children, I think that's the worst thing that can happen in society. And if there's a homicide, then nobody's going to say, well, the Legislature is partly responsible because they created the circumstances where it could happen. The grandparents aren't responsible, nobody is, and a child is gone or one of the parents is gone. This has nothing to do with you. I don't even know you. But I've been in the world longer than you have, sonny, and I've seen things that you have not yet seen because your eyes are not old enough to have seen them. I would never support this kind of legislation. I never have in the past. I won't now. And the reason I'm making it crystal clear, I won't have to say it to Senator Briese also and chew the same cud or walk the same ground twice. I don't know what it would take to persuade me to change my view. But you know, when you've been in the world 82 years and you have an opinion, it takes a tremendous amount to alter it, whether you're senile and don't understand or you're as sharp as a razor and do understand, somewhere in between, because, see, there are some things that are, there are some things that are not, there are some things that neither are nor are not, and this is somewhere in between. all of those. OK.

LEON WEILAND: I understand.

CHAMBERS: That's all that I have. It's not really a question.

LATHROP: I-- I do have one question for you.

LEON WEILAND: Sure.

LATHROP: In your circumstance, is your daughter married to your granddaughter's father? In other words, is the-- is there--

LEON WEILAND: No. No, it wasn't her-- it was not her-- the-- when-- after-- after they were married, he adopted her.

LATHROP: Oh, OK. Well, he's the father now.

LEON WEILAND: He's the father now.

LATHROP: OK.

LEON WEILAND: So at one point before-- before-- at one point before they were married, we had access. But now that he's adopted her, then we no longer have access.

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LATHROP: And you also would have had standing.

LEON WEILAND: Yes.

LATHROP: But as soon as dad adopted the granddaughter--

LEON WEILAND: Then there's no-- then there's no standing.

LATHROP: I got it. OK. Thank you for being here.

LEON WEILAND: Thank you very much.

LATHROP: We appreciate your concern for the topic. Anyone else here to testify as a proponent on either bill, LB1118 or LB1190? Anyone here to testify in opposition to LB1118 or LB1190 or both? Good afternoon.

KATHRYN PUTNAM: Good afternoon, Chairman and committee members. My name is Kathryn Putnam. I'm a private practice attorney in Omaha, Nebraska. I'm a founding partner of the Astley Putnam law firm. We practice divorce and family law. I'm also the section chair for the family law section of the State Bar at this time. I'm actually here in a capacity to testify on behalf of the NSBA, at their request, in opposition to both bills.

LATHROP: Spell your last name for us.

KATHRYN PUTNAM: Putnam, P-u-t-n-a-m.

LATHROP: OK. Thank you.

KATHRYN PUTNAM: The basis of the State Bar's opposition to this bill is purely on a constitutional basis. We've had a constitutional framework in place from the U.S. Supreme Court since 2000 that dictates what we can and cannot legislate in terms of granting third-party access to minor children over the objection of fit parents. That case is Troxel v. Granville. It is still the law of the land as we sit here today. Many states have attempted to expand the framework that's provided in Troxel, and all of those attempts have been shut down at the State Supreme Court level. We currently do have access that provides very limited circumstances in which grandparents can seek access to their grandchildren. It is typically when one of the parents is deceased, has been deemed otherwise unfit, or has declined to exercise visitation. So what sets this apart from the current wording of the bill is that the gatekeeper, which is the grandparents' own child, is not there to either grant or deny access. It's the other parent. What the wording of the bill as written now

seeks to do is to allow grandparents to reach into an intact home with married parents, who have mutually made the decision to not allow access, and to institute court proceedings against that married couple to force them to defend their decision to a court. And that flies in the face of the narrow circumstances that Troxel has allowed. The Troxel court did determine that parents have a fundamental constitutional right to determine the custody, care, and control of their children, and there is a presumption of parental fitness until a court determines otherwise, whether that be through a juvenile court proceeding, a family court, divorce, paternity, or other custody modification dispute. When there is an existing court case where the state is already involved in making decisions about the best interest of the child, they are more prone to allow a grandparent to intervene in those circumstances because the state is already involved. What this does is allows the state to step into a home that's intact and second guess access decisions that parents are making, and we do not believe it will pass muster at the constitutional level, nor would it be appropriate to expand rights in that regard. I'd like to take any questions about how these things are applied right now and-- and some disparity of access, I think, that's maybe been a little misinterpreted in some of the testimony here today. But I'd be happy to answer any of those questions.

LATHROP: OK. I do-- I don't see any other questions, so I may have a couple for you. So you mentioned a Supreme Court case of Troxel versus-- is it Grandwall?

KATHRYN PUTNAM: Granville.

LATHROP: Granville.

KATHRYN PUTNAM: Yes.

LATHROP: In-- that's a United States Supreme Court--

KATHRYN PUTNAM: Correct.

LATHROP: --not Nebraska State Supreme Court?

KATHRYN PUTNAM: Correct.

LATHROP: What's the holding in that case? Is it-- is-- it recognized a constitutional right of the parents to say no to the grandparents.

KATHRYN PUTNAM: Essentially, yes. So in that case, it was a Washington State statute that said any person at any time who has been

unreasonably denied access to a minor child, who can establish this prior relationship, can intervene and ask for custody or-- or visitation rights. The court said that is entirely too overbroad. It would need to be a much more narrow type of statute and any-- any reach into a fit parent's decision making as to who does get to see that child, absent some other narrow circumstances, such as the deceased coparent or an incarcerated coparent-- some states have allowed for that kind of access, when one parent has gone to prison, to allow access to their parents. But generally speaking, the courts have all uniformly in a-- I think 20 states have declined to allow this kind of access, especially when parents mutually agree that the access should not take place. And so there was a statute in Pennsylvania that was struck down in 2016 on their Supreme Court level that allowed grandparents to petition for access if the parents had been physically separated for six months but no divorce was pending. The state said absolutely not, they were in mutual agreement, and we have no business stepping in to tell them that their decision making is incorrect because they were presumptively fit.

LATHROP: Is the common consideration the grandparents' child? So in the case of the Weilands, Mr. Weiland that testified, if his daughter had not been married and husband number two didn't come along and adopt the child, can the daughter still say no and we can't do anything about it--

KATHRYN PUTNAM: It--

LATHROP: --or is the fact that-- does-- does it have to be an intact husband/wife that are mom and dad and them saying no?

KATHRYN PUTNAM: I think there's a little bit of disparity as to how the statute is technically written and how it's actually applied. So traditionally speaking, at least in my practice-- and I've been doing this for a long time-- when a-- when the child of the grandparent in question says no access, that is usually the end of the inquiry. When you have a case that passes and actually gets some traction with the court, it's when the parents' child, the grandparents' child, is not in the picture, is incarcerated, is deceased, or has no interest in stepping into the parenting role. So they-- because there's no gatekeeper to say yes or no to their own parents, that's when the inquiry is generally kept alive. If the-- both parties say we're-- we're not going to let these people have access, whether that be a single person who doesn't-- there's no child involved, the court would leave it up to the child of the parent-- grandparents in question to make that decision. And as long as that person is a fit parent, the

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court generally will not second guess that. And this is a little tangential, but I think it bears saying, is that our Parenting Act allows parents to enter into parenting plans that are not-- that if they mutually agree to the provisions, the court has to uphold those. So one thing I think this might run afoul of a little bit is if parents have an existing parenting plan that says we decide whether or not to provide grandparents access. I don't-- I don't know how the court would override that, so there's some applicability issues, I think, that come up too.

LATHROP: So people in the position of the Weilands would need to establish-- or their daughter would have to be established by a court order that she is not a fit person.

KATHRYN PUTNAM: Typically, that's what would take place. However, if they were--

LATHROP: And they don't have standing to prove that either. They'd have to call Child Protective Services or engage some other entity that could establish unfitness--

KATHRYN PUTNAM: I think the prob--

LATHROP: --that has standing.

KATHRYN PUTNAM: The problem they're running into, I think, is because there are two parents, two legal parents that have mutually decided to cut off the access. Whether or not they would have had any success, if they would have petitioned prior to the marriage had this happened, I don't really know the answer to that. Typically, the courts will defer to a fit parent's decision about their own parents. That's typically how these things have actually been applied in practice.

LATHROP: OK. But your judgment about this, as somebody that does this work and somebody that understands the constitutional requirements of a grandparents act, is that both of these wouldn't pass const-- constitutional muster.

KATHRYN PUTNAM: Agreed, yes.

LATHROP: All right. Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming today. I think I was just interested because a couple of years ago we passed a bill that-- it was sort of the reverse where grandparents-- or if there's an older person who is incapacitated, so-- and maybe a father or a mother who's

incapacitated, and if the spouse of that person withholds access to the family, then the family can petition the court. And, of course, the persons incapacitated, as we are sort of thinking of the child right now, we have said that-- that close-- closely tied family members may petition the court to be able to see that family member who is incapacitated and possibly near death. So it's just interesting to me that that ability isn't really there for grandparents to be able to connect with and have that relationship with the grandchild. It-- it seems to me there ought to be a format where a-- in the same manner as the-- as the adult with the incapacitated person, why-- why couldn't-- why couldn't the grandparents file a request with the court and hear why or why not the-- those kids are being withheld from the grandparents. I'm just interested in this.

KATHRYN PUTNAM: And I don't know the specific-- specifics of any constitutional issues that would attach to that bill. Here we're just dealing with a fundamental constitutional right of parents, not grandparents but parents, to decide how to raise their children and who their children are going to have contact with. Unfortunately, these issues arise primarily in issues where there is family estrangement. Estrangement happens for a large variety of reasons, one of-- you know, some of which you heard here today in earlier testimony. They're always sad and they're always, you know, unfair, to some degree, to one party. But there's a difficulty, I think, in having the state decide whether or not these estrangements are reasonable, whether the parents' decision is fit to say this is not an appropriate person to continue having access to my child, how the state would impose those kinds of regulations. I mean, I think if there was a terminally ill child, maybe there would be-- that would be something I think more narrowly tailored that might pass some muster. This is just so broad to say any grandparent can reach into any intact household and impose litigation, with the attendant costs, time, energy, money, all of those things, into a nuclear family when the two parents who are presumptively fit have made that decision. It's just going to-- I think you're going to hit the overbreadth problem that mostly statutes can't pass. But I think something more narrow-- you know, certainly the wording is the problem and the breadth of it is the problem, not necessarily the--

PANSING BROOKS: Yeah, because I think the sit-- situation is pretty similar, in a way, so anyway, I'm happy to look at that in the future. Thank you very much.

KATHRYN PUTNAM: You're welcome.

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LATHROP: I do not see any more questions. Thanks for coming down here today and sharing your expertise on the topic.

KATHRYN PUTNAM: Thank you for having me.

LATHROP: Anyone else here to testify in opposition? Anyone here to testify in a neutral capacity? Seeing none, Sen-- Mr. Speaker, you may close.

SCHEER: Well, thank you very much, Senator Lathrop and committee. And, Senator Chambers, I'm not trying to pick a fight with you, so this is just a comment. I don't disagree with what you said. However, that's not what our statute says, because the meddling or the problems, if those-- if the parents-- and that's my problem with the last professional testimony. Her comments were always to a-- the parents of an intact family. Fair enough, but look at the statute. It discriminates against those parents of an intact family that are married. You can have two individuals that have a child and have an intact family. They are still both parents. So whatever you want to do, I guess, is fine. But what you have is two difference-- two differences. All that she talked about is the tort-- the court is not going to let somebody go into an intact family with two parents. Fact of the matter is, leave the stat-- read the statute. At least those grandparents have the opportunity to go to the judge to see if they can have the-- the relationship or the experience with that grandchild. If the people are married, a marriage certificate, they're excluded. That's it. That's the only difference. That's what the statute says. Now I am politely disagreeing with the-- your colleague that testified before. I talked to several attorney-- not attorneys but a couple judges, and they both told me that, absolutely, they rely on this as a determination if they have standing or not, because that's what the statute says. If they are married, they have no standing. If the parents are not married, then the grandparent has standing and they can, by that statute, access the courts to let them make the determination-- that simple. It all relies on if they have a marriage certificate or not. Do what you might. I-- you know, take the one out that says if they are not married, that you have access, then don't give them access. But you shouldn't be giving some access and not the others and it's all based on a marriage certificate. That's it, real simple. That solves the problem. Make one or the other. But when we get up and we start talking about an intact family with parents, tell me, what is an intact family with parents? You've got a child. You have a parent. You've got a mother. You've got a parent. You've got a father. Are they married? By this statute, that makes a difference. If I, as a grandparent, get to go to a judge and say,

look, we'd like to visit our grandchild, sorry, they're married. Now, if my daughter or my son happens to live with somebody, they-- he fathers or she births a child, I can go and say, Mr. Judge, I'd like to be able to visit that grandchild. He'd say, well, by God, you're entitled to at least have a talk with me. There shouldn't be the difference there. I don't care what you want to do with it, but there is a problem; probably not going to solve it this year, but it might be back next year. And you and I won't be here, but the problem will still exist. So you really need to maybe look at this and address it, because at some point time, either grandparents should or shouldn't. I don't disagree with her. Maybe it's not. Fair enough, but make it one or the other. Don't cut it down the middle and make a marriage certificate the resounding part of being able to have access to a grandchild from a grandparent. That's it. Pretty simple. Thank you.

LATHROP: Senator Chambers.

CHAMBERS: I have not ever favored any legislation that gave grandparents a right to go into court and intrude into the family. If a person who is the grandparent has spent time with a grandchild, and I don't care how kind, how considerate that grandparent had been, nothing the grandparent does gives him or her a proprietary in-- proprietary interest in that child. No rights of ownership develop, no rights to make decisions, nothing. They have only-- the only "rights," and I'd put that in quotes, they have to visit that child even would come from the parents. And I've had people talk to me when they were in those situations and I'd say, this is the only advice I'm going to give you: You're not those children's parent. I know that the children have gotten along with you, but you better find a way to get along with their parents.

SCHEER: I-- I don't disagree.

CHAMBERS: That's your job and if you can't get along with them, you're not going to be able to see them.

SCHEER: I don't-- I don't disagree.

CHAMBERS: In my opinion, you shouldn't be.

SCHEER: I don't-- I don't disagree, Senator, but that's not what the statute says. The statute defines, if the grandparents' child is married or not, if they have access to a judge to have that input. So in your case, that's fine, but then you ought to take out the part of

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the statute that allows a grandparent, that their child is not married and they're living together, they have access to the court.

CHAMBERS: But here's what I'm saying. Whatever the statute is, the statute could be what you're trying to get now. But I wouldn't agree with the statute. If a statute was there, my opinion wouldn't mean anything.

SCHEER: But I--

CHAMBERS: But if there is an attempt to broaden an existing statute, I will oppose it. And if I could repeal whatever is there, that's what I would do, just to make my position clear, and it's not to condemn grandparents.

SCHEER: Absolutely, Senator, and that's-- and that's exactly what I'm asking for.

CHAMBERS: But there are too many instances of murders that are occurring now within families.

SCHEER: I-- and I-- I'm not arguing. But you're exactly correct. From my vantage point, it should be the same for a grandparent, regardless of what the circumstances are, and that's not what we have now. I'll leave it to the judgment of the committee what they'd like to do with it, and I realize we're very, very late, and I'm not trying to hold things up here, but truly, you're exactly correct. But the problem is that's not what we have now. So if we truly believe that parents-- no grandparents should have any input, fair enough. Make the statute say that. But what we have doesn't say that, and that's-- that's all I'm getting at.

CHAMBERS: I understand what you're saying.

SCHEER: Yeah. Yeah. Thank you.

LATHROP: I will suggest, Mr. Speaker, this thing was passed in 1986. When it showed back up on the agenda, people who had been around since then, not to include me-- that was before my time-- said, oh, my God, we filled the hearing room when-- the last time we dealt with this. This must have been some kind of compromise, and I appreciate-- it would have-- it would have been probably constitutionally not suspect, or not constitutionally suspect, if we'd have simply said grandparents have standing if their-- if their child is one of the parents and they are out of the child's life, for whatever reason, mentally, physically imprisoned, and that probably would have made the thing

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constitutional. It may not be constitutional as written. We don't know that-- if it's ever been challenged. But if-- in the circumstance where you say, where there's a nonintact family and both of those parents say no but the grandparents have standing, my guess is, given the holding in the Supreme Court case, that it might be an unconstitutional statute or authorization for those particular grandparents but sort of outside the scope of the-- what we're dealing with here.

SCHEER: And I get that and I-- I will tell you, Senator, I don't disagree because I've talked to several attorneys and several judges that will tell you there's all sorts of laws that we've passed on statute that are probably unconstitutional. No one's ever challenged them, so they're still there and they're still--

LATHROP: I've seen some I've been very nervous about, I can tell you that. Some of them have been put in front of this committee this year. I will say, notwithstanding the testimony that we've heard today, we-- we certainly appreciate the concern of those that you brought here to testify. That's a very unfortunate--

SCHEER: Yeah.

LATHROP: --circumstance.

SCHEER: Any other questions anywhere?

LATHROP: I don't think so. Thanks for being here.

SCHEER: Those of you that are going to be back, please maybe take a look, see next year. Thank you.

LATHROP: Will do. Thank you.

CHAMBERS: You know, people sometimes will say, I'm going to put on my teacher hat. I'm going to put on my Solomon crown. He was supposed to be wise--

SCHEER: It's-- go ahead. It's your last time. Go ahead.

CHAMBERS: --although he had several hundred wives and several hundred concubines, and I don't see how that's wisdom in any lexicon. But here is the solution. If the grandparent had gotten along well with the grandchild, the grandparent will have-- simply have to live long enough for the child to reach his or her age of majority, then a decision can be made between adults.

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SCHEER: Fair enough.

CHAMBERS: Other than that, that's all I have.

LATHROP: OK. I think that'll do it. Thanks, Mr. Speaker.

SCHEER: Thank you very much.

LATHROP: Have a great weekend.

SCHEER: You as well.

LATHROP: Senator Briese, you may close.

BRIESE: Thank you. And I also appreciate the testimony of the folks that came to visit us here today. It occurred to me, if we could establish fundamental right of grandparents to have access to their child, we'd have a nice little legal protection case on our hands here, based on the current statute. But I'm not a family law expert and I was really just apprised of the constitutional objection late this morning, so I had about a half hour or an hour to think about this, but-- so I didn't research it beyond the limited time I had. But without further-- further research, you know, I'm not really moved by the constitutional objections. You know, they appear to be based on the Troxel v. Granville decision, and so let's look at that. And, yeah, there's certainly a constitutional right to parent your parent-- or parent your children in the way you see fit, and it's a fundamental right, so it requires some heightened scrutiny by the courts if-- if that right is implicated by something that we do. But we first have to remember that no constitutional right is absolute. And furthermore, the Troxel decision was based on a substantive due process analysis. And the court itself indicated that they, quote, did not, and need not, define today the precise scope for the parental due process right in the visitation context-- context. And really, the application of substantive due process is a fluid exercises-- exercise. It hinges on the facts. And the court recognized this, noting the constitutionality of any standard for wording visitation turns on the specific manner in which that standard is applied and that the constitutional protections in this area are best elaborated with care. And so you really have to look at the facts. And so what are the facts here before us? Here, the Nebraska statute requires a court, before awarding visitation-- and the-- what I heard about the-- heard the word "gatekeeper" numerous times. Well, in this situation, the court is the gatekeeper. That's the way the statute has it set up. And here, before that gatekeeper awards visitation, that gatekeeper must find, by clear and convincing

evidence, a significant beneficial relationship has existed between the grandparent and grandchild, that it's in the best interest of the child for visitation to be awarded, and that the visitation will not adversely interfere with the parent-child relationship. And I would note, from the Troxel decision, it looks like the statute at issue there permitted any person to petition for child visitation rights at any time and authorized the court to order such visitation when it might, and I repeat, might serve the best interest of the child. You know, here there is a night and day difference between the Washington statute at issue and Troxel and how it was applied and what we're talking about here. The Nebraska statute has protections built in, a clear and convincing burden of proof that visitation would serve the best interest of the child and will not interfere with the parental relationship. And so as I-- I suggest, there's a-- there's a huge difference between what was what was adjudicated or what was addressed in Troxel versus what we have here. And Troxel is not dispositive of-- of-- of this issue, in my-- in my view. And so I'm skeptical of the constitutional objections. Again, without further-- further research, you know, can't say that definitively, but I-- I don't think Troxel should scare us away from what we're doing here, shouldn't run from the idea because of that. But anyway, that's my two cents' worth. And I certainly appreciate Speaker Scheer's articulation of the need for this and the very circumstances of why it is needed. And anyway, I appreciate your hearing us out today. Thank you.

LATHROP: Well, thank you. Appreciate it, Senator Briese. Senator Chambers.

CHAMBERS: A few minutes ago, I said I was making my comments in discussing with the gentleman who spoke here so that I wouldn't have to say it twice to you.

BRIESE: Sure.

CHAMBERS: But you insist on coming up, so I have to say some things to you.

BRIESE: Sure.

CHAMBERS: Nobody in this room, other than those of my complexion-- now some may be your complexion, but they're passing-- who have a history of being dealt with like property, where people determine what could be done with you like they determine what could be done with this table or this chair, or if it was a living creature, a cow or a pig or a chicken. So when I hear people discussing other human beings in the

way they would discuss property rights, for example, and a grandparent having a fundamental basic right to access to these children, they are not the grandparents' children, in my opinion, in any sense of the word. There has to be this crossover or jump, like the Corona virus did by jumping from the animal to human beings, so in all these kinds of bills, I have opposed them. There are things they've gotten into the statute when I was not in the Legislature, like the things they can do with prairie dogs, the hunting of mountain lions. All living things have a special status, in my opinion. And I do not equate animals with human beings, but anything that is sentient or I can feel is something that I do not want to see exposed to unnecessary pain and suffering, or any pain and suffering, for the pleasure of somebody else. In this situation, for the convenience of some meddling old people, a child that they did not bring into the world is supposed to have his or her life influenced or messed up by these old meddling people who can't get along with one or both of the parents of the child. And I'm saying this not to change your mind. I can't change your mind. I'm not arguing it from the standpoint of what some judges said or what lawyers persuaded legislators to put into the law. I have a unique perspective on how any human being ought to be treated. I think there is always a basic, fundamental, "uneradicatable"-- that's not a word-- dignity that attaches by virtue of an individual being human. And that's why even though you will find people who call me a racist because of how strongly I speak for black people, how strongly I fight against the discrimination against us, who can't understand, or will not bother to try to understand, why I would fight harder than white people to keep other white people from killing a white person as a punishment. First of all, there is none among you without sin, none of you who have not done things that will send you to hell, which is an eternal death based-- I'm talking about those who say they have religion. The reason I don't think the state ought to kill anybody, the state itself doesn't have clean enough hands to take the life of somebody else. The state will want to take the life of A, whose crime is not nearly as heinous as the crime of B. Human beings weigh with an imperfect scale. As Scrooge was saying about this ghost, it may have been a piece of undigested pork, a bit of mustard that led to seeing these apparitions. So maybe a judge got up on the wrong side of the bed and is going to fix somebody, and you happen to be that somebody, so you're going to get the death penalty. I've seen too much in the way of discrimination against everybody, but I find it hard to understand how a black man, who not only has read about things that have happened to us but for 82 years have witnessed it and experienced it-- walk into the store and people's eyes follow you and there is fear because I'm black. They don't know me, but they know what they

think I am, not who, what. So I know what it means to be viewed as a nonhuman, so I will not agree to allow human beings over here to treat human beings over there as though the ones over there are not human. And I see this kind of legislation as converting children into little pawns on a chessboard, and the warring parties are meddlesome old people and the natural parents, or even the adoptive parents, of this child. If these old people want some child that they can do whatever old people want to do with children, let them become foster parents. They're crying and pleading for foster parents. On television they show ads where there are older people who are foster parents. But here's what it is. They want the pleasure of dealing with the child but not the responsibility of rearing a child. When I feel like playing with the child or taking the child somewhere, I want that to be an unalienable right of mine. But if the child becomes fretful, the child becomes obdurate, the child becomes disobedient, I don't want anything to do with the little so-and-so. And that's the way I view these kind of bills. You see? And then I'll let it go. But this is the last hearing of this committee, the last hearing of my legislative career. So I'm going to take, or create, a prerogative or two that might last two or three more minutes. There will be things that can be done when I no longer am in the Legislature. They will be easily done. But while I am here, I'm going to do all I can to stop them and hope that in the process somebody will take the flame and understand why there should be this opposition. But at my age, with my experience, with having obtained a law degree from white people's law school, an undergraduate degree from their Catholic law school, I understand Catholic doctrine better than Catholics. I studied Thomas Aquinas. Some people know that his name should be pronounced "uh-kee-nus." But I went through all of that. Professors in those philosophy classes would not call on me when I raised my hand, because they didn't have to understand those things because the students knew even less, but I could question them, and if they didn't understand, the students knew just enough to realize he doesn't know what he's talking about, this guy's not even a Catholic, not even religious. So I see the games that people play. The badges they wear mean nothing to me. The titles that they bear mean nothing to me. I'm able to look into people and see what is really there, or at least I think I can see what is really there. But I am not so prideful that I cannot be shown by information, facts, that my conclusion is wrong. And when I find out it's wrong, I'll change my position. In all the years that I've been in the Legislature and these kind of bills have been brought, I've held this position and nobody has shown me yet that I'm wrong, but I see much that goes on in the real world that shows me I'm right. Children mean as much to me, probably more, than they meant to Jesus, because Jesus

had the power, if there was a Jesus, to create a second set of circumstances where little children would not suffer like they suffer. People talk to me about fetuses and zygotes, but they don't care about the living children. And here's what I'm working my way up to. There was a grandfather and he was a liar, he was negligent, but the parents of the child trusted him. They all went on a cruise together and they were on one of the upper decks. And any person in this world, where there is a glass in a window, will know when that window is up or open and will not take a child who is unable to climb up on that windowsill and set that child on that windowsill. And the child falls to the child's death while in the custody of this supposedly loving grandfather, then the grandfather shows what a liar he is: that he didn't realize that the window was open. If he set the child there, how is he not going to know? And he wanted there to be a lawsuit filed against the company. And you know what that lying devil did, either today or yesterday? Pleaded g-u-i-l-t-y. That's what I see. And when it comes to children, I look at that child-- those children or that child as though the worst thing is going to happen to that child, because so many bad things are done to these children, even by some parents who call themselves pro-life: tormenting children, beating children, not feeding children, sexually abusing children. And I would vote for a bill to turn these innocent, helpless children over to these meddlesome grown people? Let them go to these doctors who say they can take care of erectile dysfunction, inject some sperm into him and fix him up so that, if he's manipulated properly, he can make the sperm jump out of his penis into the woman's vagina. Everybody in here is grown. You all play games. And there is more child abuse in this country than on the face of the earth, more than in Iran, more than in Syria, more than in North Vietnam, more than in North Korea, more than in China. And then they've got the nerve to put on their self-righteous hat and pretend that all is well. Why do we have so many laws against child abuse? Why are we having so many prosecutions and convictions of those who create child pornography using real children, priests being convicted, bishops who protected priests, popes who protected priests while they were cardinals? And then a pope who brought the cardinal, Cardinal Law from Boston, who presided over the worst child sexual abuse in this country, brings him to Rome and put him over the basilica named after the mother of Jesus, that's what I see happening and that's why I'm a hard sell on these things. But my opposition will be removed when this session of the Legislature is over. You won't have me to deal with. It'll be an open path, just as I suppose that those who didn't like Jesus had an open path to do things when they bumped him off. But get this: Had I been a Roman senator, they would not have had a law that would allow an innocent man to be

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executed because religious people didn't like him. Jews did not crucify Jesus. Italians did. Israel was under the control of Rome. Pontius Pilate was a Roman official. Rome is in Italy. The soldiers who nailed Jesus to the cross were Italians, not Jews. The Jews said, this is what we want, but their hands did not hold the hammer, their other hand did not steady the nail, and a hand-- hammer that hit that nail was in an Italian's hands. And the spear that was stuck in Jesus's side was stuck in his side not by a Jew but by an Italian. So you all get so many things wrong that it's hard for me to just let these things go so that the activities of the Legislature can flow. But since this is the end of the line, then I'm taking liberties. And this would let you know, Senator Brieese, I don't have anything against you personally, I don't have anything against Senator Scheer personally, but I have a great deal against the attitudes in this country against children. They don't love children in this country. They are-- children are things. And when they dress little girls up like women, show them on television and say how cute it is when they shake their little booties, they put eye shadow on their faces, put lipstick on them so they look like miniature women, won't even let them be children, and then they do similar things with little boys, and then you wonder why they wind up going off the beam. Children don't have a bank of experiences against which to judge whether something is right or wrong. But the adults who do these things to children do, and they know what they're doing. It is with that term malice aforethought. And there are other adults who approve of it. They make dolls for little girls like Barbie, give a false impression of what a little girl's role in the world is, and then they want to call them little fast-tail thing. Well, she wasn't a fast-tail thing until some adult taught her how to be that. And then when a grown man rapes a little girl, he wants to say that the little girl tempted him. And there was a judge who said that a 13-year-old girl had tricked this middle-aged man and he was let off. That's what I see in your society. You all are the master race. You all are better than me. You all are essentially better than me. God made you a higher creation. I don't have the feelings that you have. I don't have the understanding you have. I don't have the mor-- morality that you have. I am a thing, just like this book, just like this book. I belong to the kingdom of "thingdom," but I'd rather be what I am than a thousand of the best of you. I listen to the talk on the floor. I listen to the things that your senators say ought to be done to children in school. I see how you all treat children who are abused at home or in school, as though they are little criminals, and you put them in places like these YRTC's. You put incompetent people in charge and you expect the little children to thrive when grown people couldn't thrive under those

circumstances. I have shown a type of superhuman self-control during the 46 years I've been laboring alone with the master race, forty-six years alone, listening, watching. But they made the mistake of not following what the old slave holder said: An educated black man is a good plough hand spoiled. Some of us watch, we pay attention, we learn, and we learn how to survive in a hostile environment. Why would I want to survive in this environment? To keep you all from hurting any human being, even those of your kind. I don't want you to kill your own. I don't want you to kill any human being because when you kill that person, you don't know it, but you're diminishing yourself, you're destroying something in yourself, you're making yourself less human, because you have somebody who is vulnerable and helpless and you decide to take his or her life because you can take it when, if there was true justice, taker of this life ought to have lost his or her life a long time ago, because true morality doesn't consist in what you consider the magnitude of the wrong. Is it wrong? How many panels of a fence would a horse have to jump over to get out of the corral? Just one. Stealing a lamb is as immoral as stealing a bull or a heifer or a cow. The problem, the immorality is in the act of depriving somebody of that which is theirs and taking that which doesn't belong to you, whether it's small enough to fit in the palm of my hand or big enough to require a semi to carry it all. And that's the problem. I paid attention to the stuff that I learned in school. When I was small and didn't know better, I paid attention to the Bible. I thought all of that was true at one time. I thought it was wrong for anybody to steal from anybody. It was only after I got older that I saw that the ones who are saying that said it because they didn't want me to steal, but while they were telling me don't steal apples off a tree, they were stealing companies that processed apples from apples into apple juice, stealing companies, tricking widows out of their inheritance, if they have any, taking their home because they were not notified that they're in arrears on some tax payments. And these tax documents are put out there for the buzzards and the vultures to descend on. And people who had no awareness, and the lawmakers knew they had no awareness, will let a multithousand-- hundred-thousand-dollar house be taken because some buzzard or vulture of you all's complexion was out there waiting to devour these people. And it was happening, and the Legislature knew it, courts knew it, they watched it, and they created this system that made it possible. And I don't care if all you all get up and get out of here. You don't have to listen to me anymore. I had to sit in classrooms when I was little and listen to white people. I had to listen to white people read a story called "Little Black Sambo," and the little white kids laughed at me. And that taught me that I was not among the others that

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we don't laugh at, as the white teachers said when a white child stumbled or dropped a book or something and the other kids laughed. And she stopped whatever we were doing and said we don't laugh at each other. I'm the only black child in that class. So they read a book and it's a story and it's a caricature. When she showed the picture, it wasn't enough to read it, but showed the picture: a big, black blob with big white circles like giant saucers and a dot in the center, and those are the eyes, then great-big, red lips, the kind of character-- caricature that any child would laugh at. But to the little white children, that was me. And they looked at me and they laughed. And I waited for that teacher to give the lesson here. I wanted her to put her hand out, her arm out and raise it at the elbow, put that pointing finger up and wave it from side to side and say, no, no, we don't laugh at each other. So I'm waiting for her now. I'm alone. I have no friend. I have nobody to speak for me. But I'm waiting for the teacher, who is the protector, the one that my parents told me to respect above all other adults because she will teach me how to be smart, teach me how to know how to do things. And I'm waiting for her to do that for me, but she didn't do it. She smiled a small smile, then turned the book back to herself and began reading it again. And the little white children laughed again. And I was taught, not through somebody telling me but the experience as a child that none of you will have, and that's why you'll never understand me, you'll never understand what I say or why I say it. You all created me when I was a child. You made me first into a Negro, then into that "n" word, and you didn't expect me to grow up into a man. You thought I would be destroyed because my mind was supposed to have been stolen then and there was a role that I would accept in this society to be imposed on me. But it didn't work that way with me. There will always be one of those creatures that does not follow the script. Maybe it's Darwinism that works for one person, but not every member of that species. And I learned, first of all, that I'm not among the ones that we don't laugh at. At that time, I thought I was a student in the classroom, just like everybody else, but I wasn't. I learned that they could make fun of me-- that's what we called it when we were children-- like we couldn't make fun of my classmates. And they never drew a picture that made little white children look like things and then the other children could laugh at that one and look at any class-- kid in the classroom that approximated and laugh at that child. So how did I make it through that day? And I'd capitalize every word of "that," T-- T-H-A-T-- THAT day? When, although I didn't have the words to express it, that day, when the realization, to the extent that it could come to a child, that my parents unwittingly, unintentionally set me up to be destroyed, they taught me to respect the teacher, but they failed,

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they neglected to warn me about the teacher. It was not a fair fight in the first place because I was a child and she was a grown person, but it was even more unfair because I didn't even know the game that I was in. I didn't know I was in a game. I didn't know it was a fight. So I didn't know how to fight. I couldn't fight. And there was nobody there, not only to not help me but to stop all these others from teaming up on me. And that's why I can understand why a bunch of white men would go out and grab one black man and lynch him, cut off his penis, cut off his gonads, cut him open, pull out his innards, set them afire-- oh, you didn't know your people did that-- and then cut him down and burn him while he's alive still. They did something very similar to Will Brown in Omaha, Nebraska, in 1919. That's what I know about. And I had to get over all that so I could sit in a white people's Legislature because other black people knew that I was stronger than they were. And although younger than they were, they counted on me to carry on my back a community. And they knew the burden, they knew the load, but when you're desperate you get help wherever you can. And it just happened in this instance that a very young man was the one regularly and repeatedly arrested, no convictions or I couldn't be in the Legislature, and I did it. And then I came here, and I have stopped laws from being passed that would hurt your people, that would degrade your women, that would make them work jobs like men and when they had a job with the state, a certain amount of money would be taken out of their check, the same is taken out of a man's check, but when time came to retire, your pay-out and pension money was not the same as the white man. And white men set up this system. You know how I found about-- out about it? I wouldn't have believed such a thing happened. A black woman went to Nebraska's law school and found out that that's what was happening and told me. And when she told me, I should have gloried in it because the white women were being punished by a white men. But I couldn't see color the way they saw it when they looked at me. I saw people who couldn't protect and defend themselves being tricked and abused by those who are stronger. White women in those days did not get the same pension pay-out as white men. So I brought a bill to the Legislature, and I had to argue and say when-- not all women, because they said women live longer than men so they'd take out more money. I said, that's not what these things are based on. But not every woman lives longer than every man. And when the woman goes to the store and she's in line behind a white man and he gets a loaf of bread and she gets a loaf of bread, the grocer will say to the woman, I'm not going to charge you as much because you don't get as much pay-out. She pays the same amount. So she was robbed when they took that money from her, and then she was cheated when they didn't give her the return that they gave

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white men. You all didn't know that happened and you didn't know that a black man saved your white women's bacon. You didn't know it and it didn't matter. When we were talking about protecting athletes-- and you all can leave whenever you want to the last day-- I saw how unfair the university was. So I got a bill passed that said if an athlete is on a so-called scholarship and gets injured while performing, that scholarship cannot be revoked. And I persuaded the Legislature to enact that law. A reporter from Kansas, Kansas City, wrote an article about the two white girls who were gymnasts and were injured and the coach jerked their scholarships, and there had been a black senator who came to their aid and reminded the Attorney General of the law that said a scholarship could not be revoked due to injury, and the scholarships were returned to the girls. One of them did not want it because she didn't want to come back to Nebraska. And they both, though, were exhilarated, as were their parents. They didn't even know such a law existed. But even though my name was mentioned, do you think anybody connected with either one of them said, I'm glad for the law and I'm glad that you made them give me my scholarship back because I didn't know anything about it and the coach should have known not to take it? No, white people don't say thank you, because that's what a black man does. We're expected to do better and be fairer than white people. And we are so altruistic that you don't even have to say thanks. And I got other bills through. And one was because a white player got injured on the football field and they put him on a door, and on that door they put him in a station wagon and took him to the hospital-- Budge Porter-- and his injuries could have been aggravated, not intentionally but by the way they took him to the hospital. And just a couple or three years ago, some people got some money together and built a house that would accommodate him with his injuries. And when I had legislation trying to get more assistance for the players and fair treatment and insurance, he was quoted as saying that he agreed with me, a black man. Why should I not have been happy and said, God's punishing him because his ancestors were wrong and he said he'll punish them down to the third and fourth generation? But that didn't work with me. I saw people who were being exploited, and when they were of no more use, they were thrown away. If I were like you all, if I were like you all, there would have been other Budge Porters. And if their families didn't have insurance, they would have had happen to their children what happened to him. But since the university did not want to name them employees and give them workers' comp, I insisted that they have a self-insured program that will pay for these athletes' injuries. And if it was temporary, they pay like workers' comp; if it was permanent, like work-- worker's comp, if it was a limb or part of a limb or whatever. And if it was a lifetime

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disability, the university paid, and they could afford it because the money had been generated by the players anyway. You know why I'm putting you all through this? You'll never hear it again. You're kind of captive here now. You can tell other black people, go to hell. But you can't tell me that, even though it's my last day, because I still have some days in the Legislature, and I will put this Legislature through h-e-l-l. I want some group in the Legislature who are considered leaders to challenge me and say, Ernie, you fat mouth, you talk about being able to stop this Legislature, do it. I've told, showed these white people that you 47 white people can control me, that you can put me in my place. I'll tell you how you can do it. Throw out the rule book entirely and say the rules are what you say they are in that instant, because you're not going to beat me as long as you got a rule, because I'll out-think you. And it's not because I'm inherently more intelligent than you all are. I learned because I live in a hostile environment in the Legislature and you don't. If you are waited on by servants, you don't understand the life that your servant leads, but your servant can survive in an environment where you can't because you have somebody taking care of you. You don't develop the skills, the ability, the know-how. You couldn't get out on the street and survive a week. But somebody who lives in the street can survive there and easily survive where you all are because you all don't know as much as people in the street and you don't know how to cope with somebody. But I didn't bring street ways into the Legislature. I learned the rules, I played by the rules, And I'm exacting my few ounces of flesh during this last bill of the last hearing of this committee and the last hearing of my legislative career. And there are others who are going to walk out that door with me not by choice, but because white people, in wanting to get rid of me, are like the hostage situation where the black man has ten people, white people hostage, and they'll kill all ten white people hoping they get the black man because white people are expendable. But not really-- it's just that they hate the black man more than they love white people. So what they did was put me into the constitution, by way of term limits, to kick all the white people out in order to get me out. They threw out the baby with the bathwater. And now those who get into the Legislature, who probably supported term limits, now that they understand what being in the Legislature means, the amount of time it takes to just grasp the mechanics of legislation, let alone know all the players, the Governor, the lobbyists, and all of those who influence the legislation, just when they're getting to the point where they can be effective, Chambers strikes. When I'm out of here, it's like somebody reaching back from the grave and saying, you lived a little longer, but in eight years I'm going to pull you right down

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here with me, and they're going to throw the dirt over you like they threw it over me and didn't even intend to get you. But they were so blinded by their hatred for me that they could not see that they were hurting all of the others, and that's where we are now. And that's why I'm here now and it's why I'm saying what I'm saying. Like Frankenstein, the monster, told the doctor who made him, you are my creator, but I am your master. White people created me, but I'm their master now. And, Senator Briese, if you hadn't come back up here and provoked me, see what you made me do? That's the way they do us. But you didn't need--

BRIESE: My apol-- my apologies.

CHAMBERS: You gave me the opportunity, and for that I thank you and I'll be forever in your debt. But in political terms, forever means maybe until tomorrow morning. [LAUGHTER]

LATHROP: OK. I think that's all we have, Senator Briese.

BRIESE: Thank you.

LATHROP: That will close our hearing on the bills LB1118 and LB1190. Thank you. Thanks to all those who came today to present bills and to testify. That will close our hearings and our hearing for the day. Maybe before we go off-- are we still on the record? We should acknowledge 50 years of public service. I know you still have 28 days or something like that on the floor, but this is 46 years of sitting in Judiciary Committee. [APPLAUSE]

CHAMBERS: But you don't-- you don't have to do that. You don't-- here's what some other senators did, if you-- we--

_____ : [INAUDIBLE] [LAUGHTER]

CHAMBERS: No longer than three minutes and not that long.

DeBOER: You said two to three minutes and it's a half-hour.

CHAMBERS: If you can show-- I can show you what some other senators did that is more than applause. When you leave this room, look at the name on that door. There is no living person in Nebraska who ever had his or her name put on any government property. Find me another living person who had it done, and you won't. The only one who had it done was me, and they hated me when they did it. I don't know what came over them, but it did and that name is there.

LATHROP: OK, Senator.