

\*Indicates written testimony submitted prior to the public hearing per  
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**LATHROP:** Good morning and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12. I'm also the Chair of the Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, has been complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I'd like to encourage you to consider taking advantage of additional methods of sharing your thoughts and opinions. For complete details on the four available options, go to the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages, and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you enter the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair in between testifiers. When public hearings reach capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow room this year because of the HVAC. So we ask that where there is large attendance at hearings, please, only the testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two options this year for testifying at a committee hearing. First, you may drop off written testimony prior to the hearing. Please note the following four requirements must be met for you to be on the committee statement. One, the submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 here in the Judiciary Committee

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hearing room. Two, individuals must present their written testimony in person and fill out a testifier sheet. Three, the testifier must submit at least 12 copies. And, four, testimony must be a written statement no more than two pages, single-spaced or four pages, double-spaced in length. No additional handouts or letters from anybody else may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official transcript assuming that you have met all four of the conditions. As always, persons attending a public hearing have an opportunity to give verbal testimony. On the table inside the doors, you'll find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually going to testify before the committee. And if you fill one out, please print legibly. Hand the yellow testifier sheet to the page as you come forward 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, this sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12:00 noon the last workday before a hearing. Position letters will only be accepted by way of the Judiciary Committee's email address, which is posted on the Legislature's website, or if they are delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last names and spell them for the record. If you have copies of your testimony, bring up at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but not 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 yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. New this year is a policy in the Judiciary Committee because of the number of bills we have and the limited amount of time we have to hear them, that's related to COVID and changes in our scheduling, we are limiting proponent testimony on

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bills to a half hour and opponent testimony to a half hour. This has only been an issue maybe in two bills so far this year, just so that you know that that's the case. And if there are more than 30 minutes worth of people coming up to testify, you may wish to sort of organize who's going to speak so that, so that we get a good cross section of opinions. As a matter of committee policy, I'd like to remind everyone the use of cell phones and electronic devices is not allowed during public hearings, though you may see senators take notes or stay in contact with staff. At this time, I'd ask everyone to make sure your phone's in a silent mode. A reminder, verbal outbursts and applause are not permitted in the hearing room. Since we've gone paperless this year in the Judiciary Committee, senators will be using their laptops to pull up documents and follow along with each bill. And finally, you may notice senators coming and going. That has nothing to do with how they regard the importance of the bill under consideration. But they may have a bill to introduce in another committee or a different meeting to attend to. And with that, I'd like to have the committee members introduce themselves, beginning with Senator DeBoer.

**DeBOER:** Good morning, everyone. My name is Wendy DeBoer. I represent District 10, which includes Bennington and parts of northwest Omaha.

**BRANDT:** Good morning, I'm Senator Tom Brandt, Legislative District 32: Fillmore, Thayer, Jefferson Saline, and southwestern Lancaster Counties.

**MORFELD:** Good morning. Adam Morfeld, District 46, northeast Lincoln.

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

**McKINNEY:** Good morning. Terrell McKinney, District 11, north Omaha.

**GEIST:** Good morning, Suzanne Geist, District 25, which is the east side of Lincoln and Lancaster County.

**LATHROP:** So we have an absent member today, Senator Pansing Brooks, who represents Legislative District 28 and is also the Vice Chair of this committee, is in quarantine related to a COVID exposure. She will be participating by watching on NET and she may forward a text to me with questions. So if you see me on my phone, it's just checking to see if Senator Pansing Brooks has questions. Assisting the committee

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today are Laurie Vollertsen, our committee clerk; Neal Erickson, one of our two legal counsel; and our pages this morning are Evan Tillman and Mason Ellis, both students at UNL. And with that, we will take up our first bill of the day, Senator Albrecht and LB282. Senator, welcome back to the Judiciary Committee.

**ALBRECHT:** Good morning, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Joni Albrecht. It's J-o-n-i, Albrecht, A-l-b-r-e-c-h-t, and I represent Legislative District 17 in northeast Nebraska, which includes Wayne, Thurston, and Dakota Counties. LB282 is a simple bill. It closes a loophole in the Nebraska law. Currently, it is against the law for anyone in Nebraska to present materials to children considered obscene or harmful, except in schools or libraries. In Nebraska, elementary schools through high school and libraries, it is currently-- it currently is lawful to present criminal obscenity to any age of school children. It makes no sense that schools and libraries, of all places, should be given a pass to expose children to material the law already would recognize as criminally obscene to children. Last year, we created legislation with LB1040 and LB881 to protect children from being groomed by an adult. This bill simply continues to close the loophole, prosecuting any adult in K-12 or library setting who seeks to groom a child through the use of obscenity. And LB282 just says the same obscenity standard applies to everyone in Nebraska. No exceptions. LB282 does not change a thing about the definition of obscenity as applied under Nebraska law. Whatever would have been considered obscene or harmful as to children previously or not obscene remains the same. The Nebraska state statute describes, without using the word obscene, what sexually explicit materials are harmful to minors and currently cannot be presented to children is in the Nebraska state statute 28-808 and Section 28-807, which defines harmful to minors. These Nebraska laws have not changed in 44 [SIC] years since 1997. LB282 simply closes the loophole no one is allowed to show material to this-- excuse me, no one is allowed to show material the state would define as obscene to a minor. Thank you for listening and I respectfully ask you to advance LB282 out of committee and onto the floor of the Legislature.

**LATHROP:** OK. Thanks for that introduction. I do not see any questions at this point.

**ALBRECHT:** Thank you.

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**LATHROP:** You will stay to close?

**ALBRECHT:** Yes, sir.

**LATHROP:** OK, thanks, Senator Albrecht. We will begin with proponent  
testimony. Welcome.

**MATT HEFFRON:** Good morning, Chairman Lathrop and members of the  
Judiciary Committee. My name's Matt Heffron. I'm an attorney in Omaha,  
Nebraska. I'm also senior counsel at the Thomas More Society, a  
nonprofit public interest law firm headquartered in Chicago with an  
Omaha office. As Senator Albrecht said, LB282 just says the same  
obscenity standard applies to everyone. No exceptions. It closes a  
loophole, a long-time loophole in Nebraska law. And if I were sitting  
where you are, I would wonder how did that loophole get there? And so  
one of the handouts I'm giving you is, is analysis of the legislative  
history of LB38, which is the section now in Nebraska's code, which is  
28-815. It's a little complicated, LB38 was in 1977, it was  
recodification and revision of the code. They discussed the obscenity  
statutes. But there's also a passage of the same obscenity statutes in  
1974, and that was LB815. And at that time, it's expressly stated in  
the legislative history of, of this statute that this obscenity  
exemption, which applies to schools and to libraries, was intended  
only for university level, graduate level, and art school sort of  
thing. They did not ever discuss allowing it for K-12 schools. And in  
fact, all of the discussion of this bill was to the contrary, and that  
is that LB815 was primarily, as it says in the artifact it was Senator  
DeCamp who said that obscenity and pornography as they relate to  
minors is the thrust of this bill protecting minors. That was the  
thrust of the, of the-- all of the obscenity statutes in 1974 and  
1977. And in fact, they would not have also given-- intentionally  
given a-- an exemption to allow minors to have obscenity in the, in  
the schools. It was just a different time. No one, no one even thought  
about it. It wasn't contemplated. And to further up on that, that it  
was simply an overstate-- oversight and mistake, we have Senator Pat  
Venditte, who will be testifying right after me, former Senator Pat  
Venditte, you may, may remember him, who was there in the 1970s,  
sitting in your very same seats and he'll say the same thing. I also  
gave you another handout explaining obscenity law. I will say this,  
lots of lawyers on this committee, you're, you're thinking back about  
obscenity law. In this case it's only there to answer your questions  
because LB282 does not have a thing to do with changing Nebraska's

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obscenity law. So if anyone comes up here after me and starts saying, what about this piece of obscenity? What about this, would, would teachers be or, or librarians be liable? This law, this LB282 doesn't change a thing. They should go to 808 and 807 if they want to know whether or not there's obscenity involved. And I can explain that further if you have questions. Finally, as far as, if there need to be any assurances for teachers, you know, what does this do to us? It doesn't do anything as far as teachers are concerned. They're just held to the very same standards as everyone else in the state. And the majority of teachers, quite honestly, will want nothing to do with presenting obscenity in schools. It, it dovetails nicely with your bill from last year, and that is this only handles the rogues. In fact, I'm married to a teacher and you'll have several other teachers testifying. This is only to, to sort out the rogues that might want to present obscenity to schools or obscenity in schools, and I--

**LATHROP:** Matt, I have to enforce that red light--

**MATT HEFFRON:** OK. Very good.

**LATHROP:** --because there's a lot of people I think that want to be heard today.

**MATT HEFFRON:** I know. Very good.

**LATHROP:** Any questions for Mr. Heffron? I don't see any. Thanks for being here. Good to see you again. Next proponent. Good morning and welcome.

**PAT VENDITTE:** Good morning, Mr. Chairman and members of the Judiciary Committee. The information that is being passed, is this going to be automatically put into the record?

**LATHROP:** No, you'll have to read it if you want that particular information provided.

**PAT VENDITTE:** Can I request that this be put into the record without touching on every paragraph?

**LATHROP:** It will be an exhibit. Pardon me.

**PAT VENDITTE:** OK.

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**LATHROP:** It will be an exhibit to the record.

**PAT VENDITTE:** OK.

**LATHROP:** We have so many rules right now, it's hard for me to--

**PAT VENDITTE:** I understand.

**LATHROP:** --make a representation. You can start the light.

**PAT VENDITTE:** I believe my vitae is pretty much self-explanatory and I know we're, we're limited in terms of time. But I remember in my late twenties when I became a state senator, we met--

**LATHROP:** We're going to have to have you--

**PAT VENDITTE:** I'm sorry.

**LATHROP:** --spell your name for us-- give your name and spell it, please.

**PAT VENDITTE:** Sure. Pat Venditte, P-a-t V-e-n-d-i-t-t-e, 1235 Park Wild Avenue, Omaha, Nebraska. That's just a few blocks from the Old Market in Omaha's Little Italy. I've been a residence there for 75 years. I remember my first couple of days becoming a state senator, we met with Gene Mahoney and one of the things that he said was, you're a state senator from 8:00 in the morning until 5:00. After 5:00, go home and, and be with your family. Well, you know, that kind of resonated with me and I was giving an inordinate amount of time away from my family. And that was kind of a wake up call. So I, I made an effort to go home and spend more time with family. And I had a couple of young, young boys that were-- that came into the family, one of which was interested in music and another one interested in baseball. So my wife took my son Tony and encouraged him into music. And I took the baseball side and taught my son how to pitch with both arms. And he became a major league baseball pitcher, the only active pitcher in baseball today that can pitch with both arms. He was drafted by the Yankees and spent time with Toronto, Oakland, Seattle. But I, I think it's important because I, I bring my childhood back to, to life today. And for some reason, I was with my grandparents who came from Italy, and her son was Judge Sam Caniglia, who was a district court judge in, in Omaha. Every single morning he would stop and visit his mother before he went to the courthouse. And as I reflect back on those days,

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I remember my uncle who lived across the street was all big 6 in 1949 and '50 for the University of Nebraska in wrestling. And, and my childhood, of course, with, with the Benedictine nuns in grade school and the Dominican nuns at the high school level taught me the values that I live by today. And after completing my undergraduate work, I started teaching at Westside High School in Omaha, Nebraska, and we had the modular system then. And that just came into being and kids were in class only half a day. And the rest of the time they were expected to be in the, in the IMCs. And that was a tough time because many young people, when they had free time, they didn't want to go to the instructional material center. They had other interests. But as time went on, we, we left the modular system and went to a, a, a regular school day. But again, I just want to reiterate a couple of things with regard to the code. Yes, when I was here, we, we went through the entire code and obviously there were some errors made. And the reason why I'm here today is to request the committee to consider those, those requests that have been made so far by Matt and myself. And the, and the amendment 28-815 is needed to close a loophole which the Nebraska Legislature in the 1970s did not intend. And I hope in your wisdom, you will correct our drafting mistake of over 40 years ago.

**LATHROP:** OK.

**PAT VENDITTE:** Thank you.

**LATHROP:** Appreciate that. I did-- I was fortunate enough to try cases in front of Judge Caniglia, wonderful, wonderful, wonderful man.

**PAT VENDITTE:** Thanks, Steve.

**LATHROP:** And after he retired, he was up in the juvenile court, basically volunteering--

**PAT VENDITTE:** That's exactly right.

**LATHROP:** --and a perfect fit too.

**PAT VENDITTE:** Thanks, Steve.

**LATHROP:** Yeah, yeah. Senator Geist has a question for you.

**PAT VENDITTE:** Yes.

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**GEIST:** I'm over here.

**PAT VENDITTE:** OK, Senator.

**GEIST:** Yes, thank you for your testimony. And as I was reading through your written testimony, you indicated that you were part of, as you were saying, rewriting the code and especially as it has to do with obscenity. And so the loophole that, that is being talked about in LB282, can you speak to whether that was the intent of, of your committee or, or you're rewriting or if, if that's something that was not foreseen?

**PAT VENDITTE:** I think the latter. I don't believe we, we had foreseen that to be an issue.

**GEIST:** OK. And also, I further ask, in considering things that are taught in schools now, such as sex education, would that fall under your concern of, of obscenity or is that how you see it as part of a, a curriculum that's needed in schools now? Would you respond to whether that's encased in LB282 in your opinion?

**PAT VENDITTE:** You know, if I may, Senator, I would like to draw a parallel to that, if I may. And I was invited to a, a health consortium at Creighton University. And this was in the latter, latter '60s. And it had to do with alcoholism. And I was one of many teachers and, and, of course, parents that were there, and it was suggested by the committee, that we know that young people are going to drink so let's tell them how much they should drink. And right away, I, I, I came and expressed my concerns and I said, if we're going to give a recipe to all of our high school students as to how much they can drink, I says that-- I want to hear that recipe. And they were recommending that we tell young people that it's OK to drink, but don't drink to excess. But what's that recipe? Young people today don't, don't understand that. And I, and I think the same thing when it comes to sex education, Senator, wow. I look back at, at my years and sex was not mentioned during my elementary years at, at St. Philomena grade school, Cathedral High School, all nuns then and priests, and I, to be honest with you, sex education wasn't an issue. I've been out of education since 2000. And what they're doing today, I, I really don't know. But our young people are subjected to just about anything when it comes to sex education, and I, I just hope that

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when we, when we involve sex education into our curriculum, that it's  
in the best interest of, of their, of their lifetime of living.

**GEIST:** Thank you.

**LATHROP:** OK, think that's it. Thank you for being here.

**PAT VENDITTE:** Thanks, Steve.

**LATHROP:** Good to see you. Next proponent.

**MARY McALISTER:** Good morning, Chairman Lathrop and--

**LATHROP:** Good morning.

**MARY McALISTER:** --members of the committee. My name is Mary McAlister, M-a-r-y M-c-A-l-i-s-t-e-r. I'm an attorney with a child and parental rights campaign. I reside in Virginia. And as part of my work, I did a lot of research on obscenity, the effect of obscenity on children and their brains and all of that. And I've been working with folks all around the country to try to repeal laws like this, that, as former Senator Venditte said, were brought in not intending to do what they're doing now. And so this is a very critical bill to protect children and also parental rights. And we're, we're not talking here about censorship. I know that there might be people, opponents, who come in later and saying we're trying to censor. That's not it at all. We're talking about protecting children. Now obscenity is not protected by the First Amendment, as, as all of us who are lawyers know. And it's one of the, the defined exemptions from it. And so-- and we know obscenity is obviously harmful to everyone, but we're talking here about young, undeveloped minds. We know children's brains do not mature until their mid-twenties. And so, and so the courts, the federal courts have long acknowledged, acknowledged that our laws should provide children with greater protection from obscenity even than is provided to adults. And so Nebraska does that, provides greater protection with statute 28-808, which provides criminal sanctions for disseminating materials that are harmful to minors. And these are appropriately recognized that materials which might not be viewed as obscene to mature adults, pose harm to the immature and developing minds of children and, therefore, should be subject to greater restrictions. And so these restrictions are not censorship, but an exercise of our duty as responsible adults to protect the

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innocence and health of children. The, the exemption as it exists, is actually a derogation of the duty to protect the innocence and health of Nebraska's children. And it's a breach of the trust of parents who entrust their children to the schools to gain knowledge and skills that will help them become productive citizens. They don't expect they're going to be introduced to materials that steal their innocence and damage their health and well-being. And what they're saying in the exemption as it exists now is they're saying, well, if you slap an education label on it, then even though no one else in the state could provide these materials to children, the teachers and the librarians can. And, and that just is a very harmful thing because the children's undeveloped brains are not able to process these materials. And these are not like English lessons or math lessons where you're, you're giving them facts. These materials evoke emotions and sensations that the children can't process. They don't know what this is. So they have these sensations, so then they're not able to focus on what they need to do.

**LATHROP:** OK. Let's see if there's questions. Senator Geist.

**GEIST:** Yes, thank you. Is it your opinion that-- now I've seen some of the images that are available here locally. Can an appropriate sex education be taught without the use of these images?

**MARY McALISTER:** Yes, and, and it was for years. I, I know my, my experience and experience of most of us, you know, you can teach human anatomy, human physiology, the-- you know, the differences between male and female and the process of reproduction without providing graphic illustrations, without providing discussions of various types of sexual activity that people engage in and how they engage it and--

**GEIST:** What would you say about art and how-- I think many of these images are cased in, well, this is art. What would your response, as a-- as an attorney for children's rights, what would your response to that be?

**MARY McALISTER:** Well, indeed, some of it is art. I mean, we're thinking-- when you think of Michelangelo's David, for example.

**GEIST:** Would you call that pornographic?

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**MARY McALISTER:** No, it's simply a representation of human anatomy and done in a, in a, a beautiful way that's not-- what happens is, is what's the intent behind the image? And if the intent behind, why are you giving this-- destroying this image? If you're showing a photograph of Michelangelo's David, you're saying here is a sculptor who is a very, very talented and he offered a very realistic piece of art representing the human body. And, and it's a beautiful thing. But if you're presenting a picture of two people engaging in sexual activity that may be very well artistically done, may be beautiful art, that is going another step beyond that is not required to be given to young children. I mean, certainly-- and, and LB282 would not affect that in terms of the university level where people are adults and then they, you know, certainly, they, they have the capability of processing the image and understanding that it's art versus pornography.

**GEIST:** OK.

**MARY McALISTER:** Children can't make that differentiation. They need us as adults and teachers, authority figures, to do that for them. And so if that gets confused, then the, the children don't know really how to handle what they're seeing.

**GEIST:** Thank you.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. How do we prepare our students for, you know, life after high school and school if we shield them in a box and don't get them to understand the realities of having unprotected sex?

**MARY McALISTER:** Well, I don't think we need to put them in a box. I don't think we need to shield them from reality, but we have to always ask ourselves with the various age levels, you know, what is a kindergartner able to understand? What is a sixth grader able to understand? And, and you can certainly-- and I think what you need to do is you focus on the relationship aspect of it. You don't need to describe in detail, for example, how, how does a person get AIDS and go into detail of the act that they engage in that makes them at risk for that. But you can, you can say when you're in a relationship with someone and you, you need to protect your health, you need to protect yourself, you need to, to make choices that are wise. Making wise

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choices is really the key because you're asking these children. And you know, the, the part of their brain that can, can analyze risks and, and process a risk and risk taking doesn't develop until their twenties. So if you're asking a, a 15 year old to not, you know, to, to not take risks, you have to be very focused. And so what you, you need to do is you need to say you need to make wise choices. You need to talk to, to trusted adults or friends who are wise in these issues and, and to seek counsel from your parents or, or counselors or whoever is in your life that can advise you on what these wise choices look like. And that doesn't need to be the, the school's role. They can certainly have an overt overviews of we need to make wise choices in our physical lives and our physical bodies. We need to make wise choices in whom we share ourselves with.

**McKINNEY:** OK. I guess, you know, through my whole life, going through elementary, I don't remember ever being taught sexual education in elementary, not once. In middle school and high school, I remember it. But I, I-- maybe they started doing it, but I, I don't recall it ever happening. What about, you know, education around, you know, rape and sexual assault and looking for the signs and educating our students on, you know, how to, you know, see the signs? And if you're being-- if a student is being manipulated, being exposed to some of this education could be helpful for them to, you know, say, hey, this has happened to me.

**MARY McALISTER:** Again, I, I don't think you need, I don't think you need to go into the detail. I think you can, again, engage with relationship education. You can engage in, you know, good touch, bad touch. You don't need to go into great detail. If somebody shows you something or, or touches you in a way that makes you feel uncomfortable and which, which makes you feel like it's not right, then you, you go to your, your parent, you go to your teacher, you go to your counselor and you say this is the activity or this is something that happened to me. I'm uncomfortable with it. And the teachers in, in class can talk about that, but they don't have to talk about and, and show most, and even show photographs or pictures of the activity, because that itself triggers. If there's a child who has been sexually assaulted and you show them pictures, even if it's not somebody being assaulted, quote unquote, but you're showing them explicit images of people engaging in these activities, that in of itself can trigger these children harmfully. And so it has to be a, a balance of informing the children about being in charge of their own

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bodies and not being told to do something that is uncomfortable to them, that, that makes them scared, that makes them feel bad. And if anybody does that, you need to talk to a trusted adult about it.

**McKINNEY:** OK. Again, I just simply don't ever remember seeing people engaged in the activity during my sex ed classes. I remember seeing photos of, like, you know, individuals with STDs and things like that. But I never-- maybe they started teaching it since I've been out of school. Maybe. I guess the last thing is even different from my childhood, our, our children, whether we want to acknowledge it or not, are exposed to a lot more than us. These phones and the Internet and all these apps and things like that are exposing children to a lot of things. I, in my opinion, I don't know, I would be interested in your response, do you think it's better to educate our kids on what they're being exposed to or to not talk about it at all?

**MARY McALISTER:** I think, again, school does not need to be the place, another place where they're getting these images. Yes, they-- yes, unfortunately, on television, on their phones, on the Internet, on social media, they're going to see these images. But a school is a very different environment. And, and especially-- it's especially a problem because children are told when you, when you go to school, you know, you are to respect your teacher and you're to listen to your teacher. And so if you have a teacher who is providing graphic information that, OK, yeah, they could, they could go get it on the porn sites. But you have a teacher telling you-- and, and you'll hear from some other testifiers here that that is happening. And then you have a teacher who's an authority figure just like your priest or your rabbi or your pastor or your mom or dad telling you this is something that's OK to do. This is something that people do and you should enjoy it. And that is being told to kids. And, and we have people who will tell you that. Then that just adds to it. And that oftentimes what they hear in school is what will drive them to go looking around on the Internet if, if they haven't already, but it will drive them. So we don't need to add to-- school doesn't need to be a place where we're adding to the harm. We-- school needs to be a place where they learn how to be productive citizens. They learn math and they learn science and they learn English and they learn history and they learn what it means to be a, a well-rounded, well-educated person who can contribute to their community. And we just need to refocus on that part of school.

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**McKINNEY:** Thank you.

**LATHROP:** I do have a question from Senator Pansing Brooks, and I'm  
going to try to paraphrase it.

**MARY McALISTER:** OK.

**LATHROP:** Do you believe that the obscenity laws, as we define them in  
Nebraska, are violated by-- in a high school that is teaching  
curriculum the high school has approved?

**MARY McALISTER:** In some cases, yes.

**LATHROP:** Is it the goal of this bill to stop sex education in K-12  
settings?

**MARY McALISTER:** No.

**LATHROP:** Is it the goal of the bill to stop sex education in K-12 that  
uses images to assist in the sex education class?

**MARY McALISTER:** If they are images that meet the definition of harmful  
to minors under Nebraska law. Just like anyone else, I mean, any, any  
other person. If you invited children over to your home, people would  
not do this, obviously, unless they had a serious issue, but if you  
were inviting the neighborhood children into your home to watch  
pornography, well, certainly that's something that you would be  
prosecuted for in Nebraska. So why, why would a teacher--

**LATHROP:** Pardon me, I just want to make sure you're not giving me long  
answers--

**MARY McALISTER:** No.

**LATHROP:** --because there's a half hour on proponents--

**MARY McALISTER:** Right. I understand. Yes.

**LATHROP:** --and I see people sitting behind you that still want to be  
heard.

**MARY McALISTER:** Yes.

**LATHROP:** So I don't want to--

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**MARY McALISTER:** OK.

**LATHROP:** --I don't want to burn the half hour with one person. And let me see if Senator has any other questions. Do you think-- this is from Senator Pansing Brooks, do you think that pictures or images of reproductive organs would be considered obscene? What about anatomy models of reproductive organs as examples, anatomical models to be used for condom demonstration or demonstration of self-examination to determine cancer?

**MARY McALISTER:** Well, the condom demonstration is, is a different issue, but generally, no, as I indicated, this does not-- is not meant to affect factual and scientific information about this is a male. This is a female. These are their reproductive organs. And these are the types of, of diseases that can happen and whatnot. But just factual scientific information that isn't-- and as the obscenity definition states, isn't meant to prompt any kind of sensations, but is just meant to provide factual information.

**LATHROP:** So when I look at the definition of harm-- harmful to minors, among the elements is lacking in serious literary, artistic, political, or scientific value to minors. If someone uses images for purposes of sex ed in a high school, for example, doesn't that necessarily mean that it is not harmful to minors because it is offered for a scientific value to minors?

**MARY McALISTER:** That would depend. Again, you would have to look at the materials and, and make the determination as to whether this is scientifically valid and does not promote the prurient interest, as it says earlier on.

**LATHROP:** Right.

**MARY McALISTER:** But is simply educational, it's simply saying.

**LATHROP:** One more question for you, and that is, do you believe this bill will have the effect of chilling sex education in the high school setting?

**MARY McALISTER:** Only to the extent that the education incorporates images and text that violates Section 28-807.

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**LATHROP:** OK. I do not see any other questions. Thank you for being here.

**MARY McALISTER:** Great. Thank you.

**LATHROP:** We appreciate your testimony. Next proponent. Good morning.

**TERESA DAVIDSON:** Good morning. Good morning, Chairman Lathrop and the Judiciary Committee. I'm honored to be here. My name is Teresa, T-e-r-e-s-a, Davidson, D-a-v-i-d-s-o-n, and I have been a pediatric nurse practitioner for 26 years. I've been working in the anti-human trafficking movement for the past eight years, first founding a nonprofit called Chains Interrupted in Cedar Rapids, Iowa, then becoming the nation's fifth anti-human trafficking coordinator within a hospital. In October 2019, I was appointed by former President Trump to serve on a federal public-private partnership to end human trafficking advisory council and served to advise federal agencies on issues regarding human trafficking. I have been impressed with the strong stand Nebraska has taken to protect your children, especially against human trafficking. Attorney General Doug Peterson is very committed to fighting this crime and speaks out strongly for prevention. I have partnered both with Nebraska's visionary human trafficking task force and with the Nebraska coalition. I watched you pass LB108, introduced by Senator Lathrop, unanimously last year. Being exposed to sexually explicit material, places children at risk from all kinds of predators, which is why it is critical that a loophole which allows obscene material to be provided to children be closed. Children's minds are not developed enough to handle sexually explicit images. If seeing an image is distressing to them, their brain goes through a complicated process and releases chemicals, including cortisol. Over time, distress can actually kill brain cells and disrupt neural connections. Depression, anxiety, risk-taking behavior, inability to learn, and poor decision making are just a few of the results, which are all risk factors for becoming a victim of human trafficking. During my work at Mercy Medical Center over the past two and a half years, I have received over 153 referrals of sex trafficking. Of those groomed at a young age, over 90 percent started with being exposed to obscene material. In fact, using obscene material is used in many of the control tactics employed by traffickers. I cannot begin to tell you how experiencing human trafficking destroyed each of their lives. One survivor friend of mine has a metal plate in her jaw from it being broken so many times. She

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struggled with infertility due to all the sexual assaults and still has nightmares to this day, ten years after she escaped the life. She can't watch certain movies or be out after dark. She has panic attacks and struggles with self-esteem and relationships. I can tell you hundreds of stories just like her, but since I only have a few minutes here today, I've included two letters from survivors of sex trafficking in your packets. We must do everything we can to prevent this. Please continue Nebraska's strong leadership in fighting human trafficking and protect Nebraska's children from exposure to obscene material. Thank you for your time.

**LATHROP:** Thank you. Senator Geist.

**GEIST:** Thank you for your testimony. I've seen some of these images that are available to children. And I would contend that they're so beyond what's needed for sex education, for history, for art, have you in your state, it's hard to equiva-- make it the same. But is there a line that is appropriate for students? And, and how do you determine where that line is?

**TERESA DAVIDSON:** That's an excellent question, because I think that we can all agree that children need age-appropriate, developmentally appropriate, healthy sex education, we all can agree on that. So where is the line? Who determines that line? I can tell you that in my experience with human sex trafficking survivors, that most of them have been-- have started being groomed by, you know, the obscene material. And even children that have seen obscene material, they, they develop that, that anxiety, that fear, that, that curiosity. And, and they, they go exploring and that gets them into trouble, especially online when they're trying to find out answers. They're-- the FBI is estimating hundreds of thousands of predators online at any given moment, just trolling for our kids that are looking for answers and looking for ways out of precarious situations. So I know I didn't answer that question.

**GEIST:** But specifically, we're not talking about those-- the things I would say that I've seen. I mean, we are talking about those things. We're not talking in this bill about attacking the ability of an instructor to present to their students in a factual way about anatomy, about art, about reproductive health or biology. We're talking about things that fall far outside the norm.

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**TERESA DAVIDSON:** Correct.

**GEIST:** Is, is that your understanding?

**TERESA DAVIDSON:** That is my understanding of this bill. Yes.

**GEIST:** OK. Thank you.

**TERESA DAVIDSON:** Um-hum.

**LATHROP:** Just one moment, I have a question from Senator Pansing Brooks. Here is the question for you by Senator Pansing Brooks. I've worked on human trafficking bills. Never once has it been intimated that the hideous practice begins in schools. To the contrary, schools use age-appropriate programs to teach and protect all children in Nebraska. Are you saying that schools are the reason that kids are trafficked?

**TERESA DAVIDSON:** No. That's a great question and I'm glad to clarify that answer. No, I'm not. There are three main players in the game of human trafficking, there are victims, there are buyers, and there are traffickers. Obscene material has been used within all three of them into-- and can be used to groom all three players into a human trafficking situation starting with victims. We've discussed how that if they're seeing something that's inappropriate for their age, they have that anxiety, that distress that can cause them to have the vulnerabilities to be groomed. But traffickers often will use a fake boyfriend or girlfriend relationship to persuade them into doing a sex act that then they videotape or photograph without their consent and blackmail them into becoming a victim of human trafficking.

**LATHROP:** You don't think all this starts with sex ed in schools?

**TERESA DAVIDSON:** No.

**LATHROP:** OK.

**TERESA DAVIDSON:** No. I mean--

**LATHROP:** I, I, I have to tell you that I'm trying to make sure that we are respectful for other people.

**TERESA DAVIDSON:** Yes, sir.

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**LATHROP:** And we have with just a few people gone so far that we're out of time for proponents. And I regret that. But that's the questions that were asked and the answers that were given. And so unless there are other questions for this testifier, and I see none. Thank you for being here.

**TERESA DAVIDSON:** Thank you.

**LATHROP:** I know you've traveled some distance to share your views, and we appreciate that. We will now take opponent testimony, those-- anyone here to speak in opposition.

\_\_\_\_\_: Can I ask a quick question? If I don't testify, can I at least turn my material-- my testimony in?

**LATHROP:** We can log it in as an exhibit. I, I apologize. We have these rules about what we can accept as written testimony. We can now move to--

**GWEN EASTER:** Excuse me. I'd like to know why, why was there a time limit put on our testimony? I, I understand you all have to have rules of alternating, but I don't feel like that it is fair when you all are limiting us to, you know, those who want to speak to 30 minutes. I've never seen this before done so. Maybe you all may have done it before. But I just think that, well, this issue that is important as it is, it should not have had a time limit on it.

**LATHROP:** Well, I can't take-- first of all, we-- this has been the, the practice in this committee all year. It has frequently been the practice with Judiciary Committee because of the volume of bills. My first two years down here, we didn't have to because our bills were heard in the afternoon and we could go till 11:00. I have to--

**AMBER PARKER:** Sir, with all due respect, we have human trafficking going on and this legislative bill that Senator Albrecht has brought forward is, is to close the door and gaps on teachers who would be pedophiles or even support groups like the North American Man/Boy Love Association. We have to protect our kids. You, Senator, know in the state of Nebraska, we already have had teachers who were arrested because what were they doing? Preying upon the children. Sir, this is one of the most important bills, LB282, so I would cry out and myself as being a victim of pornography and cutting off my freedom of speech,

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this greatly hurts me and it leaves a horrible imprint on the state of  
Nebraska. I ask and I plead, please, whatever your rules are make  
there be an exemption this day.

**LATHROP:** We-- I, I have no control over how long people took to answer  
questions before. That's the problem. When, when, when answers take up  
five minutes, then that's time that other people don't have.

\_\_\_\_\_: [INAUDIBLE]. You already know [INAUDIBLE]--

**LATHROP:** You may, you may submit--

**GWEN EASTER:** --how, how, how, how-- you already know how hearings go.  
So to say that you don't know how long people will take up time, I  
think is, is a little bit unfair. Again, you know, with this being an  
important bill, I can respect what you all are saying, but I just  
wanted to voice that, that this is, this is a little--

**LATHROP:** I appreciate that. Understand, understand that I have three  
bills scheduled this morning because we have-- and it has been  
necessary to put time limits in place. And I have to observe those  
because everybody who brings a bill has a bill that's important to  
them and everybody who comes to testify. And I, I said-- I was very  
clear with the rules.

\_\_\_\_\_: [INAUDIBLE]

**LATHROP:** Please, please,--

**AMBER PARKER:** Please,--

**LATHROP:** --please.

**AMBER PARKER:** --please, let us talk.

**LATHROP:** I understand your passion for the issue, it's evident in the  
people who have testified. We'll go on to opponent testimony at this  
time.

**HUNTER TRAYNOR:** Good morning, Chairman Lathrop and members of the  
Judiciary Committee. My name is Hunter Traynor, H-u-n-t-e-r  
T-r-a-y-n-o-r. I'm a second-year law student at the College of Law, a  
law clerk at the Rembolt Ludtke law firm, and a registered lobbyist

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for the Nebraska Legislature. I'm here today on behalf of the Nebraska Library Association and will be speaking in opposition to LB282. Today, I will discuss two reasons for why this bill should not be advanced. One, it runs counter to the important Nebraskan ideal of local control. And two, it would unnecessarily curtail the discretion librarians need to successfully do their jobs. I will consider these reasons in order. Local libraries across Nebraska are governed by boards that are comprised of community members. These boards often oversee the policies and procedures that guide librarians in picking materials for our state's local libraries. Analogously, Nebraska school libraries are subject to the oversight of school boards. It is our belief that library boards and school boards are better forums for concerned parents than our courts of law. Many concerns do not even reach these oversight boards. For example, local libraries have processes by which parents can share their concerns and work with their librarian to reach a solution. These processes promote community and transparency and education. Local control allows librarians to meet the needs of their communities and respond swiftly to any suggestions. Secondly, LB282 would make librarians jobs prohibitively difficult. There are a lot of books in this world and librarians sift through them to keep their libraries up to date and engaging. Libraries also manage electronic resources with even larger scopes. These tasks are hard enough without the looming fear of an impending lawsuit that a school district or a municipality would ultimately foot the bill for. Librarians are not lawyers. However, this bill will require librarians to proceed as though they are. My testimony is centered on the concerns of Nebraska's libraries. LB282 also impacts teachers, and I suspect educators are sharing concerns that parallel my comments. In summary, this bill would supplant community solutions with costly, tedious litigation. As a result, librarians will have to make judgments on issues that have for years confounded even great attorneys. I urge your opposition. Thank you. I'm happy to take questions.

**LATHROP:** OK. Any questions for this testifier? I see none. Thanks for being here today.

**HUNTER TRAYNOR:** Thanks so much for hearing me out.

**LATHROP:** Anyone else here to speak in opposition? Anyone else here to-- are you here to speak in opposition?

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**ADAM DOWNS:** I wasn't, but I am now.

**LATHROP:** OK.

**ADAM DOWNS:** [INAUDIBLE]

**LATHROP:** Yeah, just come on up and let's--

**ADAM DOWNS:** Adam Downs, A-d-a-m D-o-w-n-s. And listening to this and listening to a lot of the reasons, a lot of this screams to me that we don't trust teachers, we're not going to trust teachers, and we're not going to trust the teachers' curriculum that is being used. There are standards that of education that are used at that local level that was just, that was just mentioned. And I think that's important to recognize. I also want to tell a sort of a story from-- I, I did not grow up in Nebraska. I grew up in Virginia. And I did a lot of theater at that time and I participated in a one act play festival, is actually-- I know we have a big international thespian festival is here every year, too. But it was a one act competition. And this was a play that was written by a teenager and it depicted three stories of teenagers who had pregnancy, teenage pregnancies, including one with an instance of rape. And there was a rape scene in that play and it was done tastefully and tactfully. We won at a regional level and performed at the state level with it. At the state level, we were told by the judges that the content was, was inappropriate for children and was not the-- too adult for them-- for us. But this was a, this was a play written by a teenager performed by teenagers about teenage pregnancy. This bill, I fear, would lead to things like that being excluded, right, and, and, and powerful messages to help prohibit and prevent these things. I, I fear that that's what will happen with this bill, is, is that it's going to become very subjective into that classroom as opposed to, and, and those activities at school, as opposed to trusting those teachers and trusting the education standards that are out there. And I understand, I, I heard the concerns about, you know, trafficking and, and pedophile teachers. And, yes, that is a problem. And there are laws to address that, that is illegal and not OK. Right? Putting restrictions in this way, it could be detrimental, I feel. And promoting an education about what's actually happening, what these teenagers are actually doing. And I also want to mirror the-- or echo just the sentiments that were said earlier about the library and the wide range of materials that are available at a public library and censoring. I, I know this is not

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about censoring, but really is sort of pulling back and saying, hey, you know, this person is researching sexual abuse. Oh, sorry, at the library, you cannot find this information because you are a teenager and we can't share this to you-- with you. So I think there's a lot of issues with this, so I stand in opposition to it. Thank you.

**LATHROP:** OK. We're going to have you step over there and fill your sheet out--

**ADAM DOWNS:** Sure.

**\*JENNI BENSON:** Good morning, Senator Lathrop, and members of the Judiciary Committee. For the record, I am Jenni Benson, president of the Nebraska State Education Association. NSEA opposes LB282. This bill repeals a longstanding defense for teachers in grades K-12 with regard to a prosecution for obscene literature or material in 28-813. The current law found in 28-815 provides: It shall be a defense to a prosecution under section 28-813 that such person's activity consists of teaching in regularly established and recognized educational institutions, galleries, or libraries, or the publication or use of standard textbooks, films, tapes or visual aids of any such institution, or the practice of licensed practitioners of medicine or of pharmacy in their regular business or profession, or the possession by established schools teaching art, or by public art galleries, or artists or models in the necessary line of their art, or to relevant references to, or accounts or portrayal of, nudity, sex, or excretion in religion, art, literature, history, science, medicine, public health, law, the judicial process, law enforcement, education, public libraries, or news reports and news pictures by any form of news media of general circulation; In that paragraph, the bill inserts the word "postsecondary" in three places, thereby negating the use of the defense for teachers in grades K-12. The NSEA certainly does not condone the use of obscene material in our schools. However, we are cognizant of the fact that the definition of what constitutes obscenity changes over time, is different from person to person and means different things in different communities across the state. A well-intentioned teacher could find themselves on the wrong side of a criminal prosecution by an overzealous county attorney trying to make headlines, or could have their teaching certificate threatened by an angry parent. The current law protects such a teacher who may unknowingly use material within a textbook, a website or a video that has been approved by their school district. In addition, there are

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already a number of remedies in statute to remove a teacher who inappropriately uses unapproved curriculum materials. He or she may be subject to loss of their teaching certificate or, if the behavior involves grooming, be subject to a criminal penalty under LB1080 passed by this Legislature last year. Senator Albrecht has previously indicated she is concerned about students accessing obscene materials on the internet as one of the reasons for introducing LB282. As a grandmother of teenagers, I know first-hand that almost every internet guard you can put in place can be circumvented by an enterprising, smart and committed person. We cannot hold a school district or an individual educator responsible for the inappropriate actions of others when every reasonable safeguard has been attempted. The NSEA, on behalf of our 28,000 members across the state, asks you to indefinitely postpone this bill. Thank you.

**\*MEG MIKOLAJCZYK:** Dear Chairperson Lathrop and members of the Judiciary Committee, my name is Meg Mikolajczyk, and I am the Deputy Director and Legal Counsel for Planned Parenthood North Central States in Nebraska. Central to our mission at Planned Parenthood is the conviction that all people deserve to live in communities where sexual and reproductive rights are recognized for what they are - basic human rights. Inherent in these basic human rights is the premise that all people, including young people, should have access to medically accurate, nonjudgmental, developmentally appropriate, body and relationship positive, inclusive sexual health education and information. It is unclear, from reading the actual text of LB282, what the exact consequences of this bill would be, but the Statement of Intent makes it clear that the goal is to restrict, or if not restrict than certainly chill, the delivery of this type of information in public schools. At Planned Parenthood we know it is important to equip young people with the knowledge and skills they need to make healthy decisions, particularly since half of the 26 million new cases of sexually transmitted infections every year are diagnosed in young people ages 15-24.1 Currently in Nebraska, each school district determines what types of health education their students receive. Many school districts are silent on the topic of sexual and reproductive health care, while others offer curricula that is not inclusive, leans into problematic gender stereotypes, is stigmatizing, and incomplete. The legislature should be working to expand the offerings of the types of scientific, medical, health-based information students need to be successful, safe, responsible adults and partners, not working to

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further remove and keep mysterious appropriate sexual and reproductive health care. It is unclear what problem Senator Albrecht is trying to solve with LB282. The current law already allows for prosecution of adults who expose minors to obscenity. The text of the bill does not change anything in how that law would work (although the statement of intent suggests otherwise). Therefore, it can only be surmised that the purpose is truly to create a lack of clarity and fear in public school educators regarding what they can and cannot teach their students. And it is likely that the first topic to be excluded further as a result of this unnecessary legislation is sexual health education. If we are truly concerned about helping young people make choices that are healthy and right for them, then again, policymakers should be expanding, not restricting or chilling, access to sexual health education. Over 100 studies have shown that high-quality sex education helps young people delay sex and use condoms and contraception when they do become sexually active. Research also shows that well-designed and well-implemented sex education programs can decrease risk behaviors among teens, including reducing the number of partners and decreasing the frequency of unprotected sex. This type of education is supported by leading medical and public health organizations like the Society for Adolescent Health and Medicine, the American Academy of Pediatrics, and the American Medical Association. Another unintended consequence of LB282 could be an impact on one of Senator Albrecht's other proposed pieces of legislation - LB281, which would require child sexual abuse prevention be taught in public schools. Best practice in sexual education, including on topics of sexual abuse prevention, require teaching children about reproductive anatomy and terminology. If this bill does what the Statement of Intent suggests, it is unclear if elementary school teachers would be able to provide this type of instruction without being open to prosecution. This is a bill in search of a problem. It works counter to the needs of young people in the state and those trying to provide them with a well-rounded education. And it is contrary to what the majority of parents want for their children. Poll after poll clearly demonstrate that the majority of parents - regardless of political party or their state's geographic location or political leanings - support sexual health education being delivered in public schools. This bill is an extreme attempt to distort an issue by conflating appropriate public education topics, including sex education, with obscenity. That those who support this bill would even put these two unrelated issues in the same conversation is disturbing, and it

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reveals the true nature of their aims here-not to help and support the young people in this state, but to limit access to education about reproductive healthcare. PPNS stands with public school teachers, parents, and children, and respectfully requests the Judiciary oppose LB282.

**\*SPIKE EICKHOLT:** Members of the Committee: My name is Spike Eickholt and I am a Registered Lobbyist for the ACLU of Nebraska and we are opposed to LB282. LB282 would eliminate an affirmative defense to a series of criminal offenses relating to obscenity. Specifically, the affirmative defense would be eliminated for grade school teachers and for public librarians. As a preliminary matter, the distinction the bill makes for these categories of professionals who might work with material that could be considered obscene is arbitrary. This arbitrary exposure to criminal liability for grade school teachers and librarians raises significant concerns relating to equal treatment under the criminal code and equal protection of the law. There is seemingly no legitimate legislative interest in making such unequal treatment under the law. Aside from this arbitrary exclusion of an affirmative defense, the bill is a direct challenge to academic freedom and unfairly targets teachers and librarians. At a minimum, this bill will have a profoundly chilling effect on school instruction relating to sexual education and body awareness education for children. This would be unfortunate since children are confronted with a barrage of information and situations related to sexuality. They deserve to be able to seek guidance from teachers when inquiring as to what is appropriate and healthy sexual experience and development. Moreover, it is unclear what problem this bill is seeking to correct or what issue it seeks to address. Our association is not aware of any prosecutors pursuing obscenity charges pursuant to section 28-813 in decades. As there have not been any recent criminal actions filed in years, there has not been any recent litigation involving the affirmative defenses that this bill seeks to eliminate. We would respectfully urge this Committee to not advance this bill.

**\*TODD SCHLECHTE:** Chairperson Lathrop, and members of the Judiciary Committee, my name is Todd Schlechte. I am the President of the Academic Freedom Coalition of Nebraska, or AFCON, and I am representing that organization in opposition to LB282. AFCON is a coalition of organizations and individuals that has been supporting the intellectual freedom of Nebraska students, teachers, researchers, and librarians since 1988. We oppose LB282 because it would strip

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teachers, school administrators, school boards, librarians, library administrators, and library boards of their protections under Nebraska's obscenity laws. If passed, this bill will have a chilling effect on academic freedom in schools, as well as decrease intellectual freedom in public libraries. Nebraska Revised Statute 28-814 states that "the guidelines in determining whether a work, material, conduct, or live exhibition is obscene are: (a) The average person applying contemporary community standards would find the work taken as a whole goes substantially beyond contemporary limits of candor in description or presentation of such matters and predominantly appeals to the prurient, shameful, or morbid interest; (b) the work depicts in a patently offensive way sexual conduct specifically referred to in sections 28-807 to 28-829; (c) the work as a whole lacks serious literary, artistic, political, or scientific value; and (d) in applying these guidelines to the determination of whether or not the work, material, conduct, or live exhibition is obscene, each element of each guideline must be established beyond a reasonable doubt." Whether a work is obscene must be determined in court. It can be safely assumed that the average person in Nebraska has never read this definition of obscenity and would have difficulty determining whether items such as posters, books, and DVDs meet the legal definition of obscenity. Indeed, Nebraska citizens vary greatly in their personal views as to what is obscene. A word such as "fart" is obscene for some, for some a sculpture by Michelangelo, and for yet others it is nudity in a film or a graphic depiction of sex in a novel. Others are not bothered by any of that. For that reason, if this bill is passed, there will be confusion as to what is obscene, and professionals in schools and libraries will experience the increased threat of lawsuits, regardless of the actual merit of the charges. In addition, since the legal definition of obscenity is complex, neither school nor library professionals will have the time or the legal competence to determine with confidence whether an item is obscene. Out of caution, school and library personnel will likely limit the inclusion of entirely lawful materials. With respect to K-12 teachers, this bill will chill the academic freedom of teachers responsible for teaching about matters of sexuality, which can come up in various parts of the curriculum. Issues of sexuality are important in psychology, sociology, anthropology, biology, history, literature, and other fields and should be presented and discussed in many areas of the curriculum at all levels of education. The specific content of various areas of the curriculum at various levels of education should

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be determined by teachers and other professionals on the basis of academic considerations. If LB282 passes, then, because teachers and administrators will know they can be charged with obscenity, they may feel a need to eliminate parts of the curriculum or minimize student discussion in order not to put themselves at legal risk. Since curriculums are already subject to review and teachers are subject to evaluation, the introduction of the possibility of obscenity charges would be inappropriate and unnecessary. In regard to public libraries, librarians are bound by a professional set of ethics involving intellectual freedom that derives from the First and Fourth Amendments to the United States Constitution. Librarians, guided by the First Amendment corollary of freedom of access to information, believe that library users should be able to find materials that reflect a wide variety of interests, ideas, values, and beliefs. Librarians seek to provide equitable access to the library's diverse set of resources, including materials that some members of the public may personally find obscene, but are not actually legally obscene. And they resist censorship from those who do not believe in First Amendment rights for all, while supporting personal choice in the usage of materials and parental oversight of minors' usage. Further, in purchasing materials, librarians do not have the time nor the skills to determine whether a material meets the complex legal definition of obscenity. For that reason, this bill would likely result in librarians exercising an overabundance of caution in the acquisition of materials. In addition, the Fourth Amendment leads librarians to respect the privacy of individuals. Therefore, librarians do not normally monitor computer usage, nor would they have the time and the skills to determine if what is viewed is obscene. (One clear exception is child pornography, where librarians are educated to immediately report to law enforcement if such viewing is suspected.) It is also important to inject a note of common sense. Public librarians are very community driven in their acquisition of books, DVDs, magazines, and other materials. Normally, libraries accept as many requests for purchase as possible. They also keep track of popular authors and make sure they order those. And over the longer term, most items will not keep their place in the public library if they do not experience circulation, except for special collections. The result is that a library's collection will reflect its community and is extremely unlikely to contain materials that meet the legal definition of obscene. In addition, public libraries have policies that make it possible to challenge materials. In order to protect academic freedom in schools, and intellectual freedom in

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public libraries, AFCON requests that the Judiciary Committee kill  
LB282.

**LATHROP:** --and provide it to the page. Is there anyone else here to  
speak in opposition to LB282? Anyone here to speak in the neutral  
capacity?

**GWEN EASTER:** Hello, my name is Gwen Easter, G-w-e-n E-a-s-t-e-r. I'm  
with Safe Haven Community Center and Safe Haven Early Childhood  
Preschool Education Academy. I'm not against sex education, but I am  
here today to ask you all to consider what's being said here. As a  
childcare provider, most childcare providers provide education  
services and work with infants through 13 years of age. We are not  
allowed in our centers to, to use certain materials to educate our,  
our young people in the areas of, you know, when we talk about their  
bodies and, and these types of things. It's prohibited for, for use.  
There are a lot of providers who have degrees. Some are-- have  
experience working with children from one year to four years, and, and  
they're not allowed to, to, to use materials to educate their  
children. So I don't see what's the difference from everyone else  
having to obey the laws than from the schools having to obey the same  
type of laws. And we do know that there is certain materials being  
used in the school systems that is obscenity. And I say that because I  
attended a training in Kearney, Nebraska, and I don't have the  
materials here with me because I was told that we can't bring that  
type of stuff. But some of the, some of the books that were used,  
there were teachers there, there were nurses there, there were-- you  
know, and these, these materials were, were being used and some of  
them was very disturbing. And some of the materials that is being used  
in schools is very disturbing. So we're not going to pretend like, you  
know, certain materials are not being, being used. Like I said, I'm  
not against sex education, but we do need to protect our most  
vulnerable children from, from, you know, being exposed to things that  
they should not be exposed to. Parents should always have the right to  
decide what is, what is provided in a teacher aspect to their  
children. And the schools, again, there are teachers who may not want  
to present certain materials to children. So I'm just asking the same,  
the same that we've been told in our trainings, you cannot allow-- you  
cannot teach certain things to our children. Then they should be  
having to hold the same type of standard. Thank you.

**LATHROP:** OK. Anyone else here in the neutral capacity?

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**AMBER PARKER:** My name is Amber Parker, A-m-b-e-r, last name, Parker, P-a-r-k-e-r. I want this message to go around this nation. This is what's happening, our freedom of speech being cut off even to protect our children in our public schools. There are good teachers. What we want to do with LB282, Senator Albrecht, thank you for being brave. I cannot believe the push back to stop sex trafficking from grooming sex traffickers who would, who would choose to be teachers to come in with an intent to groom our children. I want to let you guys know there's an organization, they refer to themselves as NAMBLA, the North American Man/Boy Love Association. I'd encourage you to go and look on their website, but I will warn you that the FBI will probably be tracking you on this. I'm here today to address, the Board of Education will finally fire a Bronx high school teacher who openly advocate sex between men and boys seven years after he was removed from the classroom with pay the Post had learned. State Arbitrator Thomas Renaldo upheld the board's disciplinary charges against 60-year-old Peter Melzer, a teacher for 37 years and a leader of the North American Man/Boy Love Association. The 93-page ruling, dated last Saturday and obtained by the Post yesterday, said Melzer's association with the pro-pedophile group made him unfit to be in contact with children. He edited the group's newsletters and helped set policy promoting child pornography and abolishing age sex laws. What LB282 would do is close, close the loopholes for people that would want to prey upon children in our classrooms. And I want to give you an example. If a, a, a man came in who was a part of the North American Man/Boy Love Association, and with the current exemption the way it is in schools and libraries, that man could easily show a picture of oral sex and talk to the student under a guise of something of education in this. But what we don't understand is that they're preying upon them to try to connect with them in a sexual way as hormones go a lot with teenagers because they want to have some type of sexual relationship with them. LB282, and I, and I count on Patty Pansing Brooks's vote to get this out as she's been an advocate to fight against sex traffickers. This bill needs to get out. And this is showing that the state of Nebraska is saying we are not allowing any pedophiles or sex traffickers as teachers in this state to groom children with obscene materials. This LB282 is closing that loophole. Furthermore, I would even ask that an amendment would be added that would state in the state of Nebraska that a North American Man/Boy Love Association, any members to that or any pedophile group cannot be teachers in the state of Nebraska.

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**LATHROP:** Your time's up.

**AMBER PARKER:** Thank you.

**LATHROP:** Anyone else here-- is there anyone here to testify in the neutral capacity? Seeing none, Senator Albrecht, you may close. This bill has generated 101 position letters, 92 of them in support and 9 of them in opposition. There is also the following written testimony provided this morning by Todd-- I'll spell the last name, S-c-h-l-e-c-h-t-e, with the Academic Freedom Coalition as an opponent; Spike Eickholt, with the ACLU of Nebraska, is an opponent; Meg Mikolajczyk, from Planned Parenthood North Central States, has also provided written testimony in opposition; and Jenni Benson with the NSEA, has also provided written testimony in opposition. They will be part of the record. Senator Albrecht, you may close.

**ALBRECHT:** Thank you, Senator Lathrop and, and the Judiciary Committee, for your, your patience here and understanding. I know that-- you know, there are a lot of issues here, but it is certainly not my intent not to have sex education. If school boards are the ones that decide the criteria-- the, the curriculum for that particular issue at school, then they'll, they'll know what they can do and what they can't do. We're not going to-- I'm not here to take, take anything under, you know, like a teacher down by any means. But if a teacher is showing inappropriate content to a child K-12, that's why this is written. It is-- it was in 1977. That's a long time ago. We didn't have computers, you know, and with libraries today, I had one of our folks from the, the press come to me as soon as I introduced this and said, my wife's a teacher, she works in the library-- or she knows the people that go into the library at night that they open it up to, to the public and they actually get to go on, on these sites and look at pornography. I said, well, how could that happen in a school setting that you knowingly know that people are looking at that on, on computers that we supply them? You know, we, we, we put the cost into these computers that are in libraries and things like that could be happening. I just want to say this obscenity is all about catching that person that shouldn't be doing what they shouldn't be doing in a criminal activity. That's what we're looking at here. We're not looking to, to get our teachers in trouble or our librarians for crying out loud. This is about having a safe place for our children to be. What happens at home on their devices, what happens, what-- whatever they want to explore outside of schools is completely not our

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business. Our business is to take care of the children, the families,  
and our community and keep them safe from other [INAUDIBLE].

**LATHROP:** Senator Albrecht, I have a question for you--

**ALBRECHT:** Yep.

**LATHROP:** --in light of this, the direction this hearing has taken.  
This is about sex ed. I don't think anybody up here thinks it's OK if  
a kid can go into the computer and look at porn in the computer  
library or on a device provided by the school. Right? I assume there's  
ways to block that. Maybe there isn't. I-- this is my question,  
though. When you say that, that sex ed shouldn't include inappropriate  
pictures, should that be up to-- or who makes that call? If the school  
district, and by the way, I've seen these hearings, at least I've  
watched them on the news, the interest that they generate. Should the  
school be in charge-- the school district, after public hearings, be  
in charge of that curriculum? What's included and what's involved or  
who's to make that call if it's not the school district that has a  
public hearing on their sex education program?

**ALBRECHT:** Well, first of all--

**LATHROP:** It, it sounds like we're getting into a place where--

**ALBRECHT:** Yeah, and--

**LATHROP:** --it's not the school district anymore. It is something out  
here, something out here where people get to decide and protest. And  
then, then the school district needs to take not the direction from  
the elected school board members, but from some other entity or place  
or person.

**ALBRECHT:** OK, first of all, the law states what we can and can't do  
for children. I did not bring this because of sex education. I still  
believe sex education has its place in the school. I did not say that,  
that-- I mean, you might hear testifiers, and whether I asked them to  
come or didn't ask them to come, that's their opinion. The sex  
education, it's-- it-- I mean, it's OK to do. But the parameters are  
already set. There are standards out there that are allowed. But if  
every school's going to do something different, that would be  
something else. I have another bill in Education that could correct  
that, so. But, but that is--

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**LATHROP:** Are there instances, though, Senator, where school districts aren't blocking this content from computers in schools?

**ALBRECHT:** I will definitely tell you there are, yes.

**LATHROP:** You, you believe there is. I don't know. I'm not asking that question to corner you.

**ALBRECHT:** I, I know, Senator Lathrop, that there is. And, you know, I need this loophole filled so that I can make certain that the, the computers that we have at these schools block that sort of stuff, because there are--

**LATHROP:** That's fair, that's fair, parents don't send their kids--

**ALBRECHT:** --there are two different-- and, and that's for us--

**LATHROP:** --thinking they're going to be exposed to that.

**ALBRECHT:** --that's for the state. You ask who should be taking care of that? That's for us, the state, us state legislators need to know if, if something's brought to us at the magnitude that it has, we need to be prepared to correct that so that we don't put a teacher in the-- in a harm's way or-- and we don't put a librarian--

**LATHROP:** So let me go back to sex ed. If a school district, for example-- well, I'm not going to use one because then they're going to be in the spotlight and I'm not trying to do that. If a school district decides that they want to have a sex ed program for high school students, junior year, we're going to have a high school sex ed program and they subject that curriculum to input from the public, whatever that's going to look like. By the way, I think most of these places allow you to opt out of it.

**ALBRECHT:** Correct.

**LATHROP:** But if they are going to subject that to a public hearing and let the elected school board decide what's an appropriate curriculum, if, if a school board chooses to have a sex ed curriculum that includes some imagery, whatever that might be, should they-- can they under this bill then be subject to prosecution for obscenity--

**ALBRECHT:** They certainly--

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**LATHROP:** --or does that process insulate the school board from, not criticism, but from prosecution for obscenity?

**ALBRECHT:** Well, first of all, again, if it is inappropriate material and to, to you it might not be inappropriate, to me it might be. So-- but there has to be a standard set. And whether it's at the state level that, that they set that standard and the school boards all comply because this might, this might--

**LATHROP:** But we do have a standard.

**ALBRECHT:** We, we do have a standard. But you, you do have an opposition there. You know, I mean, maybe they bring in things that they didn't have cleared with the-- with this-- the school boards.

**LATHROP:** So--

**ALBRECHT:** I'm just saying--

**LATHROP:** --can we, can we amend the bill to say if the school board approves the curriculum, then it is outside of the purview of this bill?

**ALBRECHT:** But do you want every school board approving what they think is right or do you want the same standard for all schools?

**LATHROP:** But I think that's where the opposition comes from. Right? And I'm not trying to argue with you.

**ALBRECHT:** No, no.

**LATHROP:** Just trying to get some clarity. You know, I think it's obscenity that the, you know, you know it when you see it. Well, you're right, it might, it might not be obscene to one person, but obscene to another. And that's kind of clear from the hearing today. But what's a school board supposed to do?

**ALBRECHT:** Right. And, and again, I'm just-- the K-12, if that-- if the NSEA wants to protect the teachers, which that is definitely their job to do so, but we are not going to look for anyone unless they are absolutely out of line. And absolutely--

**LATHROP:** I get it.

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**ALBRECHT:** So--

**LATHROP:** No, I, I certainly understand your purpose. I-- yeah, I feel  
like we're having an Education bill today.

**ALBRECHT:** Well, it is, and, and there-- they'll be many more issues  
with this to follow, but we can't do anything unless we change that  
wording that we're going to protect the children in K-12. Times have  
changed, so. Does Patty have a question?

**LATHROP:** Yeah, Patty does have a question. I should say, Senator  
Pansing Brooks. Let me get my phone awake.

**SLAMA:** Senator McKinney has [INAUDIBLE].

**LATHROP:** Pardon me. Oh, I'm sorry, Senator McKinney, go ahead.

**McKINNEY:** Thank you. Senator Albrecht, what school district doesn't  
have some type of blocker? Because I, I worked at a high school. I  
coached wrestling. When I was in high school, it was, it was a lot of  
things you cannot access and it was in some things you're like, why  
can't I access Yahoo.com? So I'm just wondering, could, could you  
identify the school district that doesn't have that, that type of  
security already?

**ALBRECHT:** There are many, many schools that have-- I mean, when you go  
home and you have your Google search, I really didn't want to have to  
go here, but it's evident that I'm going to have to so that I get my  
point across. There are schools that have computers that have  
different people that they can use-- I think there's just two of them  
in the state of Nebraska. One I know positively for sure without a  
shadow of a doubt that children, I'm going to give you an example, can  
go look up toys and they're fourth graders, they have their little  
laptop home and they want to look up a toy, the newest and greatest  
and fun, fun toy. Within two clicks, they're on a porn site. Now that  
is not our teachers that are asking them to go there, they're  
exploring. Right? If you went to Etsy and you want to look up swimming  
suits, it'll take you within a few clicks to a porn site. Now I can't  
change that until I change obscenity in this statute today. And what  
will come next year will be much greater. And it's unfortunate that we  
have to wait that long to do that. But we must change the obscenity

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loophole before I can take care of what we need to take care of with  
our computers that are in our schools. And this is--

**McKINNEY:** I'm just saying that as a coach, I've been to high schools  
all across this state and to access their, their online capabilities,  
there is a system in place and I just can't see a student being able  
to access porn. I would, I would be surprised to see it if it's  
happening, I hope it's not, but I would be greatly surprised if it's  
possible.

**ALBRECHT:** Well, I would be happy to visit with you after this and give  
you some examples that will stop you in your tracks.

**McKINNEY:** All right.

**ALBRECHT:** Yeah.

**LATHROP:** Senator Morfeld.

**MORFELD:** Yeah, I mean, so in that hypothetical you just gave, it  
sounds like some students found a loophole, correct?

**ALBRECHT:** And, and kids can. They're a whole lot sharper than my age  
group anyway.

**MORFELD:** Yeah, I get that. But if, if there's a loophole, why don't we  
just, like, contact the school district and say, hey, listen, they've  
been able to find a way around that. I don't think we need to create a  
law.

**ALBRECHT:** But here's the deal, Senator Morfeld, there's no stopping  
what this company could be doing and they're not. OK, so you can ask  
for filters, you can ask for blockers, you can ask for that, but--

**MORFELD:** I'm sorry, I'm not, I'm not tracking. There's a company that  
is?

**ALBRECHT:** Well, the company that provides the, the computer system for  
our schools. So there, there are many, many aspects of this. But we  
can't unless we change that-- I mean, they can go look at Cosmopolitan  
magazine and go right into what they don't need to be reading or  
seeing at a young age K-12. OK, so there's lots of examples out there.

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**MORFELD:** So is, is the purpose of this law then to incentivize these companies that provide the blockers to be able to--

**ALBRECHT:** Not just that.

**MORFELD:** OK.

**ALBRECHT:** There's, there's so much more. I mean, we read, read in the paper all the time about school teachers that are, are doing things they shouldn't be doing. Those are the ones you're going to catch in this obscenity, changing this one word to K-12 under that, because there's already laws in place. But unless we get rid of that and say that we are going to protect K-12, we can't change anything.

**MORFELD:** OK, thank you.

**LATHROP:** I have three questions from Senator Pansing Brooks.

**ALBRECHT:** Yes, thank you.

**LATHROP:** Does obscenity include teaching from advanced physiology textbooks, including illustrated pictures of the naked human form?

**ALBRECHT:** No.

**LATHROP:** Does obscenity include teaching by touring a group of students through the Nebraska Capitol as part of Nebraska Legislature Day or the U.S. Capitol and viewing the art on the floor, including naked men and women?

**ALBRECHT:** No.

**LATHROP:** Here is a, a question that is more of a technical question, which is, if you have a student who is doing a joint credit with the university, so a senior in high school is able to take college classes at the same time, and they, they are exposed to this at the university while they're a 12th grader going to get joint credit.

**ALBRECHT:** I think if a 12th grader was going to the university to get the credits and he is still in 12th grade, he should not be exposing himself or they, they shouldn't-- the, the college shouldn't expose him to it, even though it's, it's something-- some exploratory, whatever for him to do.

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**LATHROP:** OK.

**ALBRECHT:** I don't think that's right.

**LATHROP:** You bring interesting bills to this committee.

**ALBRECHT:** Thank you.

**LATHROP:** They generate a great deal of discussion. This group likes to  
have those kind of discussions why we're here and--

**ALBRECHT:** And I appreciate your time.

**LATHROP:** --thanks for being here today and--

**ALBRECHT:** Thanks.

**LATHROP:** --that will close our hearing on LB282 and bring us to LB517  
and Senator Hunt. If you could wait just a moment, Senator Hunt, while  
we let the room move. I think that was media from the last bill. Does  
somebody got a mike here? Do you want to leave that there?

\_\_\_\_\_ : That's actually [INAUDIBLE].

**LATHROP:** That's all right. We'll leave it there. Can you take that out  
in the hall? Do you mind? Thank you. Senator Hunt.

**HUNT:** Thank you, Chairman Lathrop.

**LATHROP:** Welcome.

**HUNT:** Thank you.

**LATHROP:** You may open on LB517.

**HUNT:** Thank you, Chairman Lathrop and members of the Judiciary  
Committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I'm here to  
present LB517. This bill would create the option for a gender neutral  
marker on state-issued IDs and driver's licenses. It is essential and  
it's important to me that transgender and nonbinary Nebraskans have ID  
documents that are official that accurately reflect their name and  
gender. The ability to change a person's documentation to match their  
identity can have a significant impact on all other aspects of a  
person's life, including employment, marriage, insurance rights, their

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ability to get healthcare, social services, education. All of this stuff is dependent on your ID. Laws are changing all over the country now around identity documents and gender. And I would like Nebraska to not be left behind. Currently, the Nebraska Department of Motor Vehicles allows applicants to have the gender on their ID changed from male to female or female to male. So we already allow this. But to do that, you have to submit a certification of sex reassignment, which is a form that would be completed by a doctor. The form requires the provider to certify that the applicant for the ID has, quote, undergone the necessary sex reassignment procedures required for social gender recognition. So that's the state of play now. That's how the law is now. This requirement, however, is really problematic because not all transgender people have access to or want transition-related surgery or gender-affirming treatments. Further, whatever steps that are taken toward a gender transition have no bearing on someone's gender identity. These surgeries can be physically traumatic. They can be super expensive, and many trans people do not want to have surgical changes. Also, I would ask, you know, I want this committee to think about and I want the body to think about, does the state need to be in the gender detective business? That's essentially what we're doing by saying that you have to have proof of surgery in order to change your gender on your ID as it is today in 2021. Under LB517, Nebraskans would not have to provide proof of surgery when applying for a driver's license or a state ID card. Whether or not someone has chosen to have surgery is not the government's business. It's not appropriate or constructive in any way. It helps nobody for the DMV personnel or for the state to do the work of policing somebody's gender expression or whether they've had a surgery or this or that. So the question I want us to consider is not whether you accept or understand or think it's cool or think it's OK to be transgender. That's not the conversation. What I want you to consider is whether this is the appropriate place for government intrusion. In addition to providing that gender on state ID cards or licenses does not require documentation, LB517 provides a third option for applicants to select to reflect a nonbinary gender ID. If this bill passes, applicants will be able to put an X as a marker on their ID. So we'll have male and female F and X, which would be not specified. The marker and terminology in the bill is as requested by the DMV in order to be consistent with practices used by other states and the federal Real ID Act. According to the 2015 U.S. Transgender Survey, which is the most current, most comprehensive survey of trans

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people in the U.S. conducted by the National Center for Transgender Equality, 68 percent of trans Americans said that none of their IDs had the correct name and gender. Nearly a third of respondents who showed an ID with the name and gender did not match their gender presentation reported that they were verbally harassed, they were bullied, they were denied benefits or service, asked to leave somewhere or assaulted. And this is kind of a public safety issue because when people's identity doesn't match what's on their license, it can really put them in danger, regardless of what we in the Legislature think about the morality of their gender, whatever that is. Nineteen other states already provide a nonbinary option on driver's licenses. A Pew Research survey found last year that over a third of Americans now in their teens and early twenties know somebody who uses gender neutral pronouns. Since last year's hearing when I introduced a similar bill, we've worked with the DMV to eliminate concerns they had with the bill. I'd like to thank Julie Maaske with the DMV, who I believe will be speaking here today, for diligently working with us to update the bill and to get it to a place where, you know, it was an issue that they liked. We've made all the necessary changes to ensure that the state remains compliant with the federal Real ID Act. We added an effective date consistent with the DMV's capacity to implement the bill, and we updated terminology in the bill to match other states DMV standards. Right now, the process to correct your gender identification on a state-issued ID or your birth certificate is burdensome and frustrating. The state has no right to demand proof of surgery to make a correction on government documents that have real world implications for real people. We should allow people who want their gender to be marked as nonspecified to do so. This bill will matter a great deal to people who it pertains to, and it will do nothing to hurt the people who it does not pertain to. We do a lot of talking in here about retaining creative young talent in our state and attracting and retaining young people to our state. And passing bills like LB517 is one important step that we can take as lawmakers to tell all Nebraskans that you are welcome here. Thank you.

**LATHROP:** OK. Senator Slama.

**SLAMA:** Thank you, Mr. Chairman. And thank you, Senator Hunt, for being here today. I, I have a couple of questions on your bill, specifically, Section 26 based off of AM333, which was just handed out.

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**HUNT:** OK, can you tell me the page?

**SLAMA:** That's page 41--

**HUNT:** Thank you.

**SLAMA:** --of the green copy. Yep. So the way I'm reading Section 26 is  
this ability for a person to change their sex on their birth  
certificate, that would apply for minors as well. Is that correct?

**HUNT:** The ID portion would apply to anybody who is of age to get  
whatever state ID they want. The birth certificate portion only  
pertains to legal adults.

**SLAMA:** Legal adults. So that, that seems to be in contrast with upon  
receipt-- Section (2) of Section 26, "Upon receipt of a complete  
application to amend the sex on a certificate of birth from a person  
born in this state or the parent, guardian, or legal representative of  
such person." If we're only talking about legal adults, why would we  
have to have the legal guardians involved or parents?

**HUNT:** Currently, registrants have to be adults to amend their birth  
certificates, and my intention is to keep that consistent. And, you  
know, a reason is that the ID portion of the bill is something that  
you can change and a birth certificate is a little bit harder to  
change. I can probably get back to you on that on close.

**SLAMA:** OK, I, I, I would appreciate clarification on that for a close.

**HUNT:** I appreciate your question.

**LATHROP:** Any other questions? I see none.

**HUNT:** OK.

**LATHROP:** You will stay to close?

**HUNT:** Yes, thank you.

**LATHROP:** OK. Very good.

**HUNT:** And I'll find that answer.

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**LATHROP:** We will take proponent testimony. Good after-- or good morning, I guess.

**SARA RIPS:** Good morning.

**LATHROP:** Feels like afternoon already.

**SARA RIPS:** It's all right. I'll be here this afternoon, too.

**LATHROP:** OK, well, we'll look forward to that perhaps.

**SARA RIPS:** So my name is Sara Rips, S-a-r-a R-i-p-s. I am the LGBTQIA+ legal and policy counsel for the ACLU of Nebraska. At the outset, I also just want to thank Senator Hunt for bringing this bill and thank the Judiciary Committee for their time today. I'm here obviously in support of LB517. To all my fellow Nebraskans who are transgender, nonconforming, and nonbinary, I want to acknowledge you and reaffirm the ACLU's commitment to fighting with you and for you, because honestly, Nebraska should be for everyone. Our Nebraska-- we have Nebraska neighbors who are transgender, gender nonconforming, and nonbinary and they pay taxes. They raise families, they serve in our military, and they contribute to our communities. The rationale behind LB517 is simple. Our identity, identity documents should be accurate. Adding nonbinary-- requiring nonbinary people to select either a male or a female gender marker in order to get their government ID like a driver's license, requires them to affirm something that is not true. Allowing access to a gender-neutral marker such as an X on identification documents like driver's licenses or birth certificates ensures accuracy and that people are not committing perjury. LB517 also mirrors best practices. The federal government allows people to update a binary gender marker on their passports and Social Security cards without intrusive and expensive surgical requirements, as do a majority of our sister states. Additionally, 19 states specifically allow residents to mark male, female, or X on their driver's license. Access to an accurate ID ensures more people can participate more fully and more safely in public life. LB517 facilitates awareness and accuracy for other stakeholders who review and utilize these documents, like government clerks, law enforcement, schools, courts, and medical providers. Finally, it is important to note that there is no one-size-fits-all path for, for gender transition. Many Nebraskans who are nonbinary, gender nonconforming, or trans do not want or need medical treatment, and it may be out of reach for others financially.

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That's why the American Medical Association has adopted a policy urging states to eliminate any surgical requirements for transgender people to update it and amend their ID documents. Thank you for your time and I can answer any questions you may have.

**LATHROP:** Very good. I do not see any questions. We appreciate you being here this morning.

**SARA RIPS:** Thank you, Senator Lathrop. Thank you, committee.

**LATHROP:** Any other proponents of LB517 that wish to be heard?

**ADAM DOWNS:** Adam Downs, A-d-a-m D-o-w-n-s. I'm here in support of LB517. My testimony today will reference passages from Martin Luther King Jr.'s letter from Birmingham jail. His words do not carry a legal weight, but I think we can agree they carry the weight of justice and morality. He writes, There are just laws and there are unjust laws. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. LB517 seeks to fix an unjust law. Our current law forces Nebraska citizens to lie about a fundamental truth of their personality. Every time a transgender or nonbinary person presents a driver's license with the incorrect marker, the state says to them, We deny your definition of self. You have to conform to how we define you. Writing a check, the state degrades them. Renting an apartment, the state degrades them. Going to the doctor. The list goes on. Thousands of degradations across a lifetime. Change of birth certificate, the state goes even further. All right, it says, we will recognize your definition of self on one condition. Go have someone cut off your genitals and build you a new set that matches what we think you should have. I, I, I wish it was an exaggeration saying that, I really do, but it's not. That is what the state requires. And if you think it's OK for the state to make that statement, frankly, I ask you to resign from your seat in the Legislature because it is not OK. It is degrading, it is immoral, and it is unjust. And King continues in that letter, An unjust law is a code that a majority inflicts on a minority that is not binding on itself. You'll likely hear opposition to this bill from a majority that wants to keep the existing law exactly as it is. But the existing law is not binding on them. It does not force them to lie about who they are in daily interactions. It does not require them to pay thousands of dollars for a surgery that's not even performed by a single surgeon in Nebraska. And I know some of you may have strong feelings. I'm probably unlikely

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to change your mind in the five minutes here that we have. But there's that bigger issue, the government intrusion that Senator Hunt mentioned. Right? And I, I work in higher education and I have access and I've managed student records. So I know firsthand, rules, structure, conformity are required to keep accurate records. But the function of government record keeping is to document, not define who a person is. It's to document, not define. So I encourage you, implore you, vote yes on LB517. End the degradations, end forced surgery to make an administrative change, end an unjust and immoral law. It's document, not define, and make Nebraska a better place for all of its citizens. Thank you.

**LATHROP:** Thanks, Adam. I do not see any questions at this time, but thanks for being here.

**ADAM DOWNS:** Thank you.

**\*KELSEY WALDRON:** Chairperson Lathrop and members of the Judiciary Committee, my name is Kelsey Waldron, and I am the Policy and Research Associate at the Women's Fund of Omaha. The Women's Fund testifies in full support of LB517, providing a gender-neutral designation on driver's licenses and state IDs and expanding access to amend sex designation on birth certificates to reflect one's gender identity. Affirming gender identity is critical in respecting all Nebraskans and promoting safer communities free of discrimination. State-level affirmation of one's identity is critical in addressing the discrimination currently experienced by gender non-binary individuals, those whose gender identity does not align with their sex assigned at birth. Non-binary individuals experience a high rate of discrimination and mistreatment, with 30% of gender non-binary individuals experiencing loss of job or workplace mistreatment, 46% experiencing verbal harassment and 9% experiencing physical assault over a one-year period.; For school-aged non-binary youth, during their time at school, 54% report experiences of verbal harassment, 24% experience physical attacks, and 13% experience sexual assault because of their gender identity. LB517 would better support all Nebraskans and promote communities free from discrimination by providing for gender neutral designations of licenses and state IDs, and eliminating undue burden in current documentation requirements. Requiring proof of gender identity is a practice that perpetuates gender identity discrimination, and LB517 will ensure that documentation requirements do not stand as barriers to the state affirming one's gender identity.

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Additionally, LB517 recognizes the full range of gender transition goals and the individualized nature of one's gender affirmation process. Not everyone in the process of affirming their gender will elect for gender confirmation surgery. By expanding birth certificate amendment eligibility beyond current gender confirmation surgery requirements, this bill better acknowledges the unique ways gender affirmation may be experienced by each individual and better affirms gender identity for all Nebraskans. 19 states and the District of Columbia have already expanded license and 10 designations to better recognize resident's gender identity with a gender neutral option as proposed by LB517. Additionally, Nebraska is ranked in the top 15 most restrictive states for requirements of those wishing to their amend birth certificate to reflect their gender identity. 24 other states and the District of Columbia do not require gender confirmation surgery to amend one's birth certificate gender. State recognition of one's gender identity is fundamental to combatting discrimination and creating safe and welcoming communities. We respectfully urge this committee to affirm the identity of all Nebraskans and promote their safety by supporting LB517.

**\*MEG MIKOLAJCZYK:** Dear Chairperson Lathrop and members of the Judiciary Committee, my name is Meg Mikolajczyk, and I am the Deputy Director and Legal Counsel of Planned Parenthood North Central States in Nebraska. PPNCSS provides, promotes, and protects sexual and reproductive health through high-quality care, education, and advocacy in Nebraska, North Dakota, South Dakota, Iowa and Minnesota. Nebraska Planned Parenthood health centers have been leaders in the health care industry for nearly a decade in providing gender-affirming hormone therapy to patients across the state, with over 600 patient visits for nonbinary folks in our Nebraska & Iowa medical practice in the past 18 months. PPNCSS stands in support of LB517, a policy initiative that recognizes the challenges binary gender selection can create in a world where there are not simply two genders and seeks to start the process of dismantling the binary to allow Nebraskans to be recognized by the state for the individuals they are, whether that be at the airport, a place of employment, a doctor's office, or anywhere else a state-issued photo ID may be required. Planned Parenthood strives to treat people as individuals and recognize folks in the way the folks want to be identified. One common way PPNCSS does this is by making sure we know what folks' pronouns are, so that no gender identities are assumed. PPNCSS prioritizes being inclusive in every action we

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take, whether staff are tabling at a community event, providing college campus STI testing and education, or treating patients in the health centers. The Nebraska state-issued ID currently serves as a barrier to patients being fully recognized and embraced for who they are as individuals, as it only permits one of two genders to be selected, and at times the gender selected by the person (because it is the gender assigned at birth, documented on that person's birth certificate) is not the correct gender. Misgendering a person or the state refusing to recognize a person for who they are can have significant consequences in a health care setting. When an individual is forced to identify themselves in a gender box at the DMV that does not match with their authentic self, they feel discouraged that their identity on a government issued ID does not respect and honor them. Another downside of having to identify as Female or Male is that their insurance will label the individual according to the sex on a government issued ID and not their identity. This can be a barrier to individuals who have health insurance and pay premiums but are unable to use due to a bias on the requirement to identify a gender. It would benefit all individuals to be granted the right to mark whatever they feel is the best representation of themselves. PPNCs does want to highlight concern regarding Section of LB517 pertaining to birth certificates. The prerequisite of surgery to obtain a new birth certificate does still impose a heightened burden upon Nebraskans to have state documentation aligned with who that person is. With that being said, PPNCs does appreciate the opportunity for a person to obtain an amended birth certificate by either seeking the assistance (and sworn statement) from a physician or obtaining a court order by way of public hearing, although PPNCs does hope that someday in the not so far off future Nebraskans will not have to jump through any of these bureaucratic hoops to have the government identifies individuals in the way that individual so chooses. PPNCs looks to the LGBTQ+ community to guide this work and will continue to stand with the advocacy groups leading these policy changes. For those reasons, we support LB517.

**\*ABBI SWATSWORTH:** Thank you Senator Lathrop and Senators of the Judiciary Committee for the opportunity to provide testimony. My name is Abbi Swatsworth. I am the Executive Director of OutNebraska - an organization working to celebrate and empower LGBTQ+ Nebraskans. OutNebraska supports LB517. Gender identity is a term that describes how a person identifies their own gender. A person's gender identity

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may be different than the stereotypes of the sex the doctor observed and assigned at birth. There are a wide range of gender identities and expressions. The National Center for Transgender Equality defines nonbinary people as those who fall outside the designations of male or female or who blend the two together. People who identify as nonbinary have existed as a natural variation of human experience forever. A growing number of people are using the term nonbinary to describe themselves and/or choosing to use gender neutral pronouns like they/them. In a 2018 study by the Pew Research Center: 35% of Gen Z say they personally know someone who uses gender neutral pronouns. Compared to 25% of Millennials, and 16% of Gen X. It is clear that the number of people who could benefit from gender neutral identification, such as a driver's license, is steadily increasing. Currently 18 states and the District of Columbia have made provisions for a gender neutral option on driver's licenses - that option has thus far been standardized as an X. The State Department is currently exploring a third gender option to issue passports. Identification is a safety issues for nonbinary people. In a study by the National Center for Transgender Equality, 32% of respondents reported being verbally harassed, denied benefits or service, asked to leave, or assaulted upon showing identification that didn't match how they presented. In addition to being a safety issue, gender neutral driver's licenses are an issue of inclusion and a signal that Nebraska acknowledges the diversity of people who live, work and play in our state. With Blueprint Nebraska making diversity and inclusion one of the key elements of attracting and retaining workforce, LB517 is a small step in the right direction toward reaching that goal. The provisions and amendment included in LB517 regarding changes to birth certificates are equally important as an issue of dignity and confidentiality. During processes that require someone to provide a birth certificate, having one that accurately reflects their gender is vitally important. This legislation creates a clear and easily understandable path to making necessary changes. We appreciate that the path to change a birth certificate includes a notarized affidavit from a licensed physician, surgeon, or mental health professional. Stated this way the option of surgery exists but is not mandatory. This is important because health and economic disparities for many transgender people preclude them from accessing surgery. We respectfully request that you support LB517 as amended and advance it to general file.

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**LATHROP:** Any other proponent testimony? Anyone here in opposition?  
Anyone here to speak in opposition to this bill? Welcome.

**MARION MINER:** Good afternoon-- good morning. Same mistake. Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Marion Miner, M-a-r-i-o-n M-i-n-e-r. I'm here on behalf of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the gospel of life by engaging, educating, and empowering public officials, Catholic laity, and the general public. And I'm here today to express the Conference's opposition to LB517. Proponents of LB517 would argue and, and have argued that the bill is motivated by a desire to affirm the equal dignity of and society's respect for persons who feel a sense of incongruence between their biological sex and the gender with which they identify, which is often accompanied by feelings of anxiety and of being unaccepted. Love, compassion, and respect for such persons who are our brothers and sisters, along with an affirmation of their equal dignity and worth is due to them. With this affirmation, we fully agree. We also agree that the way our society addresses and cares for such persons is inadequate. Those who have adopted transgender identity are in many cases either told to embrace their new identity despite its incongruence with their physical body, or they are held at arm's length. Both responses are inadequate, and neither is deemed acceptable by the Church. If we were to treat these brothers and sisters of ours with the compassion and respect that is due to them, we owe them, first of all, the truth. Pope Francis has spoken with feeling on this issue on several occasions, speaking on what he has called the ideology of gender. He reminds us that it is one thing to be understanding of human weakness in the complexities of life, another to accept ideologies that attempt to sunder what are inseparable aspects of reality. In the encyclical *Laudato Si*, known best for the Holy Father's appeal to the West to respect and care for the natural world. He expresses that the acceptance of our bodies is God's gift is vital for welcoming and accepting the entire world as a gift from the Father and our common home, whereas thinking that we enjoy absolute power over our own bodies turns, often subtly, into thinking that we enjoy absolute power over creation. Learning to accept our body, to care for it and respect its fullest meaning, is an essential element of any genuine human ecology. Sex is a bodily and biological reality, and whether we receive it and respect it matters. Gender is how we give social expression to that reality. I do go on

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further in my testimony to speak more about this issue. I, I ask you to read it and I do go on to detail too, specifically with regard to birth certificates, how this suspect-- and how this would affect potentially in a very devastating way, girls high school sports due to the NSAA policy on this issue and how those things would intersect, as well as Title IX and women's programs that are with respect to Title IX and, and programs that are meant to protect and set aside programs, especially for the benefit and protection of women. So-- and, and I will say, too, because this has been brought up several times, the existing law regarding-- I'm sorry, I'm out of time.

**LATHROP:** Yeah, wrap up your last thought if you would, Marion.

**MARION MINER:** Sure. I did want to bring this up, the existing law requiring that you undergo surgery in order to change your birth certificate, that is something that at the time it was passed, we were not for that change. It's still a barbaric and unjust law that encourages people to go and be mutilated by someone, by a, by a surgeon in order to change the sex on their birth certificate. Our perspective is not that this should be amended to allow for an easy rubber-stamp process to change the sex listed on your documentation, but rather that that entire section should be struck.

**LATHROP:** OK. Senator Slama.

**SLAMA:** Thank you very much, Mr. Chairman. And thank you, Mr. Miner, for being here today. Could you expand, for the benefit of the committee, the concerns the Catholic Conference has on LB517's impact on girls sports and participation in those sports?

**MARION MINER:** Sure. So right now, the NSAA, and I did enclose as an exhibit, a copy of the NSAA policy with regard to transgender athletes. And I think-- I actually went through with a highlighter and physically highlighted it on the second page, I think, the relevant section. But the NSAA policy is that your eligibility as an athlete to participate in a sex-specific sport is determined by the sex on your birth certificate. So if you can very easily through, through basically a rubber-stamp process, change the sex on your birth certificate, it makes you immediately eligible for, for girls sports, and that's the concern there, is that biological males have a significant advantage just naturally when it comes to athletics, and

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girls need to be able-- they need to have the opportunity to compete  
on a level playing field.

**SLAMA:** Sure. And I'm certainly concerned with the amendment language  
that we've been given today of changing the standard that was in the  
green copy amendment to: Upon receipt of a notarized affidavit from a  
licensed physician, surgeon, or a mental health professional stating  
that an individual born in this state wishes to change such  
individual's sex designation. Like, there's no medical need. It's just  
has this person expressed to you, that they want to change their  
gender. And that's just a yes or no question that has no bearing in  
medical practicalities or any type of their practice. Just have they  
expressed it to you. Is that how you're reading?

**MARION MINER:** Yes, I believe that's how the language reads.

**SLAMA:** OK. So the way that it's currently written, I could--  
envisioning myself as a 16-year-old man go to my mental health  
professional or to a physician and say I would like to change my  
gender. That would suffice to have my birth certificate be changed.

**MARION MINER:** Correct.

**SLAMA:** And that would lead to consequences, like participation in  
girls sports and that type of thing.

**MARION MINER:** Right. Now it-- it's also my-- last year with LB, I  
think it was 873 was the bill last year, we raised the same concern  
last year. And, and that-- AM333 makes it even easier than it would  
have been under the old version of the bill than before it was  
amended. But even, even under the previously existing version and  
under LB873 from 2020, it's hard to imagine that a person who wants to  
change the sex on their birth certificate under either of those  
procedures under LB873 then or LB517 now would be, would be denied the  
opportunity to do that. And again, the losers in that situation are,  
are the girls who now have to compete against somebody who's a  
biological male.

**SLAMA:** Thank you.

**LATHROP:** Senator DeBoer.

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**DeBOER:** Thank you for testi-- testifying. Thank you for testifying today. There we go. I, I haven't had time to look through the amendment very well, but is it your understanding that this is for birth certificate or I thought it was ID.

**MARION MINER:** It's both. It's both.

**DeBOER:** OK.

**MARION MINER:** So Senator Hunt opened in her testimony and really spent, I think, pretty much all of her time talking about the ID portion. But, but it does relate to birth certificates as well. That's the, the later end of-- that's towards the end of the, of the bill, towards the end of the 43 pages. But the amendment specifically is with regard to Section 26, which is just relating to birth certificates.

**DeBOER:** OK. So I just-- I want to make sure I got the, the argument right. The idea is that a person can go up to whoever, their therapist and say that they'd like to change their, their gender, that it will then be done. And that, that this gives them an advantage in sports.

**MARION MINER:** So if, if you-- biological males because of--

**DeBOER:** Sure, I mean-- yeah, OK.

**MARION MINER:** I mean, for many reasons, right, have, have a physical advantage and we've seen this in Connecticut is one example of where there's-- it's been going on for several years now. But there's ongoing litigation because over-- through Title IX, because the parents of girls track athletes have been suing Connecticut's equivalent of the NSAA because they have allowed for male athletes to compete against women-- against girls in high school track. And what they've done is they've broken all the state track and field records for girls track. Two boys have broken 16 different state records in girls track and field. And that's kept girls obviously off the podium and has costs for some of them, presumably the chance of getting college scholarships.

**DeBOER:** So do we think this is going to be a big problem?

**MARION MINER:** It potentially-- I mean, if you, if you allow for this to happen-- right now, it's, it's very, it's very-- and I'll reiterate

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this, this is something that came up last year, when the NSAA settled on their policy, which basically says that you have to go through surgery and/or hormone therapy if you're a biological male and you want to compete as a girl in girls sports. We were against that because for obvious reasons, we think that inducing-- incentivizing somebody to go through that kind of thing is terrible. What we wanted to say was simply, listen, a biological male should not be able to compete in women sports. That's not fair to girls. What we have seen in some states which have allowed for that to happen is precisely what's happened in Connecticut, where boys have simply taken over girl sports.

**DeBOER:** This is, this is a, this is a thing that there's enough happening that boys have taken over girl sports.

**MARION MINER:** That's one example in Connecticut is you've got two, two boys who have completely taken over girls track and field.

**DeBOER:** OK, so two boys.

**MARION MINER:** And we don't want to see that happen here.

**DeBOER:** OK, so-- I mean, I suppose we have to weigh those things. But is there-- I mean, couldn't we write this and say for purposes of, of sporting events, there is some other question we ask. I mean, I, I, I, I understand your argument about sports, I guess. But I mean, it seems like that's one very far corner piece of this larger question that Senator Hunt is--

**MARION MINER:** But, but we're, but we're seeing the consequences play out in real life in other places that have not kept that barrier in place. And it's not just--

**DeBOER:** Beside sports?

**MARION MINER:** --and it's not just sports.

**DeBOER:** OK.

**MARION MINER:** As I was-- I didn't quite get to it in my testimony because my testimony was a little too long. But towards the end, you'll see I noted some programs. For example, there, there are academic scholarship opportunities that are offered by a lot of

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different colleges that are reserved for women. OK? If, if you allow--  
if you open that door to say you, you really don't have to  
[INAUDIBLE].

**DeBOER:** There's no biological difference between a man and a woman in  
terms of intelligence. So I'm not too worried about that one.

**MARION MINER:** No, I-- I'm not sure what you mean.

**DeBOER:** Well, you said that the reason that it's a concern in sports  
is because there's a biological advantage--

**MARION MINER:** Oh, sure.

**DeBOER:** --to men, but--

**MARION MINER:** Right.

**DeBOER:** --with respect to--

**MARION MINER:** Right.

**DeBOER:** --intelligence, I-- please, hope you're not suggesting that  
they're--

**MARION MINER:** Yeah, no, I'm not, not-- that's not the representation  
I'm making here. The representation I'm making is that, you know, for  
good reasons, many years ago, you had things like Title IX that were  
instituted not only to open up new opportunities for women to play  
sports, but also for academic opportunities because they were  
underrepresented and they needed access to scholarships.

**DeBOER:** Well, I suppose that the argument against that would be that  
there are even-- there's an even greater underrepresentation of trans  
people in academics, and so they would be probably less concerned  
about--

**MARION MINER:** Well, and there's, there's no reason that--

**DeBOER:** --that trade off.

**MARION MINER:** I'm sorry to cut you off.

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**DeBOER:** That's OK. I-- that's-- I think I understand your argument.  
Thank you.

**MARION MINER:** There's, there's also no reason that a college couldn't  
create opportunities specifically for people who identify as  
transgender. What we're doing here, though, is erasing a biological  
reality in the law. And that has consequences not only for the people  
individually affected, the people who identify as transgender, but  
also for people for whom programs are specially designed, like--

**DeBOER:** OK, I--

**MARION MINER:** --women in athletics and in academic opportunities.

**DeBOER:** I, I understand your argument. Thank you.

**LATHROP:** I have a question from Senator Pansing Brooks.

**MARION MINER:** OK.

**LATHROP:** OK. Can-- you can change your eye color through contact  
lenses or hair color and list it on your driver's license or state ID.  
Why not your gender? What business is it of the state's?

**MARION MINER:** OK, so when we're talking about something like eye color  
or hair color, that is something that is, you know, if you change your  
eye color, if you put in different colored eye contact lenses or and,  
and that is reflected then on your, your state ID, that doesn't really  
have consequences beyond that. There, there are no ripple effects that  
come from that. And, and, and, and there are reasons, too, that the  
state has traditionally been involved in things like marriage and  
family, which are inevitably bound up in what it means to be male and  
female because it takes male and female to create a child. And so it's  
really-- it's, it's incredibly important that we have a, a social  
understanding of things like marriage, family, what it means to be  
male and female and how that's expressed, because those things have  
such large consequences necessarily socially, culturally, because  
that-- that's, that's how families are formed. That's the lens-- those  
are the filters through which children receive reality and grow up in  
the world. What your eye color is, is not really going to have much of  
an effect on that. But if we don't have a good understanding of what  
sex and gender mean and, therefore, of what relationships which lead  
to the creation of children which lead to family mean, that has real

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consequences. Not-- and that's, that's even set aside from some of the  
practical consequences that I've spoken of with regard to women sports  
and academic programs.

**LATHROP:** OK. Any other questions for Mr. Miner? I see none. Thanks for  
being here.

**MARION MINER:** Thank you.

**LATHROP:** We appreciate you coming down and sharing your thoughts.  
Anyone else here in opposition to LB517? That table has been  
sanitized.

**MARILYN ASHER:** It has, hasn't it.

**LATHROP:** They do a good job. We appreciate it. Welcome.

**MARILYN ASHER:** Thank you. My name is Marilyn Asher, M-a-r-i-l-y-n  
A-s-h-e-r. Members of the Judiciary Committee, I am coming to you  
today to oppose LB517, gender neutral driver's license and birth  
certificate. I am speaking in reference to my past work experience. I  
worked as a religious and volunteer coordinator for the Nebraska  
Department of Correctional Services at the Nebraska Correctional Youth  
Facility from 2002 to 2017. During that 15-year period, I ran hundreds  
of security checks on prospective volunteers who wanted to work with  
the youthful offenders. My job was to send a blank security check form  
to each individual. When I received the completed form, it contained  
the driver's license or state ID, sex and birth date of the  
individual, along with other information such as their address and  
previous states of residence. I then handed the form over to the  
officer that ran the security checks and he or she would then give me  
the results before I could approve a volunteer under the direction of  
the assistant warden. This was a tedious process, but it was necessary  
in order to vet volunteers. During those 15 years, I was amazed to see  
how many people shared the same names and birthdates and to see how  
many people had also used aliases in their lives. Sometimes we would  
receive a criminal record on an individual because they had not filled  
out one piece of information correctly or because the content of their  
information was almost identical to that of someone else. I would call  
that individual to tell them they could not enter the facility and  
they were shocked to learn of a supposed criminal record. I would then  
have them correct the information or we would run the check again and,

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in most cases, they were cleared, but not always. There were times when unscrupulous individuals would apply to come into the prison and the security check was a significant tool that we had to keep those individuals from harming the youthful offenders. I am telling you this to emphasize the need for clarity in government documents. The data provided on the driver's license or state ID was key to this process. Since Director-- and since Director Frakes became the head of Corrections, he implemented more, implemented more frequent security checks and training for volunteers. He did this to make the process of using volunteers in prisons more safe, and it increased the paperwork, but it has paid off for security. I may also add that the change of driver's license, state ID, or birth certificate present added difficulties to the classification of Nebraska inmates. Please do not make the job of Department of Correctional Services, State Patrol, or other law enforcement agencies in Nebraska more difficult by allowing this law to pass. Ambiguity in the identity is exactly what criminals would like to have, and it makes their crimes easier to commit. It will make a law enforcement's job more difficult. Please make this a matter of public record, public record.

**LATHROP:** It is now.

**MARILYN ASHER:** OK.

**LATHROP:** Thanks, Miss Asher.

**MARILYN ASHER:** Thank you.

**LATHROP:** Any questions for this testifier? I see none. Thanks for being here today.

**MARILYN ASHER:** OK, thank you.

**LATHROP:** Anyone else here to testify in opposition?

**AMBER PARKER:** My name is Amber Parker, A-m-b-e-r, last name Parker, P-a-r-k-e-r. Today, I'm going to spend a whole day here at the State Legislature because I believe there's many bills that Senator Megan Hunt has introduced that is going to put children in harm's way. So I'm here to be a voice to protect the children in this great state of Nebraska. I am an opponent to LB517. I do want to address that it's interesting with our law enforcement that if this bill were to go forward in, let's say they were arresting somebody or a man was in a

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girls locker room exposing himself, the question would remain now LB517 based upon the designation of birth certificates, then, therefore, could it legally just be one big bathroom and locker room bill that says grown men can go into women's locker rooms in, in these different areas? So I want to read to you guys an actual account. And so here we go. This comes from Alliance Defending Freedom. So I want to give credit due where credit is due. They had written this. It talks about, excuse me, that they had sent a letter to Washington State, Evergreen State College Thursday after college officials claim that its nondiscrimination policy doesn't allow the school to stop a man from exposing himself to girls as young as six years old in a women's locker room. A local district attorney has also stated that he doesn't plan to enforce the state's indecent exposure statute to protect girls. LB517, I'm going to interject here, to me seems that it lays the foundation of this work where Olympia, Washington is been in this situation. I'm going to go on with the article. The 45-year-old male student who dresses as a woman and goes by the name Colleen Francis undressed and exposed his male genitalia on several occasions in the presence of young girls who use the college's locker rooms. Students from Olympia High School and children in the Evergreen Swim Club in Aquatics Academy share use of the locker rooms with the college. Rather than prevent the man from using the locker room, the school has installed curtains and ask the girls to change behind them. Little girls should not be exposed to naked men, period. A college notions about nondiscrimination don't change that, said Senior Legal Counsel David Hacker. The idea that the college and the local district attorney will not act to protect young girls is appalling. What Americans are seeing here-- so I'm going to stop there. So what I want to address here is this legislation, it may not address it, but LB517 is laying the groundwork and allowing men and giving an open door for alias. And again, like even men with intentions to harm little girls or women to harm little boys and, and to expose themselves, grown men and women exposing themselves based upon this. So if you call law enforcement and they say, well, we got this bill and this is they're recognized what's on their license, you have tied their hands. That's why I'm against LB517. We got to protect the children.

**LATHROP:** OK. Any questions for Miss Parker? I see none. Thank you.

**AMBER PARKER:** Thank you.

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**\*NATE GRASZ:** Chairman Lathrop and members of the Judiciary Committee, my name is Nate Grasz, and I am the Policy Director for the Nebraska Family Alliance. Nebraska Family Alliance is a non-profit policy, research, and education organization that advocates for marriage and the family, life, and religious liberty. We represent a statewide network of thousands of individuals, families, and faith leaders, and are in opposition to LB517. We believe every person should be treated with dignity, care, and respect, and we support public policy that affirms the unique and complementary roles both men and women play in society and in families. We oppose efforts that would bring further harm - physical, mental, emotional, or spiritual - to those struggling with their identity and attempts to normalize or elevate gender dysphoria - especially amongst impressionable children. People are born genetically with distinct male or female chromosomes. Biological sex is written into the DNA of every cell in our bodies and is recognized at and before birth, not assigned. As such, our biological sex is intricately interwoven with how we live in society and relate to others. Laws like LB517 encourage gender-fluidity, including in children, which can lead to sterilization and permanent, life-altering surgeries such as castration and the removal of healthy body parts, and have a negative impact on fairness and equal opportunity in women's athletics. Under the current NSAA Gender Participation Policy, a student's gender for purposes of eligibility for athletic activities is determined by the sex noted on the student's birth certificate. LB517 allows biological males to compete in girls' sports by providing that the sex listed on a birth certificate can be amended to the opposite sex. Girls deserve the same opportunities as boys to excel and chase their dreams. Policies that determine eligibility by means other than biological sex ignore the natural physical disadvantages girls face when forced to compete against boys. For these reasons, Nebraska Family Alliances respectfully urges the committee not to advance LB517.

**LATHROP:** Anyone else here to testify in opposition? Anyone here to testify in the neutral capacity? Seeing none, Senator Hunt, you may close. We do have, Senator, 85 position letters, 18 of those are proponents, 67 are in opposition to your bill. In addition, we have written testimony that was provided this morning. First, a proponent to LB517 Abbi Swatsworth, with OutNebraska; also a proponent, Meg Mikolajczyk, with Planned Parenthood of North Central States; also a proponent of LB517, Kelly-- Kelsey Waldron, Women's Fund of Omaha; and

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an opponent, Nate Grasz, with Nebraska Family Alliance. With that,  
Senator Hunt, you may close.

**HUNT:** Thank you, Senator Lathrop. Yeah, I took out the adult part so it can apply to minors, which would make the law consistent with other ways that we already have in Nebraska to amend birth certificates. It aligns with existing laws. And in order for them to, to change the gender on the birth certificate, they would have to get this notarized affidavit from a physician, surgeon, or mental health professional. And if a healthcare provider, you know, then they would-- the individual who is seeking the change would have had parental consent for that treatment. And also a physician would not recommend this kind of change unless it was needed. That would not be like standard practices so that's not something that they would do. What I know that we're not going to do is make policy based on the beliefs of one Church and I get that people have religious-based opinions about things, but we have to deal in reality here and the work that we do and the professional standards that we have to be held to in making policy, some of the comments we heard today were really beneath that, honestly. Trans people exist. We know that young trans people are dying by suicide at a higher rate than their peers. We know that they deal with mental health challenges and depression and anxiety at a higher rate than their peers. And we know that passing something like this, which would align the rights of trans people and young trans people with people in other states where they're affirmed, where they're valued, where their identity is celebrated, that that's one thing that we can do to help people in our state feel like that this is a place that they can call home. Trans people exist. Trans boys are boys. Trans girls are girls, and they are happy and they're successful and they live in our state already. And this is one thing that's just good policy. It's good governance. And I would like to see us move it to the floor. Thank you.

**LATHROP:** OK. Senator Slama.

**SLAMA:** Thank you, Chairman Lathrop. And, Senator Hunt, I appreciate you clarifying my first couple of questions from the open, and I do appreciate your point about professionalism and the importance of how we approach work and how we're drafting bills. I, I wanted to ask a couple of questions about the scope of the notarized affidavit, because the way I do read the amendment is just as it's written, "a notarized affidavit from a licensed physician, surgeon, or mental

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health professional stating that an individual born in this state wishes to change such individual's sex designation." That, that doesn't clarify that the person is seeking treatment to affirm or seek any type of treatment for that sex designation, just that an individual has expressed that to the health professional that they wish to change their gender. Is that correct?

**HUNT:** Well, some of the iterations we went through were we definitely wanted to get rid of the surgery requirement. We wanted to say, look, you don't have to have had surgery in order for you to change this. So we were talking about should it be that you've received treatments? Do we have to define treatment? I, I would be interested in the opposition to this bill if there's any kind of treatment that we could say that they received that would, that would remove their opposition. If, if an individual is receiving treatment from a mental health professional or a physician or a surgeon, and that's the person that would have to sign off on the affidavit to let them change their ID or change their birth certificate, then they're, they're receiving treatment. Then it's the, it's the medical professionals' judgment. And I trust the judgment of medical professionals in Nebraska to say, you know, I'm licensed, I'm trained, and I know this is something this person needs. I, I would be really skeptical that we would hear of any cases in Nebraska where people are just doling out, you know, licenses or, or affidavits for people to change their gender because not a lot of people actually want to do this. I mean, there was a concern about, you know, 16-year-old male soccer players trying to get on the girls team so they can take state or whatever, like show me a 16-year-old boy who wants to change his gender to win a trophy for school. Do you know--

**SLAMA:** I mean, we got two examples of that from Connecticut. I, I just want to clarify the text of the bill.

**HUNT:** So are they taking over our sports? That's not taking over.

**SLAMA:** Sorry, we've gotten to the scope of my question. I have another question for you, though. I expect-- there's a difference between a medical professional recommending treatment, recommending working with this person, whether it be a minor or an adult for the-- the way this is written right now, the notarized affidavit, the scope of it is, I could go to my physician this afternoon and say I want to be a boy. And in the notarized affidavit, the scope is not, are you treating

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this person for this gender change, it's have they expressed a wish to change their gender? And that's, that's it. That's not seeking treatment. That's just as this person expressed a wish, not necessarily getting treatment.

**HUNT:** If your physician in their best medical judgment, said, yes, Senator Slama, I will, I will approve that. Here's your note. Go enjoy. That would be something that could be a complaint that was filed against them about, about, you know, not doing their job very well. But again, I think that we're kind of thinking about, OK, what if the most outrageous scenario, like, it's just not going to happen.

**SLAMA:** I'm not talking about the most outrageous scenario. I'm talking, and, and you can combat the scenarios that have been presented all you want, but they're realistic and can happen as a result of this bill. I'm talking about the scope of a notarized affidavit and what it would mean as a consequence. Like, we're not--

**HUNT:** And what does it hurt, what does it hurt if, if a--

**LATHROP:** Wait a minute, we got to do one at a time. So let her finish her question.

**SLAMA:** Thank you. I appreciate that.

**LATHROP:** And then, then, then respond so we have a transcript.

**SLAMA:** And, and I'll wrap this up quickly. I appreciate the committee's time and understand that Senator Geist has a bill up after this. I'm just concerned about what we're saying, not just in the legislative history, but looking at the text of a bill about what the notarized affidavit means, because this isn't the doctor saying, all right, more power to you, go-- this is, has this person expressed an interest in changing their gender? Yes or no? That's the scope of an affidavit, not are you treating this person? So I, I would just recommend if, if you're hoping to reflect that this person is being treated by the physician, surgeon, or mental health professional on that front, that you would clarify that language so that it's not just a yes or no. So I couldn't or someone convicted of rape could go to a mental health professional and say, hey, I'm at the men's prison now, I want to be a girl. And that's the scope of what they need to do to get transferred over to the women's prison. I do think Marilyn Asher

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raised a point there. So I'm just hoping that you'd commit to  
clarifying that language a little bit so that we're not playing fast  
and loose with this.

**HUNT:** We don't have to clarify it because there's already a national  
standard of care around trans.

**SLAMA:** But this has nothing to do with the standard of care.

**LATHROP:** Wait a minute, let, let, let--

**HUNT:** Yes, it does because it--

**LATHROP:** You-- I appreciate both of you feel strongly about this. To  
keep a decent transcript, we got to go one at a time. Senator Hunt,  
you're responding.

**HUNT:** We have definitions of licensed physician, a mental health  
professional, surgeon, and they would have to, you know, follow the  
standards of care to have that license. So we don't have, you know,  
every time in statute that we talk about a physician or a mental  
health professional, we don't have to define in that statute what the  
scope of their practice is, because we've already done that in other  
parts of statute.

**SLAMA:** Sure. And I think we just disagree here about whether or not  
this would fall under their scope of practice or just an affidavit as  
a normal person as to whether or not a person has expressed a desire  
to change genders, which--

**HUNT:** As a what person?

**SLAMA:** As, as a citizen, as a normal person, as a practicing medical,  
not as a practicing medical professional, as a civilian, as to whether  
or not a person has expressed a desire to change genders. But I'll,  
I'll turn it over back to the Chairman.

**LATHROP:** Any other questions? Does that complete your close?

**HUNT:** Yeah, it's fine with me.

**LATHROP:** OK. I just didn't want to-- I wasn't trying to cut either one  
of you off.

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**HUNT:** I understand.

**LATHROP:** But as a lawyer that tries cases, I know that the court reporter can't take down two people at once and--

**HUNT:** I guess, I would, I would just add that if, you know, there are many, many, many other states that have laws like this. I think that in my lifetime we can expect a federal law around this. It's the way things are going. Nothing in this law will prevent people from hating trans people or from thinking they're less than human or from being discriminatory or having religious beliefs that you think there's only men and women or something. That's not something we can fix with statute. Right? But trans people exist in the world. They work with us. They work in this building. They have jobs, they're successful, they have families. And I think that they need to be able to move about in the world and get their education, get their healthcare, get the benefits that they're entitled to and be in the world like a, like a person, like everybody else who is cisgender and who identifies with the sex they were born in. And this will matter a great deal to the people it affects. Everyone else, it won't affect your life at all. This is a compassionate bill and it's a way that we can signal to the rest of the country that Nebraska is not a discriminatory place.

**LATHROP:** OK.

**HUNT:** Thank you.

**LATHROP:** That will close our hearing on LB517. Senator Geist, I'm going to take a three-minute break before we--

**GEIST:** Yeah, great, thanks.

**LATHROP:** --go to the tort bill.

[BREAK]

**LATHROP:** OK, are we back on? So I got something to read before we start.

**GEIST:** All right.

**LATHROP:** Good afternoon. No, I'm just-- [LAUGHTER]

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**GEIST:** It's like, oh, man, you're going to take more than a  
three-minute break.

**LATHROP:** I'm just kidding. I wasn't going to read that all over again.  
But I wanted to see if anybody was paying attention to the Chair.

**GEIST:** It does feel like it's afternoon now, I, I concur.

**LATHROP:** Yes, well, it's pretty darn close and this bill will clearly  
take us there. But welcome, Senator Geist, you may open on LB--

**GEIST:** All right.

**LATHROP:** --167.

**GEIST:** All right. Thank you, Chairman Lathrop and good morning. It is  
barely still morning, but good morning, Judiciary Committee. For the  
record, my name is Suzanne Geist, S-u-z-a-n-n-e G-e-i-s-t. I represent  
the 25th District, which is the east side of Lincoln and Lancaster  
County. I am passing around an amendment that actually replaces the  
bill. There are some tweaks in the amendment from the bill and then it  
did eliminate a couple of paragraphs near the end of the bill. So I'm  
referring to the bill, but in my testimony. But if you would just in  
your mind know I'm referring to the amendment. I'm not going section  
by section. So I think it will be clear. I have introduced LB167  
because as I, as I watch what was going on around the country through  
the declared state of emergency in 2020, I became concerned and  
specifically when I saw what was happening in Las Vegas, where casinos  
were allowed to reopen, when thousands of people streaming in at a 50  
percent capacity, while at the same time in Nevada, churches were  
prohibited from holding worship services of more than 50 people. If  
they held larger services, they faced criminal and civil penalties. My  
concern grew as I watched religious organizations in other states have  
to fight to provide much needed services and hope to their members.  
This fight was taken all the way to the Supreme Court with the South  
Bay Pentecostal Church v. Gavin Newsom, Governor of California case.  
This case was brought to ensure that religious organizations did not  
have more harsh restrictions imposed on them by the government  
compared to secular businesses. LB167, would codify this recent U.S.  
Supreme Court ruling to ensure that Nebraska religious organizations  
are protected from discrimination during a public crisis, national  
disaster, or state of emergency. Putting these protections in statute

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is necessary to ensure problems do not arise in the future. I'll add that we're fortunate in the state of Nebraska that this was not an issue in our state and I'm bringing this bill to make sure in the future it doesn't become one. Religious organizations provide services that are vital to health and welfare of our state. Not only do they meet the spiritual needs of our people, but they also support social services such as feeding the hungry, housing the homeless, providing mental health and healthcare services. Churches and their ministries are desperately needed to provide these services to those in need, and especially during-- especially important during a time of crisis, such as a pandemic, a natural disaster, or state of emergency. In my bill, public health officials have the authority to protect health and public safety. But the First Amendment, including the free exercise of religion, is never suspended. I made sure that this bill does not limit and you'll want to notice this. It doesn't limit or change government's ability to protect public health and safety. It permits the government to implement neutral health, safety, and occupancy requirements on all businesses and services and simply prohibits any government official from singling out religious organizations for harsher restrictions. This bill would ensure that religious organizations of all faiths in Nebraska do not have to fight all the way to the Supreme Court to ensure that their rights are protected by future legislators. Not only will it ensure that government officials in Nebraska can protect public health and safety without violating the First Amendment, but will also ensure that Nebraska provides religious organizations with the same rights and freedoms as secular businesses during a pandemic, a natural disaster, or state of emergency. Thanks for your time and attention. I'd be happy to take any questions.

**LATHROP:** Senator DeBoer.

**DeBOER:** Hi, thank you, Senator Geist,--

**GEIST:** Yes, ma'am.

**DeBOER:** --for bringing this bill. The one question I have is, is this not already the law?

**GEIST:** It is in the sense of this is part of the First Amendment. What changes and what this actually would codify in Nebraska is the ability, and I believe it's Section 2, sub-- with subsections (1) and (2) is the, is the most important part that allows the-- no, actually,

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that reference is incorrect. It's later in the, in the amendment that allows the church or organization to go to the government and prove their case. They can say this-- whatever the requirement that they see has been put upon them by the government, they can say because this is posed an undue burden to our congregation, which is specified in my amendment, they can go to the court and get relief for that.

**DeBOER:** And, and so the enforcement mechanism is to go to the court?

**GEIST:** Yes.

**DeBOER:** OK. Which you already have to do. But we can talk about this later.

**GEIST:** OK.

**DeBOER:** OK, thank you.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Geist, for bringing this bill. This is really sort of an interesting bill. So a religious organization goes and asks for the exemption or the right to do something in the face of a disaster, whether that disaster is COVID or flood or tornado or whatever, is the state held harmless? By that I mean, they're doing something that they feel is correct because of their religious beliefs. But then if they are injured by the, by the event, whatever that event is, is-- are the taxpayers in the state held harmless?

**GEIST:** What this would do, let's just say for a DHM, for instance, the, the only thing that this is asking is parity, that the government does not impose a harsher restriction on that religious organization than it's imposed on any other nonreligious organization. However, what it also allows is if the government can show a compelling interest of having to show-- having to restrict a religious organization for whatever reason, health, safety, public welfare, that's allowed in this. So does that answer your question?

**BRANDT:** I, I believe so.

**GEIST:** OK.

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**BRANDT:** The only other question I guess I have is because, you know,  
if we're talking about a church congregation--

**GEIST:** Um-hum.

**BRANDT:** --you know, we are talking about a family gathering here.  
We're talking about a group of 100, 200, a large number of people. And  
if you have a public health crisis that involves having a number of  
people together and by having that number of people together, it, it  
perpetrates the, the crisis. I'm not opposed to that, but I don't want  
the state held liable if they're trying to, to correct that.

**GEIST:** Right, well-- and I want to clarify that it, it would have-- a  
church organization would have to follow the same requirements as long  
as they're applied neutrally across the board. They're not asking for  
special rights in that situation as long as it's health, safety,  
public safety, that sort of thing, they're asking not to be treated  
more harshly.

**BRANDT:** OK, thank you. I think that explains it.

**LATHROP:** I do have a couple of questions for you,--

**GEIST:** OK.

**LATHROP:** --Senator Geist, and maybe by way of clarification, but  
Section 2 basically provides: The government shall permit religious  
organizations to continue to conduct their normal--

**GEIST:** Yes.

**LATHROP:** --operations or their normal services. And then it says but  
nothing in that provision stops the government from imposing duties or  
limitations and applying them to churches as long as they provided it  
to other-- it says: all other organizations and businesses.

**GEIST:** OK.

**LATHROP:** So under this bill, is-- and I'm just trying to get to your  
intent on this one.

**GEIST:** Sure.

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**LATHROP:** And we'll take this latest pandemic, since that's probably  
the, the reason--

**GEIST:** The onus for the bill. Correct.

**LATHROP:** --for, for the bill in the first place. So we have-- we've,  
we've talked about essential workers and essential services, and I'll  
give you an example, meatpacking workers, we regard them as essential  
workers. They are-- they were allowed to continue to operate in a  
normal fashion among the Business and Labor Committee. We've heard a  
lot of stories, a lot of accounts, I should say, of meatpackers who  
stood shoulder to shoulder with other meatpackers during the pandemic.  
So that's an organization or a business.

**GEIST:** Right.

**LATHROP:** Do we have to make everybody not run, if we, if we say, let  
me put it differently, can the government under your bill carve out  
certain businesses and say they deserve special treatment, but we're  
not going to apply that special treatment to the church?

**GEIST:** They could--

**LATHROP:** Because it seems to me-- let me, let me maybe just  
pontificate for a second.

**GEIST:** OK.

**LATHROP:** It seems to me that you have the pandemic hits. We don't know  
a lot about it at the front end. We know there's community spread and  
they say, well, we need to stop bars and restaurants. Everybody ought  
to stay home unless you have a good reason for being out. But then we  
started to segregate who should be open and who should be closed.  
Right? And I'm thinking of meatpacking workers, those folks, and we  
wanted, everybody needs their protein. Right? And the, the-- we need  
to take care of the animals that need to be processed. So the  
meatpacking workers were there and they may have wore masks at some  
point. They might have put up some Plexiglas, but nothing about their  
operations changed otherwise to speak up, near as I can tell from,  
from the accounts I've heard. Can the church then say, wait a minute,  
the meatpacking place is down at the Tyson plant, nothing's changed,  
so you don't get to make us go to 50 percent capacity?

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**GEIST:** Actually, that's a good question, and, and I think that's covered when it says the state can show a compelling reason, a compelling interest. Now that interest is going to directly relate to the religious organization. But if the state can show in that situation that, that we're not prohibiting or not-- we're permitting and not prohibiting your involvement here at the church, but for our compelling interest, this is what we're doing.

**LATHROP:** I'm going to throw something out here for your consideration,--

**GEIST:** OK.

**LATHROP:** --and that is a compelling interest is almost always going to be found when we say there's a pandemic, there's a compelling interest.

**GEIST:** Yes, yes.

**LATHROP:** I think what we're looking for is, is there a logical reason for the people who are accepted out from the direct health measures? Right? The compelling interest as soon as there's a pandemic, the state's going to clear that hurdle. I think what you're trying to do, if I understand the purpose, you're trying to say there has to be a compelling reason for the distinction between the people you are allowing to continue to operate and those you stop or those you limit.

**GEIST:** But it's also prohibiting the government from limiting beyond that-- beyond a nonreligious, what's your typical DHMs. It's prohibiting the government from saying, but we're going to make-- the example in, in Las Vegas, where the government allowed 50 percent occupancy in, in a casino. However, only 50 people within a congregation.

**LATHROP:** So that's-- and that really is-- this is a consequential bill and that's why I'm asking these questions.

**GEIST:** Yes, and-- yes.

**LATHROP:** And I realize it's important to you. If I say-- if I'm the mayor or the Governor and I say every place has to be at 50 percent occupancy, but Tyson can still operate at 100 percent or Hy-Vee can still be at 100 percent because we all need our food or the hospital

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can still be at 100 percent. Some cases are going to 110. I don't know who we're supposed to compare the churches to and who they should not be compared to when deciding whether you the church have a cause of action against the government for what--

**GEIST:** I understand what you're saying.

**LATHROP:** --you are imposing on the church. I get what you're driving at because it's irritating if they're walking into the casino, but they can't walk into the church or they're going to the tattoo parlor, but not the church. But that seems to be whether we're classifying the churches and direct health measures accurately or, or logically. Anyway.

**GEIST:** And, and it's-- it also speaks to what my bill also does is reaffirms the importance of the rights in the First Amendment, which the-- and I understand you're asking if the church then could turn around and ask for broader abilities because of those specific carve outs. Is that what you're saying?

**LATHROP:** Yeah, it seems to me that there are some things, and I don't want to say church isn't essential, right, but some things that are where people gather, restaurants, for example, the, the arenas to watch hockey or basketball or football or, you know, stadiums, those kinds of things where people can gather and places of employment. Anyway, it's an, it's an interesting bill. I'm sure we'll have an interesting--

**GEIST:** Discussion. I hope so.

**LATHROP:** --conversation. But thank you for presenting it,--

**GEIST:** Sure.

**LATHROP:** --and we'll see what the proponents have to say. We'll, we'll take proponent testimony. If you're here to testify in support, you may come forward.

**SOLO MWANIA:** Thank you, Chairman Lathrop and the Judiciary Committee. My name is Solo Mwanja, S-o-l-o M-w-a-n-i-a. I'm the lead pastor at Lincoln City Church in Lincoln and been involved with the congregation for 19 years or so. And first of all, I wanted to-- I will piggy off my testimony with a question that the Chairman was asking Senator

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Geist in regards to the distinction between the church, maybe you use the example maybe of the Hy-Vee being an essential service. And one of the things that we've seen happen through the pandemic and our heart goes out to all the people that are suffering. And so many people have died through this pandemic. And as a church community, the faith community, we are as involved as everybody else. And in many times, not just the physiological impact, we are down with the families and the people impacted in taking care of their emotional and spiritual needs. I've buried people. I've lost two friends in with this pandemic. But to, to clarify that question, I think there's a, there's a, there's a definition or a classification of faith that has been applied with limited understanding with people who do not know faith. There are a lot of people, and I respect that, they are not religious. They are not people of faith. When you think of matters of faith, to them, they might look at it and classify faith or church as entertainment. When you, when you compare a church, a football game or a show at the Lied Center, you know, they are entertainment, people of faith participate in those things as well. But for us, who are people of faith, we see it as a, as a religion. It's not an entertainment or a society or a club as you would, but it's actually a conviction where the real-- the founders recognized this when they framed the constitution and founded the nation. And the, the freedom of religion is one of those core values in the country. What I under-- the reason I support what Senator Geist is proposing here, as an immigrant, I'm an immigrant from Kenya and I've lived in Nebraska for 19 years. All my kids were born and raised in Nebraska. One of the things we always looked at America as growing up in other countries where civil individual liberties or religious liberty wasn't always respected, is that America was always the one place that was a big brother, the one place you could go and say, you know, this is really the land of the free. And I can tell you-- I couldn't tell you the number of times I've stood before the congregation and said how grateful I am to be in a place where you can worship freely. You can choose whether you decide to be religious or not, but you can worship freely without feeling that you're conscious of being infringed upon. And that's where faith is distinctive. We have continued throughout the pandemic, God forbid, after COVID-19, history teaches us that there will be other pandemics. I'm sorry, I got a little winded. May I, with your permission, continue?

**LATHROP:** Finish your thought, sure.

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**SOLO MWANIA:** I'll finish my thought, you know. As the pandemic continues, we don't stop what our calling is, helping families. And one of the dramatic things that has happened during the pandemic is more and more people are suffering with mental health issues, depression's gone up, substance abuse, domestic abuse, and communities have faced-- if, if our faith-- ability to practice our faith in the way that is defined with our conscious and, and our, and our calling. We've continued to work with families as they navigate through the hardships that we are all experiencing due to this pandemic and even more critical in this time. And so what I see Senator Geist is doing here is to protect us from what-- things like what's happened in Las Vegas. And I know ministers in fellowship that have actually had to deal with that in Nevada. And so that in Nebraska, we could at least feel that our Legislatures are protecting us from having to do our work without fear that the government will infringe upon. We're not trying-- we're not in competition with the government. We actually-- we are working cohesively in helping the society.

**LATHROP:** OK. Pastor, thanks for your testimony.

**SOLO MWANIA:** I appreciate your time.

**LATHROP:** I do not see any questions at this time. I really do appreciate, I really do appreciate you coming down. I know you patiently waited to testify today, too. We appreciate that as well. Oh, hang on a minute. We have Senator Pansing Brooks, I think has a question. So here's a question from Senator Pansing Brooks. Don't the city and state governments know what is best regarding a pandemic due to information from health experts and have special duties to keep citizens safe, how can we exempt churches or other groups who can still meet remotely when we are charged with protection of our citizens' life, liberty, and happiness?

**SOLO MWANIA:** I appreciate that. That's a very good question. What we are asking for is not an exemption that supersedes anything. I think the concern that we are having right now is when people who are not people of faith may be antagonistic or don't see any value in the lives of the people of faith is when they start treating people very differently than they would otherwise treat others. And that's what we are asking for. It hasn't happened, thankfully, in the state of Nebraska yet. But you see the trend in other states and you think, OK, what can we do preemptively to ensure that those types of

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infringements on practicing faith don't occur in the state of  
Nebraska?

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** Thank you. That raised a, a question for me. I think then what  
I'm hearing you say is that there's a, a concern that-- here, let me  
do that, there's a concern that when people are making decisions about  
directed health measures and they're having to, to weigh things  
because that's what has to happen, that you're saying that if they  
don't properly value faith, they may not weigh things properly when  
they're determining the cost benefit analysis.

**SOLO MWANIA:** That is very clear, Senator, because many people who-- if  
you don't have faith with certain convictions, it's not a conviction.  
If you're not a faith person, it's not a conviction. And so people  
classify faith in, in those terms as maybe the gatherings, they  
classify it as maybe with the same measure, like an entertainment  
event would be. And what-- and the argument is that the faith is  
different. And most-- and the, the thing that seems to be sometimes  
misunderstood about the people of faith is that we are not in  
contention or in competition. Actually, we are working with the-- we  
are help-- we're working with people to help nurture through the whole  
person, the spiritual, the emotional, and all that. So that, that the  
faith community at large is not trying to-- our goal is-- our goals  
are the same. Like, we're not going to be putting people that we care  
for-- it's the people of faith that walk through-- people-- walk  
through people's lives in some of the hardest times of their lives.  
People of faith are usually there to comfort and to strengthen. So  
we're not going to be willfully put people in jeopardy that we care  
for and that we walk with from birth to death.

**DeBOER:** So, so I think Senator Pansing Brooks's question then might be  
knowing that you're not-- I think everybody recognizes that you're not  
going to willfully put someone in danger. I think her question is, is  
it possible that just as the folks don't who are making the decisions,  
maybe don't value faith enough or you have a concern that they don't  
value faith enough to properly weigh things? Is it possible that faith  
leaders may not have enough information to properly weigh things?

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**SOLO MWANIA:** I think the public information is accessible to the people of faith in the same way that it is accessible to secular people.

**DeBOER:** Sure, I'm saying, but the decision makers. Right? Because we've seen that as this pandemic is unfolding, the decision makers sort of learn first and then they try to get information out. But maybe it doesn't all get out and it certainly doesn't get out in the same speed to everyone that it gets out to the decision makers. So it's an interesting question because it's saying we have concerns that they may not on, on one hand that the leaders may not weigh things properly because of their own biases. On the other hand, there's a concern that faith leaders may not properly weigh things because they don't have all the information. So thank you, that, that clarified very much. Thank you.

**SOLO MWANIA:** Appreciate that.

**LATHROP:** OK. Pastor, I don't see any other questions, but thanks for being here today.

**SOLO MWANIA:** All right. Thank you for your time.

**LATHROP:** Anyone else here to speak as a proponent on LB167?

**AMBER PARKER:** Good afternoon. My name is Amber, A-m-b-e-r, last name Parker, P-a-r-k-e-r. I'm here to address that I am a proponent for LB167. And in addressing, I would like to list why. I'm a greatly concerned American seeing what is happening in the United States of America. We are seeing power being usurped over the power-- of people, excuse me, going to meetings even like today and in some other areas, our freedom of speech being shut off based upon rules. So I want to address in the capital city, the mayor in the Lincoln, Nebraska area, Mayor Baird, she had addressed a curfew and had posted safety and concern for the people in the capital city which we're here today. However, she sat in with protesters and things like this. And I just want to be clear that during this time, the, the city, the capital city and Lincoln, Nebraska, went through millions of dollars of damage. Meanwhile, law abiding citizens sat at home. Mayor Baird, I believe, sat in with the protesters. And if anybody were to go out, they would be breaking curfew. So this is where I want to tie these two points together. Recently, again, in the capital city, Mayor Baird

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is under-- she's still under complete control and under what is known as the emergency during to the COVID-19 and everything going like that. Citizens have shown up at the meetings to approach and address with city council members, but continually are interrupted by Jane Raybould and Pat Lopez on that committee. And why I want to bring this up, it's so hypocritical because in these meetings, if you go, you'll see citizens who have went-- have shown that there are garbage bag seats and they can't go in. But there was another meeting where they allowed them in. And the reason we need LB167 is the point that when the mayor declared the curfew in the capital city, she allowed protesters and things like that. But what about if people wanted to go their church in protest or even pray and, and stand up in unity and saying if there was ever a time, let's reach out together? But she never gave that choice. So LB167, we really do need these protective measures because it's outlining and clarifying as state Senator Geist had said that the compelling evidence for health and safety and warfare [SIC] and that the state can show-- excuse me, compelling interest was the words. I don't know if she had said evidence, but that's what's really important. So I just give you an example of what's happening with the mayor in the capital city of Lincoln, Nebraska. And that she is still under emergency rule. And due to the council, many of the council members other than Christensen, she is not answering. They will not answer when she comes out at that level of power. So LB167 protects us from tyrannical leaders as what Mayor Baird has done to the people and shutting their voices off and working with the city council.

**LATHROP:** OK. I don't see any questions.

**AMBER PARKER:** Thank you.

**LATHROP:** Next proponent. Good afternoon.

**GWEN EASTER:** Good afternoon. My name is Gwen Easter, G-w-e-n E-a-s-t-e-r, and I'm with Safe Haven Community Center and Safe Haven Early Child Preschool Education Academy, but I'm also a minister. And, and I, I would like to support-- you all to support LB167. And the reason for that is to-- you know, from my experience of seeing what has happened across the country with the churches and, you know, to me, there has been, I would say, like discrimination, you know, against some churches. And, and there, there should be some concern about what's happening. You know, I think that people should be

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allowed to look at the information that's provided by the professionals, although a lot of times they, too, have been up and down with giving information out pertaining to the COVID. And it's kind of been, you know, you know, the information has just kind of been up and down, is all I can say right now, but I think that people should be allowed to decide for themselves whether or not they want to attend a church service. You know, this time has been, like, depressing for a lot of people. People have lost, you know, their jobs, their family members, homes, and they need their churches open. They need to be able to-- pastors need to be able to decide, you know, if, if the congregation should come together. Most people want to worship, you know, and if they're being allowed to-- people are being allowed to do-- go to other gatherings or other events like, you know, a protest, and, you know, like he said, and games and all this, then, then the same should be applied to, to churches and to, to those people lives. And they should have a choice, a decision to make on for themselves, you know, not having all these professionals that sometimes don't agree with each other about what is really going on with this whole COVID, you know, making decisions about our entire families. So that's all I really wanted to say.

**LATHROP:** OK. I don't see any questions. Thanks for being here. Any other proponents?

**MARILYN ASHER:** Excuse my limping. I had a run in with the ice on Sunday. My name is Marilyn Asher, M-a-r-i-l-y-n A-s-h-e-r, and I do not have prepared testimony. But as a former religious and volunteer coordinator for the state of Nebraska, as I stated before, I don't think we can underestimate or overestimate the value of the faith community in Nebraska. We had volunteers coming from all over Nebraska to serve the inmates and now they're not able to because of the pandemic, which is understandable. But I have just seen a lot of extra depression in people I know that have not been able to get together in church services. And as Senator Geist said, some of the stringent rules have not come through in Nebraska. But I just want to say that the value of the faith community is so, so important. My heart goes out to the Nebraska inmates who have not been able to receive the services of those volunteers, regardless of the religion that is represented. And I think we're going to have some work to make up when they are able to go into the Department of Corrections. But I myself am a volunteer and cannot go in. But I just want to affirm what the other testimonies have been. Thank you.

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**LATHROP:** OK. Senator DeBoer.

**DeBOER:** I want to ask you a question that's a little-- I want to ask  
you a question that's a little off topic--

**MARILYN ASHER:** Sure, sure.

**DeBOER:** --because of something you just said. You said that folks are  
not able to go do religious work in the, the Penitentiary. Is that  
correct?

**MARILYN ASHER:** Right, the--

**DeBOER:** And--

**MARILYN ASHER:** --volunteers have been stopped.

**DeBOER:** The volunteers have been stopped. It was my understanding  
and-- it was my understanding that that had, had stopped before. Is  
that true because of the modified operations?

**MARILYN ASHER:** At the beginning of the pandemic?

**DeBOER:** No, in October of last year, I think it was that they had gone  
to the 12-hour, 12-hour shifts and so that their evening activities,  
including their religious activities.

**MARILYN ASHER:** It, it has impact. Yes. Those-- that has happened in,  
in the prisons in the past.

**DeBOER:** So-- OK.

**MARILYN ASHER:** And the religious coordinators end up bearing quite a  
bit of the responsibility for the spiritual life of the inmates, even  
though, you know, there's various religions that they are servicing  
and that happens in the prisons. It just happens. But I don't believe  
across the board in all the prisons in Nebraska, there has been a  
nine-month suspension.

**DeBOER:** That happened in the-- during the pandemic.

**MARILYN ASHER:** Yes.

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**DeBOER:** Because I know that, that they were saying-- I'm just trying to find out because I wanted to know this was very-- it was something I was very concerned about before with the modified operations that they were taking away these volunteer opportunities for faith-based volunteering. So do you have any information about that or you don't know for sure?

**MARILYN ASHER:** Well, the reason it-- with the modified operations, it's just the custody load is so heavy when there's a higher level of restriction as far as supervising those services. I believe that probably the, the clergy were possibly able to still come in for one-on-one visits. But as far as--

**DeBOER:** OK.

**MARILYN ASHER:** --the services, quote unquote, the group gatherings of inmates that would have been restricted. No, I myself, am a piano teacher at the Nebraska Correctional Youth Facility, and even those activities have been stopped just because of that. They, they opened it up and for after from like March to June and then it clamped down again. And I have not been able to go back in.

**DeBOER:** OK. Sorry, this is off topic, Senator Geist, I didn't mean take us down a different path. But you were here, so thank you.

**MARILYN ASHER:** Sure, sure.

**LATHROP:** OK. I don't see any other questions for you. Thanks for being here, Miss Asher.

**MARILYN ASHER:** OK. Thank you.

**\*NATE GRASZ:** Chairman Lathrop and Members of the Judiciary Committee, my name is Nate Grasz, and I am the Policy Director for the Nebraska Family Alliance. Nebraska Family Alliance is a non-profit policy, research, and education organization representing hundreds of pastors and faith leaders from across Nebraska who share a common commitment to caring for and serving our communities. Religious organizations provide extensive benefits to our state. They not only meet the spiritual needs of our citizens, but also provide critical social services including charitable activities, health care, educational services, and programs that help the poor, elderly, sick, and individuals struggling with addiction or mental illness. LB167 ensures

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that Nebraska ministries and houses of worship are protected from government discrimination during a public crisis, natural disaster, or state of emergency and can operate on the same terms as other businesses and organizations. Churches and their ministries are desperately needed to serve those in need, at risk, or suffering, especially during a pandemic or state of emergency, and the government has a duty to uphold - rather than infringe upon - the First Amendment. After several states placed restrictions on churches not levied on similar secular gatherings, the U.S. Supreme Court stepped in and ruled that California and New York violated the U.S. Constitution by discriminating against religious houses of worship. As Justice Neil Gorsuch stated, "Government is not free to disregard the First Amendment in times of crisis." The Supreme Court has upheld the free exercise clause of the First Amendment many times, writing, "The Free Exercise Clause of the Constitution guarantees religious believers-at a bare minimum-equal treatment under the law. LB167 ensures churches and religious organizations are treated equally. This bill is necessary in order to make certain that the First Amendment is protected in the future, and churches and religious organizations in Nebraska do not have to fight all the way to the u.s. Supreme Court to have their rights upheld. LB167 does not limit or change the government's ability to protect public health and safety. It simply prohibits any government official from singling out churches for harsher restrictions. Dr. Timothy P. Flanigan, Professor of Medicine at the Warren Alpert Medical School of Brown University, provided sworn testimony in federal court that religious services pose no greater threat to public health than other gatherings where CDC guidelines are followed. Dr. Flanigan concluded: "There is no scientific or medical reason that a religious service that follows the guidelines issued by the CDC would pose a more significant risk of spreading SARS-CoV-2 than gatherings or interactions at other establishments or institutions." [S]o long as the CDC guidelines are followed, there is no scientific or medical reason to prohibit religious services but not prohibit other activities or gatherings, nor is there any scientific or medical reason to allow certain activities or gatherings while not allowing religious services." Public officials have the authority to protect health and public safety, but the First Amendment - including the free exercise of religion - is never suspended. On behalf of Nebraska Family Alliance and the hundreds of faith leaders we represent, I respectfully urge

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the committee to advance LB167. Thank you for your time and  
consideration.

**\*TOM VENZOR:** Chairman Lathrop and Members of the Judiciary Committee, my name is Tom Venzor. I am the Executive Director of the Nebraska Catholic Conference, which is located at 215 Centennial Mall South. I would like to express our support for LB167. LB167 would serve as an important contribution to our state's protections for religious liberty. This legislation ensures that religious organizations are not unjustly discriminated against during a state of emergency through the unequal imposition of health and safety standards. The COVID-19 pandemic has underscored and revealed numerous strengths within our families, schools, organizations, businesses, health care system, and government, to list just a few areas. In particular for the Catholic Church, our parishes, schools, and charitable agencies have continued their service to God and neighbor under stressful circumstances. Unfortunately, the pandemic has also revealed weaknesses, including in our constitutional order and its regard for religious liberty. Across the country, there have been challenges against health and safety guidelines implemented in an uneven manner against religious organizations. The United States Supreme Court has taken up two notable cases on this topic, ruling favorably for religious liberty claimants-Roman Catholic Diocese of Brooklyn v. Cuomo and South Bay United Pentecostal Church v. Newsom. This situation raises the need for vigilance in our own state regarding religious liberty, which the United States Conference of Catholic Bishops has called "our first, most cherished liberty." LB167 provides that needed vigilance by ensuring that government actors are clearly on notice as to the appropriate balance that must be struck between public health and safety measures and preserving religious liberty. LB167 respects the authority that public officials exercise to protect public health and safety by enacting neutral, generally applicable laws that are not a substantial burden on religious organizations. In the event government actors fail to adhere to these basic requirements by, for example, treating similarly situated secular entities more favorably than religious organizations. LB167 also provides reasonable remedies that can be pursued. While the religious liberty interests of Nebraskans have fared well throughout this COVID-19 pandemic, LB167 is forward thinking legislation and establishes needed safeguards for future states of emergency. The Nebraska Catholic Conference respectfully

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request that you advance LB167 to General File. Thank you for your  
time and consideration.

**\*CARINA M. McCORMICK:** My name is Carina M. McCormick, PhD, and I strongly oppose LB167. I take offense at the Statement of Intent that purports the purpose of the bill is protect religious organizations from being treated "worse than similarly situated businesses and organizations." This summary is inaccurate to the point of deception. The wording of the bill itself does so much more than ensure equal treatment for religious organizations: it elevates religious organizations as being beyond the reach of safety measures that apply to all other organizations. It is already illegal to make laws that are additionally restrictive for religious groups than for other organizations. This bill is not necessary if the intention is for religious groups to be protected from being treated "worse than" comparable businesses and organizations. Instead, Sec. 2 specifically states that "The government shall permit a religious organization to continue operating and engage in religious services during a state of emergency, and no public official shall prohibit religious organizations from operating ... during a state of emergency." Compare this edict to the misleading summary in the Statement of Intent that the bill is intended merely to place religious organizations on equal footing with other organizations. There is a major contradiction that must be recognized and prevented from being perpetuated in the debate. Moreover, the wording of the bill places the onus on the governmental organization to prove that "applying the burden to the religious service in this particular instance is essential to further a compelling state interest and is the least restrictive means of furthering that compelling state interest." The bill does not include this requirement for other businesses and organizations, which again raises religious organizations' separation from safety measures that are intended to apply equally. Repeatedly, the language of the bill is in conflict with the claimed statement of intent, which attempts to create the illusion this bill seeks equal treatment. Within the last two months, I've seen the danger of allowing religious organization to have less restrictive safety requirements in an emergency than are required in other public places. One of my closest friends lives in a state where masks are required nearly everywhere, with churches being an exception to the mask mandate. Her grandmother and grandfather were extremely restrictive about their activities during COVID-19 but still felt it was important to attend church services. At their church, the

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only churchgoers wearing masks were them and one other couple, according to the information my friend received. As you know, masks are more effective when worn by infected individuals, with the mask reducing spread of the infection, than they are when worn to protect the wearer. Despite my friend's grandparents wearing masks, they still contracted COVID-19, as did at least one other couple there. Church was the only location they were ever around non-family members without masks. In mid-January, he went to the hospital because his COVID-19 symptoms were becoming dangerous. He never walked out. After long weeks of struggle, he died in the hospital without my friend being able to tell her grandfather goodbye, because masks were not worn at his church. His wife of 43 years was not allowed to see him as he suffered and was left to experience her own COVID-19 infection alone without him for the first time since their wedding. All of this suffering, loss, and mourning, because churches were given special exemptions from laws that otherwise applied to everyone. The state and localities have a responsibility to protect all its citizens. That responsibility does not end at the church door. Churches should not get extra opportunity to put people at risk, but that is what this bill seeks to provide. The statement of intent is shamefully inaccurate to an extent that it is dangerous. Governments must have the right to protect its people - all people, in every public place - during declared public emergencies.

**\*JON CANNON:** Good morning members of the Judiciary Committee. My name is Jon Cannon. I am the Executive Director of the Nebraska Association of County Officials. I appear today in opposition to LB167. LB167 would define state of emergency as a public health crisis, natural disaster, or other event that triggers the use of emergency powers by the government as proclaimed by the Governor. Pursuant to the ability of the Governor's general powers for declaring disasters, emergencies, and civil defense emergencies that have occurred or that the occurrence or threat thereof is imminent, such proclamation to be declared by the Governor must indicate the nature of the disaster, emergency, or civil defense emergency, the area or areas threatened, and the conditions which have brought about the state of emergency. Emergency situations have included floods, blizzards, tornadoes and many other natural disasters. LB167 would require the government to potentially permit religious services to be performed in a geographic area that is unsafe to gather in and if there are possibly dangerous areas to convene in as provided in section 2(1) of the bill. However,

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in subsection (2), the bill provides parameters for the government to require religious organizations to comply with neutral health, safety, or occupancy requirements issued by the state or federal government that are applicable to all organizations and businesses. These two subsections seemingly contradict each other with subsection (1) prohibiting action by the government while subsection (2) would conversely allow action disallowed in subsection 1. As Supreme Court Chief Justice Roberts reiterated in a concurrence in *South Bay United Pentecostal Church v. Newsom*, 592 U.S.(2021) and previously explained when the Court considered the evolving case of *South Bay United Pentecostal Church v. Newsom*, 590 U.S. (2020), "federal courts owe significant deference to politically accountable officials with the "background, competence, and expertise to assess public health." Further, Chief Justice Robelis indicated he adheres to the view that the "Constitution principally entrusts the safety and the health of the people to the politically accountable officials of the States." *Id.* So not only is it unclear what is allowed or disallowed for the creation of important measures to protect the public in the even of a health crisis, natural disaster or other event that triggers the use of important but the legislation would greatly expand the potential liability of counties in the event of a state of emergency. Further, it is reasonably foreseeable that even facially neutral restrictions could be subject to litigation. We ask you to please consider our thoughts as you evaluate the potential negative impact of LB167 to political subdivisions, including counties. Thank you for your willingness to consider our comments. We encourage you to indefinitely postpone LB167 for the reasons we have outlined. If you have any questions, please feel free to discuss them with me.

**\*SPIKE EICKHOLT:** My name is Spike Eickholt and I am the registered lobbyist for the ACLU of Nebraska. We are opposed to LB167. This measure raises important and complex issues relating to public health and religious exercise. But we believe this measure could have unintended consequences and is unnecessary. We urge the committee to examine the text of the bill carefully, recognize how broad the definitions are, take notice of the significant penalties, and look carefully at the description in the fiscal note which accurately describes the bill's impact: "LB167 requires the state or any other political subdivision to allow religious organizations to continue operating during a state of emergency. If any restrictions were enacted, religious organizations may file a claim (or relief,

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including compensation and attorney fees." Other jurisdictions are considering measures such as this, but this proposal is particularly broad as it requires not only that worship services be allowed to proceed during emergencies, but also that operations by any religious institution (which includes "a religious group, corporation, association, educational institution, ministry, order, society, or similar entity, regardless of whether it is integrated or affiliated with a church or other house of worship) be allowed to proceed. This would allow a religious college to hold in-person classes, while non-religious schools could not. Religious institutions should be exempt from rules enacted during states of emergencies, especially where the exemption would lead to harm of others. The bill also provides that if health, safety, and occupancy requirements substantially burden religious services, they are subject to strict scrutiny review by courts. In states which have similar standards of review, these are a reflection of an already existing state religious freedom restoration act (RPRA) but Nebraska does not have a state RFRA so this standard of review is unusual. While the freedom to hold and attend worship services is a fundamental right, it is constitutionally appropriate for the government to restrict such gatherings, along with similar non-religious gatherings, if medical and scientific experts agree that they pose an immediate and grave risk to the public health. Exempting worship services from neutral and generally applicable restrictions enacted during public emergencies could harm others and is the type of religious preference that the Constitution forbids. This bill would exempt worship services from such neutral and generally applicable restrictions enacted during public emergencies, no matter how much danger these gatherings pose to the public. Religious freedom is not a license to harm others. LB167 would significantly limit the state's ability to respond to public emergencies. Under the First Amendment, religious individuals and organizations are not entitled to religious exemptions from rules that are neutral and generally applicable. There is a long line of cases that rightly recognize that no right is absolute and that the right to religious exercise, which we all value, does not include the right to burden or harm others or the public. Under the Supreme Court's rulings, a restriction need not apply to all organizations and businesses in order to apply it to religious activities. For example if a monsoon or wildfire evacuation order closed all businesses and organizations but allowed gas stations to remain open to facilitate residents' ability to leave town, religious organizations could claim

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an absolute right to continue operating and holding worship services, as the evacuation order would not apply to every single essential business and organization. Under the bill, even if certain health, safety, or occupancy requirements are "neutral" as defined by the bill - i.e., they apply to all essential businesses and organizations-religious organizations may still claim an exemption from the rule. If the restriction substantially burdens a religious organization's religious exercise, the state may not apply the requirement to the religious organization unless the state meets strict scrutiny, a stringent legal standard. The Supreme Court rulings do not require this. As such we urge the Committee to not advance the bill.

**LATHROP:** Any other proponents? Anyone here to speak in opposition to LB167? Anyone here in the neutral capacity, wants to be heard in a neutral capacity? Seeing none, Senator Geist, you may close. We do have 96 position letters, 91 of them are proponents and 5 of them are opponents. And if you'll allow me to, we have written testimony as follows: Tom Venzor with Nebraska Catholic Conference is a proponent; Nate Grasz with Nebraska Family Alliance is a proponent; Spike Eickholt is with the ACLU of Nebraska is an opponent; Jon Cannon with NACO is an opponent; and Carina McCormick, PhD, not representing any organization, has provided written testimony in opposition. You may close.

**GEIST:** Thank you, thank you for your time. Thank you for sitting through part of your lunch hour. I appreciate that. One of the things I did want to comment on your question, Senator Lathrop, was there was a Supreme Court case in New York that addressed other organization's ability to open when the, the synagogue in that case was not able to open at its capacity as the other organization. What they found in this case is that actually the synagogue was operating and had the ability to operate at a much safer, cleaner, healthier capacity than the organization that it was being held against. So some interesting things, we can talk about it later. And if there's something that I can do to make this more clear, I think you understand the intention of the bill. And it's very worthy, I think, of being heard and hopefully passed. So I appreciate your time and just know I'm, I'm here to answer questions and help you out as much as I can.

**LATHROP:** Senator McKinney.

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**GEIST:** Yes.

**McKINNEY:** Senator Geist, do you think if these restrictions weren't put in place, that would have been able to control the spread of the virus like we, like we did? It was-- it's bad, but I believe that had we not had these restrictions in place it could have been worse.

**GEIST:** I'm not a pandemic expert, so I don't know on my own intelligence if that's the case. I think that there's some anecdotal evidence to say that spreading a pandemic is something that's microscopic and in our vapor air is very difficult to control. I think we can do our best to manage our exposure. I don't know, to be honest, if, if our directed health measures have, have really done what they're intended to do and I-- I'm not speaking specific to Nebraska, I think there are other states that have been much more restrictive than we have.

**McKINNEY:** Because what, what honestly concerns me is I've heard of multiple situations where people still want to go to church are saying, we don't care about masks. God is going to protect us and we just need to just gather. And that's what concerns me, because how do we control the spread of a virus if we have individuals in our communities just freely walking around "maskless" and not really caring about the virus at all?

**GEIST:** Well, I think you're, you're voicing something that others have voiced. It's also-- and people of faith also believe. Now I don't necessarily prescribe to that, that thinking, but the, but the faith community, because of their First Amendment right, does not want the government to be the judge of how they express their faith and that-- that's where, where this is important. Because it's not the role of the government to decide. Now I understand the role of the government in this case is for public safety, and they're not asking to be exempted from public safety. But it's also not their role to decide how the free exercise of their religion is demonstrated. And that's where it's a very difficult balancing act, but also why we think that this legislation is important.

**McKINNEY:** Thank you.

**GEIST:** Um-hum.

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**LATHROP:** I do have one more question for you.

**GEIST:** OK.

**LATHROP:** So in the cause of action that you provide for, Section 4, you set out the relief that someone may receive as, as part of the litigation that might follow a direct health measure imposed on a church. And declaratory relief and injunctive relief, I understand that. You want to enjoin the public health official from shutting down the churches. That would be--

**GEIST:** Right.

**LATHROP:** --the nature of the complaint. You also have (c) "Compensatory damages for pecuniary and nonpecuniary."

**GEIST:** Um-hum.

**LATHROP:** OK. Pecuniary would be money losses that, that a religious organization would experience. So here's my question. If I, if I am the mayor of Omaha and I say the church has got to shut down and you file suit, can you claim that if we had church like we regularly do and they pass the basket, we would have \$5,000 in receipts, you won't let us have church so I want-- our damages include the loss of revenue from passing the basket at church?

**GEIST:** And my understanding of that is, yes.

**LATHROP:** OK. So nonpecuniary, we often-- that's a, that's a strange word. That would normally be sort of general damages, sort of the pain and suffering, inconvenience, loss of enjoyment of life. Is that for the church, like the pastor or the priest, or is the organization bringing that on behalf of all of its members who are unable to attend?

**GEIST:** OK, I'm not an attorney. My thinking is it would have to fall within the definition. I don't know, I-- I'm not going to venture a guess. I don't want to put myself in a corner.

**LATHROP:** I think it's important that we have a record, though, of what you regard it for pecuniary loss and whether that would include the money the church doesn't get by passing the basket on a Sunday that can't operate.

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**GEIST:** And that would have to be shown over time. I'm sure they'd have  
to look back and see what is typical.

**LATHROP:** We have ways to prove the damages.

**GEIST:** Sure.

**LATHROP:** I just want to make sure that you were talking about the  
collections.

**GEIST:** OK.

**LATHROP:** OK. Any other questions for Senator Geist? I see none.

**GEIST:** OK, thank you.

**LATHROP:** Thank you, Senator.

**GEIST:** Thank you.

**LATHROP:** I appreciate you being here today with LB167. That'll close  
our hearing on LB167, and our hearings for this morning. We will be  
back in an hour.

[BREAK]

**LATHROP:** OK, got a little bit of "this is how we run the ship" to read  
before we start, so with that, good afternoon and welcome to the  
Judiciary Committee. My name is Steve Lathrop and I represent  
Legislative District 12. I am also the Chair of the Judiciary  
Committee. Committee hearings are an important part of the legislative  
process. Public hearings provide an opportunity for legislators to  
receive input from Nebraskans. This important process, like so much of  
our daily lives, has been complicated by COVID. To allow for input  
during the pandemic, we have some new options for those wishing to be  
heard. I would encourage you to consider taking advantage of the  
additional methods of sharing your thoughts and opinions. For complete  
details on the four options available, go to the Legislature's website  
at [nebraskalegislature.gov](http://nebraskalegislature.gov). We will be following the COVID-19  
procedures this session for the safety of committee members, staff,  
pages, and the public. We ask those attending the hearing to abide by  
the following procedures. Due to social-distancing requirements,  
seating in the hearing room is limited. We ask you to enter the

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hearing room when necessary for you to attend the bill hearing under consideration. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair in between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter the hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. Unfortunately, we don't have an overflow room this year because of the HVAC repairs, so for hearings with large attendance, we ask only testifiers entering the hearing room-- request that test-- only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two options this year for testifying in front of a committee. First, you may drop off written testimony prior to the hearing. Please note the following four requirements must be met to be on the committee statement. First, submission of written testimony will only be accepted the day of the hearing between 8:30 a.m. and 9:30 a.m. in the Judiciary Committee hearing room, this room, 113-- 1113. Individuals must present their written testimony in person and fill out a testifier sheet. Number three, testifier must submit at least 12 copies and number four, testimony must be a written statement no more than two pages, single spaced or four pages, double spaced in length. No additional handouts or letters from others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript if all four conditions are met. As always, persons attending a public hearing will have an opportunity to give verbal testimony. On the table inside the doors, you will find yellow testifier sheets. Fill out a yellow testifier sheet only if you're actually testifying before the committee and remember, please print legibly. Hand the yellow testifier sheet to the page as you come forward 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. This sheet will be included as an exhibit in the

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Health and Human Services Committee February 26, 2021

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official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12 p.m., noon, the last work day before a hearing. Position letters will only be accepted by way of the Judiciary Committee's email address on the Legislature's website or delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each hearing today with the introducer's opening statement, followed by proponents of the bill who will have 30 minutes, then opponents that will have 30 minutes of total testimony, and finally, by anyone wishing to speak in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring up at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you 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 yellow light is your one-minute warning and when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, we'd like to remind everyone that the use of cell phones and electronic devices in the hearing room is not allowed, although you may see senators use them to stay in contact with staff and take notes. At this time, we'd ask everybody to make sure their phone is in the silent mode. Remember, no verbal outbursts or applause in the hearing room. We've gone paperless this year and for that reason, you will see senators using their laptops to pull up documents and follow along with each bill. That's not them jacking around on Facebook or something, that's them following along and reading input from the public relative to a bill. Finally, you may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration, but senators may have bills to introduce in other committees or other meetings to attend to. And with that, we'll have committee members introduce themselves, beginning with Senator DeBoer.

**DeBOER:** Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10, which is Bennington and parts of northwest Omaha.

**MORFELD:** Good afternoon. Adam Morfeld, District 46, northeast Lincoln.

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**McKINNEY:** Good afternoon. Terrell McKinney, District 11, north Omaha.

**GEIST:** Good afternoon. Suzanne Geist. I represent District 25, which  
is the east side of Lincoln and Lancaster County.

**LATHROP:** We have an absent member. Senator Pansing Brooks is our Vice  
Chair and she represents Legislative District 28 here in Lincoln. She  
is currently quarantined at home due to a COVID exposure, so she'll be  
watching on any NET and sending me text questions. So if you see me on  
my cell phone, that's not me jacking around. It's me looking to see if  
Senator Pansing Brooks has a question for me to present to a testifier  
or a bill introducer. A couple more things, assisting the committee  
today is Laurie Vollertsen, our hardworking committee clerk, as well  
as Josh Henningsen, one of our two legal counsel, who also works hard  
and our hardworking pages today are Ashton Krebs and Kennedy Zuroff,  
both students at UNL. And with that, we will take up our first bill of  
the afternoon, Senator John Cavanaugh and LB321. Welcome, Senator.

**J. CAVANAUGH:** Thank you, Chairman Lathrop, and thank you, members of  
the Judiciary Committee. My name is John Cavanaugh, J-o-h-n  
C-a-v-a-n-a-u-g-h. I represent Legislative District 9 in midtown  
Omaha. I'm here today to introduce LB321, which would prohibit the  
so-called LGBTQ panic defense in Nebraska. The defense aims to  
demonstrate the defendant's conduct resulted from the discovery of the  
victim's perceived gender identity or sexual orientation, often to show--

[ALARM]

**LATHROP:** So remember when I was reading all this stuff? I'm just going  
to interrupt you for a second. My committee oftentimes doesn't even  
show up to hear it anymore. They've heard it so many times and  
apparently it still hasn't sunk in.

**MORFELD:** That's the first time in seven years, though.

**LATHROP:** That was even an alarm it sounded like. Anyway, Senator  
Cavanaugh, I apologize.

**J. CAVANAUGH:** That's OK. Thank you, Chairman Lathrop. This defense  
aims to demonstrate the defendant's conduct resulted from the  
discovery of the victim's perceived gender identity or sexual  
orientation, often to show that the defendant lacked the requisite

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mens rea to be guilty of the charged offense. It usually takes the form of an insanity or diminished capacity defense, a provocation defense, or even a claim of self-defense. Eleven states and the District of Columbia have banned this defense and legislation is under consideration in many other states, including Iowa, which passed through-- passed a bill-- similar bill through their house unanimously last session and I think it's taking it up again this year. The defense-- this defense plays on the damaging and untrue stereotype about LGBTQ people seeming to suggest that they deserve violence committed against them because of who they are. In 2013, the American Bar Association passed a resolution urging legislative action to curtail the availability and effectiveness of the gay panic and trans panic defenses. This bill was introduced two years ago by Senator Hunt as LB166 and during the hearing on that bill, opponents raised some points, which I will try to address here. The Supreme Court, in 1993 case State v. Lowe, did not allow evidence to be introduced of a victim's sexual orientation because it was not relevant. The defendant in that case advanced the gay panic defense, but crucially, the court was silent on whether such a defense was allowed at all. In fact, the court's Opinion stated evidence of a murder victim's homosexuality may be admissible as corroborative of a defendant's claim of self-defense from a homosexual act, provided such a defense as tendered is probative of that defense before concluding that the evidence in the case was not probative. But in State v. Escamilla in 1994, the Nebraska Supreme Court held that there were, there were a defendant-- there, where a defendant claimed the act of killing a victim was the result of the violent and overriding reaction to a homosexual approach by the victim. Evidence of that victim's prior similar homosexual activities may be admissible under certain circumstances as corroborative of the defendant's claim that there was a lack of deliberation or premeditated malice on his or her part necessary to convict of first-degree murder. There was no-- there was also no argument that the legislation could conflict. There-- I'm sorry, there's also no argument that the legislation could conflict with a hate crime statute or prevent defendants from presenting evidence in their defense on an essential element of the hate crime. I do not view these as conflict. As the ABA's resolution in 2013 stated, these defenses are irreconcilable with laws that treat crimes motivated by sexual orientation or gender identity as aggravated offenses. But I'm also a defense attorney and I understand the other concerns raised, raised by-- here regarding the ability to present evidence and I am

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willing, of course, to work on those concerns in good faith, if we can. One more thing I will note, as it relates to hate crimes law in, in Nebraska, sexual orientation is a protected class under our hate crimes law, but gender identity is not. My understanding is Senator Hunt had a bill to change that, but she intends to withdraw that bill and I understand her reasons for doing so. But under Nebraska law, a defendant asserting a trans panic defense may not be admitting to a hate crime. This committee has heard many bills on the subject over the years and you will hear a few more here today. And while I've tried to address the good faith criticisms I expect to hear, I do not want to take-- I do want to take time to address something else. Every person has a right to be treated with dignity. Too often on bills such as those you'll hear today, many opponents will seek to rob LGBTQ people of their dignity and those who have come before you, stand up for their rights and their dignity, must sit and listen to the insults and assaults of their character. I want to acknowledge them and, and the LGBTQ Nebraskans watching this afternoon. You have worth, you have dignity, you're valued, and your laws should reflect that. Thank you for your time, committee, and I'd ask you to advance LB321 and I'm happy to take any questions.

**LATHROP:** I do want to ask one question, though. So in the context of the difference between first-degree murder and second-degree murder, first-degree murder being premeditated, second-degree being sort of in the spur of the moment, oftentimes most, most frequently characterized by I came home from work, found my-- I came home from work early and found my wife in bed with somebody else and I shoot them both. That would be second-degree murder because it happened without premeditation, but, but there's something that triggered it, right? Would this prevent a defendant from offering evidence that something like this took place and it wasn't premeditated, but rather on the spur of the moment?

**J. CAVANAUGH:** So--

**LATHROP:** You following me?

**J. CAVANAUGH:** I do. My answer would be that, that this bill would only prevent you from asserting that the-- that precipitating event is the, the perception or discovery of the perceived gender identity or sexual orientation. So in this scenario you are, you are establishing, it, it would-- as long as the-- that precipitation would be not related to

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that, then he would-- that would still be a distinction, but it's  
just--

**LATHROP:** What if, what if I just-- what if that's the thing that sets  
me off and I'm trying to prove that it wasn't premeditated, but that  
something that set me off? And this is it, it set me off.

**J. CAVANAUGH:** Well, so you're saying that you, you were-- hope--

**LATHROP:** What if I'm-- it's not a defense, right?

**J. CAVANAUGH:** It-- you would not be able to--

**LATHROP:** You don't get to kill somebody because of this.

**J. CAVANAUGH:** Right.

**LATHROP:** On the other hand, it may explain why the-- what you're being  
charged with wasn't premeditated.

**J. CAVANAUGH:** Right, so you couldn't-- under this law, you wouldn't be  
able to use that as a mitigation for the, the prior intent. In the  
scenario, you're establishing that the lack of premeditation itself  
would not be established in that, in that circumstance. I guess I'm  
failing to see the connect-- that situation there.

**LATHROP:** If the prosecutor has charged me with first-degree murder and  
said I came over on purpose, premeditated, had an encounter with  
somebody and-- premeditated and I killed them, if I'm the defendant,  
should I not be able to offer whatever explanation is inconsistent  
with premeditation?

**J. CAVANAUGH:** OK, I, I see what you're saying. So that, that's-- yeah,  
essentially that is what this bill is attempting to address. You--  
it's saying that you could offer any reasonable explanation that  
lack-- that that would explain your lack of premeditation. It is  
saying that, that you can-- this is not an acceptable mitigation to  
premeditation and that you couldn't--

**LATHROP:** Shouldn't it be, though?

**J. CAVANAUGH:** Well, I--

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**LATHROP:** I mean, should-- why should we shut, shut the door on anybody to be able to prove-- by the way, I'm not, I'm not OK with this, all right, but I am trying to make a distinction because premedit-- being charged with first-degree murder, premeditated murder is the most serious thing we can charge somebody with, right? And if I act on an impulse, for whatever reason, it's no longer premeditated. That's a defense, right? Not to the murder itself, but to what degree I'm going to be convicted. And would this close the door on my ability to say this wasn't premeditated, jury, I freaked out when this happened and I did it on an impulse?

**J. CAVANAUGH:** Right and so the distinction here is that the, the, the-- this happened-- that caused you to freak out is the gender identity or sexual orientation of the victim. And so what it's saying is that-- I think you're trying-- you're establishing a scenario in which you're, you're trying to explain the reasonableness of a assailant's assault on somebody because of their feelings about that other person's gender identity or their-- even their perceived-- perception of that person's gender identity. And that's exactly what this is seeking to address and to say that that is not an acceptable mitigation. You're, you're asking what is an acceptable mitigation and whether someone should be able to assert any mitigation and what I-- what this bill would say is you should be able to assert any mitigation within reason, right? Then what-- and this is one that we have established-- other states have established is not an acceptable mitigation for your subjective perception about the other-- the victim and so it-- and it's saying that it-- that is not a mitigation for your behavior. It's not saying that automatically, if you kill somebody, that, that you're not entitled to other mitigation, you just can't use the, the-- your discovery of their gender identity or sexual orientation or even your perception of it as a mitigation to diminish your-- the-- your, you know, intent.

**LATHROP:** Well, I guess we can see what everybody has to say. I just want to throw that out there so that you have an opportunity to think about that as people testify and maybe we have a further conversation, if it's appropriate or necessary, in your close. Anyone else have a question? I see none. Thank you, Senator.

**J. CAVANAUGH:** Thank you.

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**LATHROP:** We will take proponent testimony at this time. If you're in favor of the bill, you may come forward and be heard.

**ADAM DOWNS:** Adam Downs, A-d-a-m D-o-w-n-s. I'm a-- I'm not a lawyer, right, so in my research for this, I found the American Bar Association endorsement and what I wanted to actually do is just read a portion of that into here. But I will note that I did change the name and the pronouns of this because this is a-- telling a story of somebody in there and that person had requested a female name about a week before she was murdered. So Latisha King, 15, was open about being gay. She was teased and bullied incessantly from the age of 10, but she was proud of her identity and openly expressed it through makeup, accessories, and high heels. She had the support of some of her school's administration who stood up for her when students and teachers expressed concern about her appearance. Despite the support, one day after saying I love you, baby to a male student, Latisha was shot to death in the classroom in front of her classmates. Latisha did not touch Brandon McInerney. She never threatened Brandon, she did not make any advances toward him, and she did not put him in any kind of danger. The day before she was murdered, Latisha, wearing makeup and high heels, simply asked Brandon to be her valentine. Brandon's defense at trial was that Latisha was sexually harassing Brandon and that Latisha's words and wardrobe were responsible for her death. His attorney argued that Brandon was just responding to Latisha, whom he described as an aggressor and a bully who was known to make inappropriate remarks and sexual advances to males. Brandon's attorney did not claim that Latisha assaulted Brandon or threatened his safety. He didn't have to. Following this strategy of shaming and demonizing the victim for her sexual orientation, the jury hung when trying to decide if Brandon was deliberate and wholly blameworthy in killing Latisha. Sadly, Latisha's story of murder and subsequent vilification is not unique. And that's where I'll end the quote from the American Bar Association's referendum on this and what I'd like to do is maybe throw out a couple of other instances where this has occurred so these names are not forgotten because they deserve acknowledgment that the system has failed them and they-- that they didn't receive the bare minimum of human decency and respect. Chanelle Pickett, murdered-- the murderer was convicted of assault and battery and got two years in jail. Jamaica Green [PHONETIC] was stabbed 21 times. Her murderer, not guilty. Scott Amedure, the jury reduced the charge from premeditated murder to second-degree murder. Ahmed Dabarran, despite the

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confession-- a confession from the murderer, the murderer was acquitted. Guin Richie Phillips strangled, stuffed in a suitcase, dumped in a lake. Jury convicted of the first degree-- or second-degree murder rather than first degree and the murder became eligible for parole two and a half years after his conviction. All of these instances had the LGBTQ panic defense utilized. It was used as a strategy to get the jury on their side, to try to create sympathy for the murderer who failed to recognize just an identity of a person, right? And with that, I'll close my statement. Thank you.

**LATHROP:** OK. Thank you, Mr. Downs. I do not see any questions for you.

**ADAM DOWNS:** Thank you.

**\*ABBI SWATSWORTH:** Thank you Senator Lathrop and Senators of the Judiciary Committee for the opportunity to provide testimony. My name is Abbi Swatsworth. I am the Executive Director of OutNebraska - an organization working to celebrate and empower LGBTQ+ Nebraskans. OutNebraska stands in support of LB321. Gay and transgender "panic" defenses have been asserted by defendants in criminal trials throughout the u.s. since the 1960s. In these cases, defendants have argued that their violent behavior was a rational response to discovering that the victim was gay or transgender. The gay and trans "panic" defense is a legal strategy which asks a jury to find that a victim's sexual orientation or gender identity is to blame for the defendant's violent reaction, including murder. It is not a free standing defense to criminal liability, but rather a legal tactic which is used to bolster other defenses. Perpetrators using this defense claim that their victim's sexual orientation or gender identity not only explain - but excuse - their loss of self-control and subsequent assault. Gay and trans "panic" defenses frequently draw on unique stigmas about LGBTQ+ people, sexuality, and gender to justify horrific violence against gay and trans people. These defenses are rooted in irrational fears based in homophobia and transphobia, and send the message that violence against LGBTQ+ people is understandable and acceptable. Some will argue that a panic defense is an admission of a hate crime. HRC reports the number of law enforcement agencies reporting hate crimes data decreased by 451 from 2018 to 2019. 71 cities with populations exceeding 100,000 either did not report data to the FBI or affirmatively reported zero hate crimes which is clearly not credible. The lack of mandatory reporting means that the FBI data, while helpful, paints an incomplete picture of hate

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crimes against the LGBTQ and other communities. This lack of tracking implies that defendants in cases against LGBTQ+ people may not be charged consistently with hate crimes. Without a formal recognition of a hate crime by investigating officers, County Attorneys may be less likely to pursue hate crime charges which can carry a further burden of proof. While it may seem that a panic defense would trigger a hate crime charge, we are not aware that additional charges are being pursued in these cases. Daniel Spencer was stabbed and murdered by his neighbor Robert Miller in September, 2015. Miller claimed that he rejected a sexual advance from Spencer and acted in self defense when Spencer became agitated, but physical evidence disproved his claim that he was ever in danger. Miller's conviction was mitigated from murder to criminally negligent manslaughter. When it comes to deciding an LGBT individual's right to life, a mitigated sentence sends the harmful message that an LGBTQ+ person's life is not worth protecting in a court of law. We respectfully ask you to support LB321 to ensure that all Nebraskans are treated with dignity and humanity in our justice system.

**LATHROP:** Other proponents of LB321? Seeing none, we'll take opposition testimony. Anybody here to testify in opposition?

**SPIKE EICKHOLT:** Good afternoon, 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 Nebraska Criminal Defense Attorneys Association in opposition to the bill. We are opposed to the bill in its current form and we are opposed, opposed to the ultimate purpose or at least the intent of the bill itself. With respect to the current form, if you look at the bill, it does far more than simply allow for a mitigation argument to be made differentiating between first and second-degree murder on this purported gay panic defense. If you look on line-- on page 2, lines 1 through 6, the court or a jury should not even consider evidence, nor shall it be defense to an offense or negate an element of a criminal offense that the defendant's conduct resulted from the "discovery of, knowledge about, or potential disclosure of the victim's actual or perceived gender or sexual orientation." If you look on lines 23 and 24, the definition of gender means "sex and includes a person's gender identity and gender expression." Everyone presumably has a gender. It's not just a defense of temporary insanity. It's an absolute bar to the admissibility of evidence. We already have in statute current limiting statutes to allow for evidence to be admitted for limited purposes; 27-412 is the rape shield law. In most circumstances, an

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alleged victim of sexual assault, that person's sexual past cannot be adduced as evidence. There are some exceptions to it. There's a process. The defendant gives notice, the judge has a hearing, the judge determines whether or not it's admissible and if so, for what purpose. This bill doesn't cover any of that. Similarly, we have the 27-404 admissibility. We have the opportunity, a defendant can, to raise an insanity defense under 29-2203. We have to give written notice to the court 60 days before trial, at least six days to the state with any sort of expert opinion accompanied with it. The state can-- has the opportunity to get their own expert to consult and evaluate the defendant if you raise that. This doesn't talk about that. It's an absolute bar of admissibility of evidence. You can't raise it. You cannot argue it. With respect to State v. Lowe, I made that point earlier because in that case, Lowe tried to raise a gay panic defense that was rejected by the trial court and the Supreme Court affirmed that. There hasn't been any successful argument in Nebraska since then on this type of defense. No one can say who was found not guilty in Nebraska, who walked free. It does not necessarily conflict with the hate crime statute, but it-- if you are going to argue as a defense that you intentionally did the act because of the sexual orientation or the gender of a person that you did the act to, you are not only acknowledging that you committed the crime, but you're acknowledging to the aggravator of the hate crime. So that's the point. It's not necessarily conflict. With respect to the form of the bill-- and I don't mean to say this crudely, but I want to be clear. I don't think it's wise policy-- legislative policy for the Legislature to put in statute a limitation on a defense or mitigation argument because it may be offensive to people that that may be raised. You ultimately have an opportunity and a right to defend yourself when the state is coming at you on a serious charge and I think that sets a dangerous, dangerous precedent to start with this. I'll answer any questions if anyone has any.

**\*NATE GRASZ:** Chairman Lathrop and members of the Judiciary Committee, my name is Nate Grasz, and I am the Policy Director for the Nebraska Family Alliance. Nebraska Family Alliance is a non-profit policy, research, and education organization that advocates for marriage and the family, life, and religious liberty. We represent a statewide network of thousands of individuals, families, and faith leaders, and are in opposition to LB321. We believe every person should be treated with dignity and respect because every person's safety and human

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dignity matters. It is wrong to use a victim's gender or sexual orientation as a defense to a criminal offense, and rightfully, evidentiary rules, such as relevancy, already preclude a defendant's discovery or knowledge of a victim's sexual orientation or gender identity as a defense to a crime. Our opposition to LB321 is rooted in the problematic definitions of gender, gender identity, and gender expression that seek to be created and inserted into state statute under this bill. We believe it is erroneous and bad public policy to define gender as "sex and includes a person's gender identity and gender expression," and should not be defined as such in state statute. Doing so inserts a new definition not reflected anywhere else in statute and is contrary to biological reality. Society has rightly structured itself around the innate distinctions between males and females. Tearing down these fundamental distinctions by redefining gender to mean sex including gender identity and gender expression is a drastic alteration that is bound to have consequences, especially for women and girls. Because of this legislation's attempt to insert new, controversial definitions for gender, gender identity, and gender expression in state statute, Nebraska Family Alliance opposes LB321.

**\*MARION MINER:** Chairman Lathrop and Members of the Judiciary Committee, good afternoon. My name is Marion Miner (M-A-R-I-O-N M-I-N-E-R), and I am the Associate Director for Pro-Life & Family Policy at the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the Gospel of Life through engaging, educating, and empowering public officials, Catholic laity, and the general public. The Catholic faith recognizes the supreme dignity of every person as made in the image and likeness of God. The only appropriate response to this reality is charity. For this reason, the Catholic faith also recognizes that no one, including those who are experiencing same-sex attraction or questions about their own gender identity, should be subject to unjust discrimination. The Catechism of the Catholic Church addresses this directly in paragraphs 2357 to 2359. Everyone should be treated with respect and dignity. The Conference opposes LB321 because it would incorporate problematic definitions into law. LB321's definition of terms such as 'gender,' 'gender expression,' and 'gender identity' undermine the biological and given reality of sexual difference-in short, the reality of the body. As Pope Francis has noted regarding what he has called "the ideology of gender," "It is one thing to be understanding of human weakness and the complexities of life, and another to accept

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ideologies that attempt to sunder what are inseparable aspects of reality." Codifying terminology that serves gender ideology undermines society's understanding of the material reality of the sexed body. This necessarily also undermines the anthropological basis for the family, the most basic building block of society. Furthermore, rules of evidence and Nebraska Supreme Court case law already substantially preclude the type of evidence that LB321 seeks to protect against. For example, rules related to relevancy and the probative value of evidence versus its prejudicial impact would protect against sexual orientation or gender identity being unnecessarily and harmfully used against the victim of any number of crimes, many of which, regrettably, are heinous and violative of justice, human dignity, and the common good. Because such evidence is already substantially precluded, the deeper concern is that this legislation is less about dealing with unjust discrimination and more about imposing--for the first time in Nebraska state law--ideological definitions that run contrary to our common biologically created reality. The Nebraska Catholic Conference respectfully urges your opposition to this legislation and asks that you indefinitely postpone LB321. Thank you for your consideration of our position.

**LATHROP:** Any questions? I don't see any, but thanks for being here. Anyone else here to testify in opposition to LB321? Anyone here to testify in a neutral capacity? Seeing none, Senator Cavanaugh, you may close. We do have some written testimony and 12 position letters, all proponent test-- all proponent, all of the letters are. We also have written testimony provided this morning on this bill. As a proponent-- Abbi Swatsworth from Out Nebraska is a proponent. Opponent is Marion Miner with the Nebraska Catholic Conference and also opposed is Nate Grasz with Nebraska Family Alliance. Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Lathrop, and thank you to the Judiciary Committee and thank you to everyone who was here today testifying on both sides. Mr. Eickholt and I have spoken about this bill a number of times about our, our divergent opinions and I have tremendous respect for him. And I would just say he's-- he always speaks very artfully, so when he said he was-- didn't want to be crude about it, I just think he deserves credit for how well he presents before this committee and I just want to recognize that before I disagree with him. So Mr. Eickholt's proposal here is that there are ways that we have constrained other places in the law, which is fine to create a mechanism for now that is to allow for necessary and, and

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I think considered relevant evidence. What we're saying here is that this is not just an offensive proposition to, to claim mitigation because of this-- the sexual orientation, gender identity of the individual, the victim, but it, it is not an acceptable defense. And going back to kind of your analogy, Chairman, in that scenario, if it were a man who comes home to find his wife in bed with another man, that would be second-degree murder. If a man comes home and finds his wife in bed with another woman, that-- and murders them, that would be second-degree murder as well, regardless of the circumstances. If you come home and you only murder the other person because of the, the specific gender of the individual with your wife, that would not be an acceptable mitigation and I think that's the distinction here, is that it's-- the situation is, is the same regard-- should be the same regardless of the, the gender of the victim there and that you should not be able to claim a mitigation because of that and that-- I think that's kind of the reason. I just wanted to additionally point out, I, I think-- I don't know if I read it specifically out of Escamilla, but as Mr. Eickholt said, nobody has asserted this before and Lowe specifically didn't deny it, but I would just tell you the wording in Escamilla is clear. We hold where a defendant claims the act of killing the victim was the result of a violent and overriding reaction to the homosexual approach by the victim, evidence of the victim's prior similar homosexual activities may be admissible under certain circumstances as corroborative of the defendant's claim that there was a lack of deliberation and premeditated malice on his or her part necessary to convict as first-degree murder. What it-- that is the state of law in Nebraska. That is-- that, that case is cited to in the-- in 20-- 27-404-- in the, the, the notes attached to 27-404. So it is clearly established and what Escamilla is a case about is an ineffective assistance of counsel case. This is a case where they didn't raise this and he appealed and lost on other grounds, but reading of this would be that a defense attorney would-- essentially could be construed as ineffective if they failed to assert this under that state of law and so if any-- there are any other questions, I'd be happy to take them.

**LATHROP:** I, I, I would just make this observation that as I read the first, first paragraph, the first section, this would stop me-- let's say that someone is about to out me, OK, out my gender, gender identity. They've just found out and now they're, like, I'm going to go tell people that this is true about you, Lathrop, and I shoot him.

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I'm going to want to talk about it in my defense because someone just basically threatened to out me. So this thing swings both ways. It's not just I found out about it and then I punched somebody or I found out something and then I shot somebody. It's also the disclosure, right? Well, that would be the disclosure of the victim.

**J. CAVANAUGH:** Well, this pertains to the gender identity and sexual orientation of the victim and not the attacker.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** So if I'm making the-- this is probably too elementary, but if I'm making the distinction between first-degree and second-degree murder, if I'm the prosecutor, I have to prove the premeditation, right?

**J. CAVANAUGH:** Yes, right.

**DeBOER:** OK, so if my defense is I wasn't premeditated because I found out some information that surprised me in a-- as-- I guess what it would be if you discovered someone's gender identity was different than you expected, you still-- the, the burden of proof is still on the prosecutor to prove that even if I can't use the defense, that that was my surprise, the burden of proof is still on the prosecutor to prove that you premeditated, right?

**J. CAVANAUGH:** Correct and, and essentially-- yeah, what this bill is saying is, is that the defendant couldn't raise that surprise as a mitigation to that.

**DeBOER:** But do-- this is where I need help. What does that-- are-- what do you mean by the mitigation of it? I mean, I know what the word mitigation means, but--

**J. CAVANAUGH:** So to claim that it was not premeditated and claim that it was-- it-- in the heat of the moment.

**DeBOER:** But there isn't a presumption of premeditation, is there?

**J. CAVANAUGH:** No, they'd have to establish by the-- yeah, by the evidence that the circumstances prove the elements of the crime.

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**DeBOER:** Right, so what I'm saying is I don't think this gets to the first and second-degree thing that the Chairman was worried about if, if-- if I am in a situation, I discover someone's gender identity or expression is different than what I thought, I react in that moment in some heinous way, later, if I'm asked was it-- or if the prosecutor is trying to prove whether it was first or second-degree murder, I-- it does-- does it matter whether or not I can raise this offense-- raise this defense in order to determine whether or not it's first or second-degree murder? Because the prosecutor still has to prove it, right?

**J. CAVANAUGH:** Well, they still-- yes, the prosecutor still has to prove, prove whatever crime. This is not just first, second-degree murder.

**DeBOER:** Right, right.

**J. CAVANAUGH:** This is in mitigation for any offense that would-- essentially you would potentially raise. So I guess I'm not quite following the question of whether--

**DeBOER:** I guess I'm saying does this bill change anything about how, as a prosecutor, I would try to-- let's say we pass this bill. The prosecutor doesn't have any change in what they have to do, so it would be the defense attorney. Maybe the defense attorney can't raise that that's the reason, but the prosecutor still has to prove that there was premeditation. And if, if, in fact, it was a surprise that happened quickly, then there wouldn't be any evidence of premeditation.

**J. CAVANAUGH:** Well, I suppose it depends-- what a jury is going to find as evidence of premeditation, what a prosecutor-- how they're going to present it. In the-- particularly in the Escamilla case was Mr. Escamilla murdered someone by stabbing them a number of times, sort of in the middle of a, of a sexual act, and then he wanted to claim that had he known that person had a previous past, past of-- I think that their-- in that case, it was pedophilia-- that that-- he would not have pled in that case. And so that he thought that he shouldn't have been charged with first-degree murder because if he was able to present that evidence, then it would have mitigated it. But in the case, there was other surrounding evidence that sort of supported--

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**DeBOER:** That he was premeditated.

**J. CAVANAUGH:** --that supported the premeditation.

**DeBOER:** Got it. OK, thanks.

**J. CAVANAUGH:** I feel like I'm on the Supreme Court.

**LATHROP:** All this could be taken up a motion in limine, right?

**J. CAVANAUGH:** Well--

**LATHROP:** A pretrial motion where the court says is this relevant to this particular case? Let me make a judgment under our rules of evidence and under constitutional principles, the court can decide whether it comes in or not-- right now.

**J. CAVANAUGH:** Currently, yes, the court would, would rule on it. And in-- again, I feel like I'm in front of the Supreme Court or something now. In the-- in these cases-- and I-- Mr. Eickholt and I have had this conversation about that the-- to present the insanity defense, you would have to present additional evidence on top of that. But again, that is the state of the law. So a judge would go back and read Nebraska Supreme Court case law and say they have explicitly said this is, this is acceptable, relevant evidence if it establishes-- if you establish it in connection to the, to the--

**LATHROP:** Assuming it has some relevance.

**J. CAVANAUGH:** Right and the, and the case law in Lowe, in particular, and Escamilla, the two cases ongoing in Nebraska where this has been discussed, they, they were both pretty poor examples of evidence. They had no real relation that they were grasping really to, to make any kind of connection. And that's what the court said and that's what the ruling was, that these would be acceptable if you brought different evidence that was on this, this topic. And so that's-- I, I think that's an important distinction here because I think there have been conversations where people say what's the point of this because it doesn't happen here, but it is the state of the law in Nebraska.

**LATHROP:** Well, yeah, we don't really buy that. It hasn't happened here yet, but it could.

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**J. CAVANAUGH:** It-- yes.

**LATHROP:** OK, any other questions? I see none. Thanks, Senator  
Cavanaugh. We appreciate the--

**J. CAVANAUGH:** Thank you.

**LATHROP:** --introduction of this bill. We will now move to LB120 and  
Senator Hunt. Welcome back to the Judiciary. Welcome back.

**HUNT:** Thank you. Good afternoon, colleagues. Thank you, Chairman  
Lathrop and members of the committee. I'm Senator Megan Hunt,  
M-e-g-a-n H-u-n-t, and I represent District 8, which includes the  
neighborhoods of Dundee and Benson in midtown Omaha. Today I'm  
presenting LB120. This bill would prohibit employment discrimination  
based on sexual orientation and gender identity. We have so many  
people here today and across Nebraska who are passionate about change  
and equality for LGBTQ+ residents. An important step of this is to  
change current law, which allows individuals to be legally denied job  
opportunities, position appointments, employment training, and  
position retention based solely on their identity, an identity that  
has no impact on their ability to perform a job. You may recognize  
this bill most recently as LB627 proposed by Senator Patty Pansing  
Brooks last session. I wish so much that Senator Pansing Brooks could  
be here today and I, I want to convey that I know this is an issue  
that is so close to her heart and that I know she's watching us from  
home today and that she's sending her love to everybody who's here in  
support of this bill and everybody who's been so brave to be in  
support. This bill has made it to the floor several times without  
success and while that's disheartening, I'm committed to continuing  
this fight and for my community. I thank Senator Pansing Brooks for  
all the blood, sweat, and tears she's put into this bill, as well as  
Senator Morfeld, who introduced it before, Senator Chambers, many  
people throughout the years who have taken up the mantle of this fight  
and I'm, I'm very grateful to be among them. I'm also pleased that we  
were able to approve Senator Pansing Brooks' LR466, passed August, to  
affirm the Bostock vs. Clayton County Supreme Court Opinion, which  
held that an employer who fires an individual for being gay or  
transgender violates Title VII of the Civil Rights Act. The  
resolution, while an important step, sent a message by affirming the  
Supreme Court Opinion and I applaud the work of all the advocates that  
supported that resolution. However, it's important that we still

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codify this into state law for a number of reasons. After the Supreme Court ruling *Bostock*, the Nebraska Equal Opportunity Commission began processing cases on the basis of sexual orientation and gender identity. The commission informed us that while the federal ruling applies, it would be helpful to have this explicitly included in state law so as to make it clear that we are in lockstep with the federal decision. This would also allow them to fully leverage all federal funds available to help protect Nebraskans from discrimination. Clarity in state statute and leveraging funds could also help the NEOC conduct education and outreach efforts. NEOC Director Marna Munn should be here today and I would let her speak more about this in detail. By passing this into state law, we provide an avenue for recourse, a state or local court, instead of a federal court that is more accessible and affordable for plaintiffs. State laws can permit state residents to take action against an employer who has displayed a pattern of discriminatory practices. LB120 would enable issues to be addressed locally rather than litigating through a federal ruling. It's good governance to update state and local laws to harmonize our laws with changes in federal law to make sure employees and employers don't have to wade through uncertainty and differences among the laws. LB120 will clarify the law and avoid costly litigation for employers. In countless contexts, when federal law changes due to a court decision, states update their laws to harmonize. It's just a standard good governance practice. Today, approximately 69 percent of Americans, including the majority of all major religions, support nondiscrimination protections for lesbian, gay, bisexual, and transgender individuals. In Nebraska alone, 75 percent of residents support these protections, including 67 percent of those in small towns and 82 percent in medium and large cities, 63 percent of Protestants, 78 percent of Catholics. The fact that Nebraska's laws don't reflect the beliefs of our state's citizens or the majority of Americans makes us look closed minded and it hurts our ability to attract and retain talent. Twenty-two states and the District of Columbia have already put employment protections in place for their LGBTQ+ citizens, including our own neighboring states of Iowa and Colorado. These protections provide competitive economic advantages to these states because they increase the ability of employers to recruit and retain top talent from across the country. Recently, I conducted an informal survey on social media to, to which hundreds of Nebraskans responded. I think we're over 1,000 at this point and I've shared those results publicly too. One key takeaway of this survey is that

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young people don't want to live in a place where the culture doesn't reflect their values. Workers are hesitant to stay or move into a state that doesn't offer protections and security to their positions. Creating a home in a community that doesn't legally appear to be supportive of who you are is very difficult and it's really hard for me to, to stand up and say Nebraska is a great place to live and everyone should come live here when I know deep down that we do not have those protections for every Nebraskan. We're competing with our neighboring states for top talent. We're competing with all the other states for top talent and we cannot afford to be a state that tells young people that they are not welcome here. Whether they were born here, they attend school here, or they're simply looking to make a new life in our great state, we need to make sure that our businesses and our employers have their doors open to everybody. In 1867, our state adopted the wonderful motto, "Equality Before the Law." It's time to put that into action and make sure that "Equality Before the Law" applies to everybody. The way to do this isn't through the subtle recognitions of Pride Month or buying rainbow Oreos or wearing a rainbow T-shirt. It's through legislation and actual legislative action that protects people's right to employment and stable income for their families. I often say that I have the dubious honor of being the first out LGBTQ person ever elected to the Nebraska Legislature and I say it's a dubious honor because I was elected in 2018 and, you know, I'm a white, cisgender woman and we have a really long way to go in Nebraska for representation in government that actually reflects the identities of the people we serve, but I'm very proud to be here. And to me, it makes no sense that I could be employed and working here in the halls of government where laws are made and I could have a photo on my desk of my girlfriend or my wife, but if somebody does that at a company in Omaha or a company in Lincoln or a company in Broken Bow, they can be fired for that. To me, that's, that's ethically inconsistent. It's inconsistent with our vision as a state and we have the power here to change that. And to all my fellow LGBTQ+ Nebraskans, you know, wherever you are in the spectrum and wherever you are in your journey of recognizing your identity and who you are and who you love, I want you to know that you're welcome here and that I will advocate for you and that there are people here in the Legislature and in government who will fight for your right for equal and just laws. So I ask for your support in advancing LB120. This is one of those, those ideas where people don't really change their mind, right, like, people kind of come into these conversations knowing

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where they're come-- going to come down, but I think that aligning our state law with federal law, given the Bostock decision and all the benefits that we know will come from this, it's, it's something that we really ought to finally do. I'd be happy to take any questions.

**LATHROP:** OK. Any questions for Senator Hunt? I do not see any.

**HUNT:** Thank you.

**LATHROP:** Thanks for introducing LB120. Before we take proponent testimony, I got to ask a couple of questions. How many people-- I got to wait for-- I'm about to take a poll and I have to be able to see people. Thanks. How many people, by a show of hands, to testify in support of this bill? Keep them up. One, two, three, four, five, six, seven, eight. So we have a three-minute, three-minute rule and a half, a half-hour for proponent testimony. How many of the same people intend to speak on the following bill? OK, so I'm just going to say this. We do the-- we will do 30 minutes of proponents and 30 minutes of opponents. If the proponents of this bill don't have an opportunity to be heard, let's let them be the first ones heard on the next one, if you understand what I mean. How about opponents? How many people are here to be in opposition? That looks like a size of people that we can probably get in, but same thing. You probably-- I'm not-- shouldn't assume that, but you may be the-- opposed to the next bill as well, so let's make sure that everybody has a chance today-- this afternoon to be heard given the time limitations that we're under. And with that, we will take the first proponent testifier. Good afternoon. Welcome.

**JENNIFER CREAGER:** Good afternoon. Thank you. Chairman Lathrop, members of the Judiciary Committee, I'm Jennifer Creager with the Greater Omaha Chamber. Today I'm also authorized to appear on behalf of the Lincoln Chamber of Commerce and the Nebraska Chamber, as well as Union Pacific, Cox Communications, and Mutual of Omaha. I'm passing out a letter from the CEO of Union Pacific, Lance Fritz. On behalf of the chambers and all these member companies, we are pleased to support LB120. Our organization's support is based on several factors. We believe passing a law like this is the right thing to do. Employees of companies in Nebraska and job applicants to those firms should have the expectation that they will not be discriminated against by their employer because of who they are, just as they are protected from discrimination based on gender, ethnicity, and religious beliefs. We

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believe this bill would have tremendous implications for economic development in our state. At our chambers, we work every day with employers that are attempting to recruit employees to their companies. Frequently, they hear direct feedback from talented people who do not want to work in Nebraska because the state does not offer protection from discrimination based on sexual orientation. With an unemployment rate as low as it's ever been, talent recruitment is crucial to building up Nebraska's workforce. Talented employees want to work in an environment that is open, welcome, and nondiscriminatory. The state of Nebraska should be such a place. Increasingly, employers consider this issue when they make location decisions that will impact the growth and future opportunities available in our state. It is clear that they believe an inclusive business climate is a competitive business climate. There are some who will argue this bill will create a burden or unnecessary costs on business. That concern is not supported by the facts. Since the city of Omaha passed a similar ordinance in 2012, there have been very few claims or costs to businesses as a result. Also, many companies who operate in Nebraska have-- already have policies aligned with this bill. These companies see talented, hardworking, and engaged employees who love working in a place where they can use their talents fully without fear of lawful discrimination and they would like to see more. Lastly and very, very importantly, we would urge the members of the Legislature to pass this bill now rather than waiting for another time. In an era where labor is increasingly mobile, we cannot afford to give good people a reason to leave our state or choose another state in which to pursue their careers. We unfortunately have heard from many young Nebraskans who are considering that choice. Nebraska's greatest asset is our people. We would respectfully ask the committee to advance LB120 and allow our state to further grow and benefit all of its people for generations to come. And I realized I forgot to spell my name--

**LATHROP:** Yeah.

**JENNIFER CREAGER:** --J-e-n-n-i-f-e-r C-r-e-a-g-e-r.

**LATHROP:** And I knew who you were, so I didn't ask. Thanks, Ms. Creager. Any questions for this testifier?

**JENNIFER CREAGER:** Thank you.

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**LATHROP:** Thanks for being here. We appreciate it. Good afternoon.  
Welcome.

**PAIGE GADE:** Good afternoon. Good afternoon, Chairman, senators. My name is Paige Gade, P-a-i G-a-d-e [SIC]. I currently serve on the leadership council of the Lincoln Young Professionals Group and chair of the public policy committee. I'm here to testify on behalf of the Lincoln YPG in support of LB120. We are a group of over 2,000 young business leaders working and living primarily in Lincoln and Lancaster County, Nebraska. Lincoln Young Professional Group's leadership council has decided to unanimously support LB120 because we believe it creates a more inclusive and diverse workforce. Diversity and inclusion is outlined very clearly in our public policy areas of interest and I could argue that this specific issue falls under three out of four of our areas of focus: economic opportunities, community growth and social inclusiveness and diversity. This is why we have been supporting this issue at a state and local level for the past seven years. Fairness and equal treatment are fundamental values of our state. They are essential for a welcoming economy and perhaps most importantly, they are the basis of our anti-discrimination law. Equality before the law is our state motto, motto and inscribed on the outside of this very building in which we sit today. Equal treatment and fairness are values that the Lincoln Young Professionals Group respects and seeks to promote. We know these are values that hold strong businesses and vibrant communities together. Lincoln YPG stands for the principle that all people should be treated fairly and equally and have their work and merit serve as the basis of reward, not other factors such as race, ethnicity, sexual orientation, or gender identity. Diversity, equity, and inclusion are viewed as basic, as a basic expectation, a given, if you will, by the vast majority of young professionals. We believe a welcoming environment in the state of Nebraska is imperative to attract it-- to attracting and retaining young talent. It is an important component of talent acquisition and retention, not just today, but certainly in the future. Many young professionals seek to settle in communities that are aligned with their desire for diversity and inclusion. Business thrives when we have the best talent at our disposal, disposal in Nebraska and this bill serves to protect that talent here in our state. There has never been a good reason not to ban employment discrimination based on sexual orientation and gender identity and this year is no different. The Supreme Court of the United States ruled last year that federal

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law bans employment discrimination based on sexual orientation and gender identity and the House of Representatives just passed the Equality Act, which if signed into law, would extend civil rights protections to prohibit discrimination on the basis of sexual orientation or gender identity. Passing this legislation on the state level is a great opportunity to show that we truly mean what we say when we talk about equality before the law and to ensure that our citizens, citizens are afforded these protections. The time to pass this legislation is now. Lincoln YPG believes that LB120 is an important step in making sure Nebraska remains an attractive and competitive place for business. Our generation looks to retain and attract individuals from diverse backgrounds and with diverse perspectives. We seek out communities that reflect our values and supporting this bill will allow more people to feel appreciated and protected in their journey to reach their full potential in their work and in their lives. Prohibiting discrimination based on sexual orientation and gender identity is a simple and important step to attracting and retaining talent here in the state of Nebraska. As a state, we should strive to celebrate diversity and be a community that embraces people as their most authentic selves. I urge you to please advance LB120 to General File. It's long overdue. Thank you.

**LATHROP:** Thank you. There's a question for you. Senator Geist.

**GEIST:** Yes, thank you. Thank you for being here. From your perspective and the perspective of the organization that you represent, do you find Lincoln to be an unwelcoming place?

**PAIGE GADE:** We believe that this is an issue that affects Lincoln and the entire state and I would echo what Senator Hunt and what the previous testifier said in that there is an opportunity to show that-- to express the welcoming place that we have here in Lincoln.

**GEIST:** But-- OK, well, maybe across the state. I, I've just found Nebraska to be very open and welcoming and I'm curious if, if that's been your experience.

**PAIGE GADE:** From my personal experience as a straight, white female, I've found it to be a very, very welcoming. But we believe that as Gen X and as millennials start to be-- make up an even bigger part of the workforce, that this is an issue that they all feel very passionately

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about and as representing the young professionals of Lincoln, that we  
believe this is an important issue.

**GEIST:** Thank you.

**PAIGE GADE:** Thank you for your question.

**LATHROP:** OK, thank you for being here. Welcome. Good afternoon.

**VINCENT LITWINOWICZ:** Good afternoon, Judiciary Committee. My name is  
Vincent Litwinowicz, V-i-n-c-e-n-t L-i-t-w-i-n-o-w-i-c-z. I was  
guessing last night, as I was not having time to prepare for medical  
reasons the last couple of days, that there was going to be many  
proponents of LB120 speaking today, presenting many kinds of arguments  
for its passage this year, finally, in the Nebraska State Legislature.  
So as a biological male who recently disclosed herself as a female on  
social media right at the turn of 2021, I just want to say that I want  
to stand up and be counted. Quickly writing this testimony this  
morning, I just want to say that I'm not harming anyone or breaking  
any laws. And as a person with a rather severe diagnosed mental  
illness that has seriously impacted her life, I do not wish, nor  
expect to be discriminated against either based on my gender identity  
as a female or as a disabled person. It would be so unkind and from  
what I understand from the Bible, I believe Jesus would wash my feet  
just as well as anyone. Should I eventually be able to get a job, for  
example, as a wheelchair-bound human being with, with multiple  
sclerosis, I don't feel that I should be specifically discriminated  
against in landing a job due to my gender identity, nor do I expect to  
be discriminated against in any regard due to who I am as a human  
being. I'm having problem tracking. I am a loving person that has not  
and will not harm anyone in any situation, nor with regard to any  
statute. I still have many talents that I really haven't been able to  
use so far for various reasons that I alluded to and I want to be able  
to use them without worry of denial for something so completely  
irrelevant that I cannot control. And after losing the presidential  
election with 74 million people voting for Trump the second time, I  
hope you Nebraska state senators have the hearts just a little bit in  
line with the Christian ethic that so many people ascribe to in this  
state, to right the ship just a little bit on behalf of all of us  
humans. Thank you for listening to our plea and I wish I could say  
more. Thank you.

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**LATHROP:** Thank you for being here. I do not see any questions for you today, but we appreciate your testimony.

**VINCENT LITWINOWICZ:** Thank you.

**LATHROP:** Good afternoon. Welcome back.

**MARNA MUNN:** Thank you and let me know if you can't hear me. Good afternoon, Chairperson Lathrop and the rest of the Judicial-- Judiciary Committee. My name is Marna Munn, M-a-r-n-a M-u-n-n, and I'm an attorney and the executive director of the Nebraska Equal Opportunity Commission or the NEOC and I'm here to testify in support of LB120. I typically testify in a neutral capacity and did so on the last iteration of this bill, but subsequent to the testimony, as you all know, last summer, the U.S. Supreme Court rendered its decision in Bostock v. Clayton County case. The United States Supreme Court recognized that for Title VII of the Civil Rights Act, in employment cases, the protected basis of sex included sexual orientation and gender identity. Since that time, due to the Bostock decision and through our federal work-share agreement with the U.S. Equal Opportunity Commission or the EEOC, we began to process cases on the basis of sexual orientation and gender identity at the NEOC. The reason for that is that the-- Nebraska adopted its own version of Title VII called the Nebraska Fair Employment Practices Act or FEPA. And while it mirrors Title VII and is currently deemed substantially similar to Title VII sufficient to allow dual filing and coordination of efforts between the NEOC and the EEOC, FEPA is a state law and so is separate and distinct from the federal law. Because of that, changes can be made to the state law that aren't mirrored in the federal law and vice versa. For example, we have-- we protect marital status and we do whistleblower protection retaliation and those aren't mirrored in the federal law. And that's fine because as you all likely remember, just as a refresher, you can always provide greater protections on the state level than you do on the federal level. Troubles arise, however, when the state provides less protections than the federal level. And when that happens, then we become at odds with our federal partner and could fall out of substantial equivalency, would be unable to process dual-file cases, lose revenue, and most importantly, Nebraskans would be forced to go to federal agencies located in other states to try to exercise their rights under Title VII because they don't have similar rights under our equal law. And I give this refresher because I've been asked numerous times whether,

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given Bostock and the decision there, whether changing our law would be redundant and I need to say emphatically it would not be. We-- I don't often talk about our outreach and education mission when I'm here, but that's an enormous part of what we do. We actually try to head off having more investigations by doing more outreach and education. And when the state law doesn't explicitly say what the federal law says, there's lots of inconsistencies in addition to the fact that the state law can be changed, which creates legal vulnerabilities. So we proceed now under Bostock, but that could be changed and we have to be honest about that. But in addition to that, when we get-- field over 5,000 technical assistance calls, as well as online inquiries every year, as well as other website visits where we try to provide education and outreach and when folks try to look up-- small businesses in particular try to look up the law themselves because they cannot afford regular legal counsel and they cannot afford human resources help on a full-time basis, they don't see these words in the law and they think that those are not being protected on the state level and it almost induces them to break what is now federal law. And so we are just-- we're in support of the bill this year because of the change on the federal level and how that is better protection, not only for the individual-- I'll wrap up quickly-- not only for the individuals who identify under these protected bases, but also for the business, the employers in the state to understand and be on the same page with regard to the law. And with that, I'll just take questions if you have them.

**LATHROP:** OK. I don't see any questions. I, I will say this, that we always learn something helpful when you show up, so thanks for being here today.

**MARNA MUNN:** Thank you and if anyone has any questions post this hearing, you can always contact me.

**LATHROP:** OK. Thank you, Ms. Munn. You can come up. Welcome.

**RALPH KELLOGG:** Good afternoon, Chairman Lathrop. Thank you to you and the committee for allowing me to speak today. My name is Ralph, R-a-l-p-h, last name, Kellogg, K-e-l-l-o-g-g. I am coming to you today as a gay man, as someone who has been the subject of discrimination within the workplace, and I want to share a brief part of my story with you. In mid 2000s, I worked for a financial institution that's no longer in business. It was sold to a larger entity. However, while

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this institution was in business, I worked there for several years, was given several successive, successive, successive promotions-- excuse me-- received numerous corporate accolades, and positive performance reviews. One night, my manager called to my home, spoke to my now husband, and the next day, I was called into her office under the guise that she wanted to see me the following day. And during that conversation, I was all but berated to tell her who the individual was that answered my home phone. When I finally admitted to her that he was my same-sex partner, now husband, she said, that's interesting. Thank you for sharing that with me. I'm glad you felt open enough to do so, even though that wasn't what I had gone in to speak to her about. Shortly thereafter, I sort of fell in standing very quickly. I lost subsequent projects, promotions were no longer available to me, and when I went to human resources, they said there was nothing that they could do. Ultimately, I went back to my manager and said I feel like there's something going on. I feel like it started when I shared with you that I am gay, that I live with a man. And she subsequently said to me well, maybe you're just not a good fit for the organization at this point. What I would share with you is that as someone who works in human resources and someone who listens to people all day long about what they look for in employment, they look for safety, they look for equality, and they look for a place where they can grow and thrive. In an organization, what you're looking for is a place to be safe. No one have-- in no time have I ever run into an LGBTQ person coming into the organization saying they wanted to be treated differently. LGBTQIA people want to be treated fairly without the, the crux of their identity or their orientation being called into question. I urge you to think about the fact that I am a person sitting here and I am privileged. I am a white man in a predominantly white man state sitting here in front of you. Imagine those individuals who don't have the opportunity, the black and brown people who live in our state who don't have this opportunity, who face discrimination because of race, in addition to orientation or gender identity. Imagine all of those stories that you would hear today. What I'd ask you is to please align the state with what the federal government is doing, embrace the law, and protect your citizens because we're out here, we matter, and we deserve to be listened to and counted.

**LATHROP:** Very good. Senator Morfeld.

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**MORFELD:** Thank you for coming today, Mr. Kellogg. So did that incident happen in, in Nebraska or--

**RALPH KELLOGG:** It did, it did.

**MORFELD:** And, and to kind of bounce off Senator Geist's question, did you feel welcome in the state when that happened to you?

**RALPH KELLOGG:** No, absolutely not. What it did was left me fearful of ever disclosing my gender id-- or my sexual orientation in any organization. And to Senator Hunt's comment at the beginning of this, of this session, I never put pictures out on my desk of my spouse. I never talked about my spouse. If you are gay, you get very used to playing the pronoun game at work. So when someone asks you, what did you do over the weekend, you say we, they. You never talk about your spouse, at least I didn't used to. Now I will only seek out and work in organizations where I know that my sexual orientation is secondary or not an issue to the job that I do.

**MORFELD:** Thank you, Mr. Kellogg, and, and one other question. I want to make sure other people get to testify too. I know that in, in my experience, I've heard of-- I-- probably about a dozen Nebraskans who are LGBT that have been-- had adverse employment action happen or be fired for being gay. Everything from attorneys at top firms here in town all the way down to-- I don't want to say down. There's no position that's low-- but a whole spectrum of positions. Have you heard of other friends, family members who are LGBT that have had adverse employment action against them here in--

**RALPH KELLOGG:** Yes and within the LGBTQIA community, it's a strong network and I would say that we also know that there are organizations within the state of Nebraska that are not friendly to LGBTQIA people, so we don't even approach them with the opportunity to work or to entertain them as, as professional options and imagine the talent that's lost from that simply because of orientation or gender identity. You're going to, you know, turn down the opportunity to bring someone in who's talents in a marketplace where the unemployment is usually half that of the national average.

**MORFELD:** Thank you very much, Mr. Kellogg.

**LATHROP:** Senator Geist.

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**GEIST:** Yes, I want to thank you for your courage. It takes a lot for-- I'm sure, to come in front of this committee and in no way would I approve of what you've gone through. I think it's wrong and so I don't want you to misconstrue my question on a denial of your worth and a denial of me thinking that it's OK for anyone to fire you or discriminate against you because of the choices that you've made because I don't personally approve of that. I simply wanted to know how welcoming this state is and, and I appreciate your testimony.

**LATHROP:** OK, thank you for being here. We appreciate hearing from you.

**RALPH KELLOGG:** Thank you very much.

**LATHROP:** We have time for proponent testimony. Welcome.

**VICKI WOOD:** My name is Vicki Wood, V-i-c-k-i W-o-o-d. Thank you, Senator Lathrop and members of the Judiciary Committee and Senator Hunt for introducing this. I am here today to speak as a proponent of LB120. Last year, I came to speak in favor of a similar bill. I listened as dozens of people gave testimony urging the committee to end the right to discriminate against individuals who identify as LGBTQ+. Then I heard two groups give opposing testimony. Both of them were churches. Somehow, the civil rights of individuals to live free from discrimination is overruled by the religious preferences of a few. I say this as not only disheartening, but an affront to the separation of church and state, which we rely on as part of our constitutional rights. My personal story is actually my son's story. My gay son was fresh out of college and in his first professional job at a small, family-owned company in a town close to Lincoln. After a couple of weeks on the job, he noticed that one of the company owners would often make angry and homophobic comments to the office in general, then a coworker told him that during a car ride to see a client, the company owner spent most of the ride in an angry tirade against gay people and their agenda. My son called me to ask if he could be fired if this business owner discovered that he was gay and I sadly had to tell him yes. In this state, you can be fired for that. He left the job and took a job in Lincoln, but kept his identity hidden for the first year and was very unsure and nervous about how to answer his coworkers' personal questions. These questions are part of any workplace, especially one that's made up predominantly of young people. This is a discomfort my son has felt his entire life, at school as a teenager, in college, and now in his adult workplaces.

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One's sexual orientation has nothing to do with what type of employee they will be or if they will be a good or bad neighbor. In the twenty-first century, nobody should fear losing their job or their housing because of who they are or who they love, nor should they live in fear that this could happen to them. Thousands of our LGBTQ+ neighbors, friends, and family know this fear is real and seek protection from this discrimination, which is not a special right, but an equal right. I hope this year that the committee will do the right thing and we won't be back again asking next year. Thank you.

**LATHROP:** Thank you, Ms. Wood. I do not see any questions, but thanks for being here. Good afternoon.

**LUCAS PETERSON:** Hello. Distinguished members of the Judiciary Committee, my name is Lucas Peterson, that's L-u-c-a-s P-e-t-e-r-s-o-n, no relation to the Nebraska Attorney General. Please go ahead and call me Luke. I am a resident of 46th Legislative District here in Lincoln, have been for around 13 years. My testimony represents my personal life experience. I'm not here under any capacity to represent any organization that I may belong to. I come to express my support for LB120 and urge its passage. All Nebraskans deserve an equal opportunity to earn an income in this state, not to be subjected to abject poverty or homelessness due to their honesty. I have lost count how many times I've testified for this piece of legislation. I've come every time, every time it's introduced for this hearing and have been ever since I was first fired-- you heard that right-- first fired for being honest. I was much younger. I was a sophomore in college and I was just trying to find my way in life. At the time, I didn't know exactly, you know, who I was and was trying to feel things out, I guess, but I joined the Gay Straight Alliance at Doane College, now Doane University, towards the end of the academic year. And it was a very big deal that I joined apparently because I had a job at the time, word had gotten out that I joined the Gay Straight Alliance there, and my employer, the next day or relatively around there, pulled me into his office and told me two things I still have not forgotten. He said I find you to be a questionable character and I don't condone your immoral behavior. After that, he told me to leave, don't show up. I was stunned, speechless, and angry. I couldn't believe this happened and it still happens today. Passing LB120 won't let me get my old job back-- and trust me, I wouldn't want it-- but that gives me peace of mind that I wouldn't ever experience that again if this-- please pass. Just a couple of points, I imagine that no

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heterosexual individual looks at equal opportunity employment language. I have. I do. I look at jobs all across that are open only to be disappointed when I research that they don't have such language. Passing LB120 would stop that unfair disadvantage. You know, I go through my testimony here and it says-- I talk about how Iowa has had this for a very long time, over ten years. You can go to Colorado. If you were to move there, they have that. Minnesota-- people go to Illinois. You know, we're outsourcing our most precious, precious resource here in the state and that's our people. So, you know, everyone wants to talk about the brain drain. No one does anything about it. This is something. Thank you.

**LATHROP:** Very good, thank you for your testimony. We do recognize you as a frequent visitor and we're glad to have you here today.

**LUCAS PETERSON:** Thank you.

**LATHROP:** Yeah, thanks for coming by. Any other proponents to be heard? We have time for one more, then we'll go to pro-- opponent testimony. Good afternoon.

**SARA RIPS:** Good afternoon. It's nice to see you all again. My name is Sara Rips, S-a-r-a R-i-p-s. I am the LGBTQIA+ legal and policy counsel for the ACLU of Nebraska. Thank you, Senator Hunt, bringing this bill and thank you to the Judiciary Committee for their time today. I'm here in support of LB120. To all my fellow LGBTQ Nebraskans, I want you to know that the ACLU is committed to fighting for you and your rights because honestly, Nebraska should be for everyone. Across the state, there are transgender, gender-nonconforming, and nonbinary Nebraskans. They are our neighbors, they pay taxes, they raise their families, they serve in our military, and they contribute to our communities. From a policy perspective, LB120 clearly aligns and is grounded with American values of fairness and equality and freedom and, of course, ensuring that people who work hard and play by the rules are allowed to move forward in our society. This is a commonsense update and revision to our already well-established and strong civil rights laws. Nebraskans do experience discrimination in the workplace based on their gender identity and sexual orientation. We know this based on the testimony you just heard and the legal intakes that the ACLU receives. The Supreme Court's ruling this past summer in Bostock affirmed that discrimination in the workplace based on gender identity and sexual orientation is a violation of Title VII

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of the Civil Rights Act. Adopting LB120 would ensure that the laws protecting discrimination in the workplace are in line with federal law and align with the announcements from our own NEOC about how they are rightly applying this decision. Updating our laws provides not only a sense of belonging to more Nebraskans, but it provides clarity to all stakeholders. Approving LB120 would send a strong, business-friendly message that Nebraska is a state that can attract new businesses, create jobs, address brain drain, and better compete in a global marketplace. That is why the Lincoln, Omaha, and Nebraska Chambers of Commerce have been vocal supporters of this measure and measures like these and should be commended for such. Advancing LB120 is a good first step to proving why there is no place like Nebraska. Thank you and I'm happy to address any questions.

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

**SARA RIPS:** Thank you, Chairman Lathrop.

**\*JUSTIN BRADY:** Chairman Lathrop and members of the Judiciary Committee, my name is Justin Brady and I am testifying today on behalf of the Nebraska Realtors Association in support of LB120. Since 1917, the Nebraska Realtors Association has prided itself as being the voice of Real Estate in Nebraska. The Nebraska Realtors Association has nearly 5,000 members that take pride in the communities in which they live, work, and serve. The Nebraska Realtors Association works to support legislation that protects property rights and facilitates home ownership. Realtors also take pride in the fact that they have continually been a leader of organizations that have policies to prevent discrimination. Under the National Association of Realtors Code of Ethics, "Realtors shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. Realtors shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity." Further, "Realtors, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity." LB120 would expand current Nebraska statutes regarding employment discrimination to include discrimination based on sexual

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orientation and gender identity. The Realtors believe that this is a positive addition to Nebraska law that will bring other employers in line with what Realtors already practice. We commend Senator Hunt for her dedication to this subject and hope that the Committee will see fit to advance LB120 to the full Legislature for further debate.

**\*CRAIG BECK:** Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Craig Beck and I'm the fiscal analyst at OpenSky Policy Institute. We're here today to testify in support of LB120, as we believe it is an important step toward accomplishing the state's economic development goals. Changes to state policy associated with protecting and expanding economic and personal freedoms, like LB120 would do, can present both costs and benefits to state economies "depending on the degree to which they repel or attract businesses and labor supply." A study of the potential impact of similar antidiscrimination measures as proposed in LB120 on Florida's economy found that doing so would boost its attractiveness to workers by expanding personal freedom and increase its total economic output by \$5.46 billion over the next ten years. The study focused on the size and economic potential of the Millennial Generation and an associated "Creative Class," members of which "put higher value on individuality, self-expression and openness to difference versus the homogeneity and conformity that defined previous" generations. These members also tend to be more mobile, according to Census data, and are within the age group that all four economic development reports dating back to 2010 have said Nebraska needs to recruit and retain in greater numbers. In addition to helping the state recruit and retain young workers, this bill would also help ensure those who identify as LGBTQIA are better able to achieve their economic potential by being treated equally in the labor market. At least one study has found that workplace discrimination causes LGBTQIA people to be unemployed or underemployed, which means they can't reach their full productivity in the workplace and so the overall economy suffers. Because we believe LB120 will promote economic growth in the state, we would encourage the committee to advance it. Thank you for your time and I'm happy to answer any questions.

**\*ELLIE MARTINEZ:** Life in Nebraska, as coined in the state mottos "Nebraska Nice" and "The Good Life," boasts strong community, helpful neighbors, safe neighborhoods, and promises of living the American dream. The enduring identity of "midwestern kindness" is embraced by our residents and supported by our visitors. In fact, Miley Cyrus has

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been quoted recounting the story of her car breaking down in Bellevue, Nebraska and being saved by a group of older men who knew nothing of her celebrity status. In spite of this positive image that precedes us, however, I believe it blankets over some real problems. Perhaps these problems are partly responsible for the recent change to our motto three years ago - "Honestly, it's not for everyone." As a member of the LGBTQ+ community, it is not for me. Living in Lincoln, admittedly one of the more progressive areas of Nebraska, I do not feel safe, accepted, or free. When I was 18 years old, my girlfriend and I both applied to the same call center job. In fact, we were one of many couples that worked at the call center. However, nobody knew we were in a relationship. Throughout the training process, it became apparent that we were very close, and it was generally accepted that we were either sisters or best friends. During the time we worked there, it was a familiar joke on just how close we were. We drove together in the same car, had scheduled ourselves the same hours, went on break at the same time, talked during our shift, etc. We had worked at this call center for two years and still nobody knew we were a couple. My girlfriend and I have been talking about how awkward and uncomfortable we would feel to tell our management about us being together at this point. We knew that at least one of our managers was open to all different kinds of people which made us feel better. My girlfriend and I talked frequently about how we were going to address it. By this point, it felt like we were biting our tongues with every conversation we had. We were constantly second guessing ourselves. On one hand we knew that at least one of our managers would be accepting. On the other hand we were scared of all of the "what ifs'." What if we would get fired? There is nothing to stop that from happening. During the summertime we were working during the day with very few other people. By this point we had been working there for two and a half years. With every day that went by, the more comfortable I was feeling with telling my management my "secret," and randomly I did. My manager was talking about her anniversary that was coming up and I had told her that my anniversary had recently passed with my girlfriend. She acted like she had just found the missing puzzle piece to a puzzle she'd been working on for two and half years! She was happy for us. It felt like a thousand pounds of bricks were lifted off of my shoulders. Despite this positive outcome, I am still very aware that it could have gone the other way. I also realize that I wasn't able to be my true, authentic self for the majority of time at that job. Without legislation in place, this fear will follow me for the rest of my

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life. It will always be another layer of my life and something that I need to navigate. There are already protections in place for other marginalized groups - race, religious affiliation, age - and it only makes sense to implement protections for LGBTQ+ individuals. This way we can start building towards safer and more inclusive Nebraska.

**\*JENNI BENSON:** Good afternoon Senator Lathrop and members of the Judiciary Committee. For the record, I am Jenni Benson, President of the Nebraska State Education Association. NSEA is in support of LB120 and thanks Senator Hunt for introducing the bill. LB120 prohibits employment discrimination based on sexual orientation and gender identity. Currently, state law prohibits employment discrimination based on race, color, religion, sex, disability, marital status or national origin, but does not prohibit discrimination based on sexual orientation and gender identity. The NSEA believes in the equality of all individuals and that equality should be extended to sexual orientation and gender identity. Nebraska harms itself by not welcoming all citizens who want to contribute to "The Good Life" and the economy of our state. Not only have we assisted members who have experienced discrimination, we also know of citizens who have left the state because they didn't feel that they were welcome due to their sexual orientation. Discrimination and stereotyping must be eliminated in our state if we are to continue to grow and truly reach our state motto of "Equality Before the Law." I urge you to advance LB120, so employment discrimination against individuals based upon sexual orientation and gender identity is prohibited.

**\*KELSEY WALDRON:** Chairman Lathrop and members of the Judiciary Committee, my name is Kelsey Waldron and I am the Policy and Research Associate at the Women's Fund of Omaha. The Women's Fund testifies in strong support of LB120, to prohibit discrimination in employment based on sexual orientation and gender identity. The Women's Fund seeks to build a community and a state where every woman and girl has the opportunity to reach their full potential. We support the economic well-being of all of Nebraska's women and girls, and to that end, we strongly believe that any kind of discrimination based on sexual orientation or gender identity has no place in our state. Nationally, 1 in 4 Lesbian, Gay, Bisexual, and Transgender (LGBT) individuals report experiencing discrimination based on their sexual orientation or gender identity within the last year, and half of them express such discrimination negatively impacted their work environment. Between 2016 and 2017, 27 percent of transgender workers reported they were

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fired, not hired, or denied a promotion because of their gender identity or gender expression. Persistent wage gaps exist for sexual orientation and gender identity, as 22 percent of LGBT workers were not paid or promoted at the same rate as their non-LGBT colleagues. The Supreme Court has now ruled discrimination of sexual orientation and gender identity is covered under Title VII of the Civil Rights Act of 1964 and is therefore illegal.<sup>iv</sup> Our laws must reflect this commitment to workplace inclusion and equality before the law. While legal protections now exist for LGBTQ workers under this ruling, we recognize sexual orientation and gender identity discrimination has been pervasive in workplaces, and LGBTQNebraskans remain particularly vulnerable to such workplace inequity. Our laws must affirm and reinforce this ruling, to ensure all are welcome and supported in Nebraska workplaces. Nebraska employers have made clear that their primary challenge is meeting their workforce needs. By not adopting these protections from discrimination explicitly into our statute, our state is sending a message- loud and clear - to young adults about to enter the workforce and to existing workers and their families that they are not welcome here. Bypassing LB120 and explicitly reaffirming employment nondiscrimination based upon who you love or what reproductive organs you were born with, Nebraska will take a significant step towards the realization of our state's motto of "equality before the law." The Women's Fund supports economic empowerment and equal pay for all Nebraskans - straight, cisgender and LGBTQ individuals. Nebraska communities and our economy will prosper when all workers are given basic protections for economic and job security. The Women's Fund respectfully urges the committee's support of LB120 and advancement to General File.

**\*MEG MIKOLAJCZYK:** Dear Chairperson Lathrop and members of the Judiciary Committee, my name is Meg Mikolajczyk, and I am the Deputy Director and Legal Counsel of Planned Parenthood North Central States in Nebraska. PPNCS provides, promotes, and protects sexual and reproductive health through high-quality care, education, and advocacy in Nebraska, North Dakota, South Dakota, Iowa and Minnesota. Planned Parenthood in Nebraska offer LGBTQ+ care and educational programming that provides a supportive environment that allows people to get the information and support they need to make healthy decisions and feel comfortable in their identities. At Planned Parenthood, we value compassion, diversity, and inclusivity. We are dedicated to serving every person who comes to us for health services and education, and we

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are proud to foster an inclusive work environment where all employees feel welcome. This includes LGBTQ+ folks, who currently have no legal protection from discrimination based on sexual orientation or gender identity in Nebraska. At Planned Parenthood, we do not discriminate against the LGBTQ+ community in our service to them as patients or as a business because we believe all people deserve the right to live a happy, healthy, and meaningful life. LGBTQ+ people face many roadblocks and injustices, and in Nebraska one of those injustices includes the threat of discrimination in employment, public accommodation, and housing based on sexual orientation or gender identity. One in three LGBTQ+ Americans reported they have experienced discrimination in these three areas during their life.<sup>1</sup> No one should lose their ability to put food on their table and a roof over their family's heads because of who they love. All people should have the right to participate fully in their daily activities without fear of discrimination. No one should be forced to hide who they are in order to pursue and fulfill these basic aspects of life. LGBTQ+ people, like all citizens, deserve to be protected by the law. A 2009 study revealed that 53% of LGBTQ+ workers nationwide hide their sexual orientation or gender identity at work. They fear a hostile and unwelcoming environment, and not without cause—close to ten percent of LGBTQ+ people report leaving a job because of the discrimination they endured based on their sexual orientation or gender identity.<sup>1</sup> All people deserve to live in a society where they are respected and honored — this policy seeks to make that society a reality. Employers also suffer when their employees feel unwelcome or unsafe in the workplace: employee engagement suffers by up to 30 percent due to unwelcoming environments. Promoting safe and welcoming workspaces benefits both employers and workers. Laws prohibiting discrimination help to foster more positive and open work environments, which in turn leads to stronger job commitment, better relationships in the workplace, increased job satisfaction, healthier employees, and increased productivity. New York recently joined 19 other states and the District of Columbia in prohibiting discrimination on the basis of gender identity. Almost half of US states have active laws that prohibit sexual orientation discrimination in both private and public workplaces. Several states in the Midwest, including Iowa, Minnesota, and Illinois, have laws prohibiting discrimination based on sexual orientation and gender identity. And this past June, the United States Supreme Court, led by conservative-leaning Neil Gorsuch, ruled in a landmark decision that the 1964 Civil Rights Act protects LGBTQ+

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employees from discrimination based on sex. It is time Nebraska followed suit. For the people who must hide in fear, for the people who are deprived of opportunity and access based on who they are and who they love, Nebraska must take this opportunity to end unjust discrimination against LGBTQ people in our state. Thank you, Senator Hunt for introducing this crucial legislation and for being a champion in protecting all Nebraskans from discrimination. Thank you, as well, to the Judiciary Committee for your time and thoughtful consideration of this bill. I ask you to vote to advance this bill to General File.

**\*ABBI SWATSWORTH:** Thank you Senator Lathrop and Senators of the Judiciary Committee for the opportunity to provide testimony. My name is Abbi Swatsworth. I am the Executive Director of OutNebraska - an organization working to celebrate and empower LGBTQ+ Nebraskans. OutNebraska stands in support of LB120. OutNebraska often receives inquiries from LGBTQ people exploring a move to our state. The most common question we receive is about community climate - are there nondiscrimination policies in place? We must tell the truth - LGBTQ people are not protected from employment discrimination in state statute. While LGBTQ Nebraskans are protected under the recent Bostock Supreme Court decision, state statute protecting LGBTQ employees is still important for a number of reasons. One pressing reason is the reputation of our state as a desirable place for young workers. We believe one of the aspirational goals of Blueprint Nebraska is directly tied to our state's reputation. The goal to bring 43,000 new 18-34 year-old residents to the state. Meeting this aspirational goal will be difficult when we continue to see a steady drain of talent. Millennials make up the largest group of employees currently in the workforce. By 2030 they will be 75% of the workforce. Research shows that millennial workers believe in and value inclusive policies like employment nondiscrimination. Nebraska's difficulty in passing nondiscrimination has signaled over and over again that Nebraska is not welcoming of sexual orientation and gender identity diversity. Updating our law to reflect the law of the land signals to this growing body of workers that Nebraska is for everyone. OutNebraska believes, and a majority of Nebraskans believe, that all hardworking people-including those who are LGBTQ-should be treated fairly and equally by the laws of our state. This update clearly and without question brings Nebraska in alignment with our state motto, Equality Before the Law. Updating the law won't end all unfair treatment or reposition our reputation overnight. It will provide a vital tool to

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illustrate that all Nebraskans who want to work hard and who do their jobs well are welcome and valued in our great state. We believe it is a vital piece of our economic growth. We respectfully ask you to support LB120 by advancing it to General File. We encourage you to consider it as a priority of the committee.

**\*ANNA EICKHOLT:** Good Afternoon Chairperson Lathrop, members of the Judiciary Committee. My name is Anna Eickholt, with the YWCA Lincoln whose mission is to eliminate racism, empower women and promote peace, justice, freedom, and dignity for all. The YWCA is dedicated to ensuring that discrimination is not a part of any workplace and it is for that reason that we testify in support of LB120 and thank Senator Hunt for introducing this bill to help end discrimination based on sexual orientation and gender identity in the workplace. As of 2020, Gallup, as well as the Williams Institute at UCLA School of Law, report that 3.8% of Nebraskans identify as LGBTQI. That's an estimated 67,000 Nebraskans who are part of a community that is denied job opportunities, fired, or otherwise discriminated against simply because they are lesbian, gay, bisexual, or transgender and despite being qualified and hardworking people simply looking to make a living. And despite the ruling from the Supreme Court in June 2020 stating that workers cannot be fired for being gay or transgender, it is imperative that we as a state continue to fight to ensure that no employer, employment agency, or labor organization, include private employers in Nebraska, can discriminate against anyone due to their sexual orientation. We, therefore, thank the Judiciary Committee for its consideration and ask that you vote LB120 out of committee.

**\*ROBERT SANFORD:** Chairman Lathrop and Members of the Judiciary Committee: My name is Robert Sanford and I am the Legal Director for the Nebraska Coalition to End Sexual and Domestic Violence. The Nebraska Coalition stands in support of LB120 and I ask that this testimony be made a part of the Committee statement. The Nebraska Coalition recognizes that societal power and privilege contributes to violence within our communities. We believe that we must strive, as an organization and as a community, to create a world where everyone is treated fairly and respectfully to eliminate that violence from existence. This causes us to evaluate the impact our laws have on individuals within our state and in doing so we have to assess who is oppressed within our midst. Anti-discrimination bills show that we want each person in our society to have the same level of respect and

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dignity as the next person. The Nebraska Coalition supports LB120 and  
we ask that you advance this bill out of committee.

**LATHROP:** We will now take up opponent testimony. Welcome.

**TOM VENZOR:** Chairman Lathrop and members of the Judiciary Committee,  
my name is Tom Venzor, that's T-o-m V-e-n-z-o-r, and I'm the executive  
director of the Nebraska Catholic Conference, which advocates for the  
public policy interests of the Catholic Church and advances the gospel  
of life through engaging, educating, and empowering public officials,  
Catholic laity, and the general public and I'm here to express our  
opposition to LB120. The Catholic faith recognizes the supreme dignity  
of every person as made in the image and likeness of God. The only  
appropriate response to this reality is charity. For this reason, the  
Catholic faith recognizes that nobody, including those who are  
experiencing same-sex attraction or gender identities issues, should  
be subjected to unjust discrimination. In other words, everyone should  
be treated with respect and dignity. LB120, unfortunately, goes beyond  
protecting against unjust discrimination. LB120 uses government  
coercion and punishment to force individuals, employers, small  
business owners, nonprofit entities, religious organizations, among  
others, to affirm conduct and messages that conflict with their  
sincerely held moral or religious beliefs on marriage and human  
sexuality. Even former Supreme Court Justice Anthony Kennedy  
recognized such a view on marriage, long has been held and continues  
to be held in good faith by reasonable and sincere people here and  
throughout the world. LB120 does not treat those with traditional  
views on marriage and human sexuality as reasonable and sincere  
people, but in need of corrective government coercion and punishment.  
LB120 contains at least several other issues worth briefly noting.  
First, LB120 undermines the ability of an employer to carry out their  
business in accord with their mission. For example, it would prohibit  
a Christian book owner from being able to hire or conduct their  
business in accord with their faith-based mission. Second, LB120 makes  
no attempt at adding religious liberty protections. It leaves in place  
current law protecting the ability of religious organizations to hire  
on the basis of religion and current law also offers bona fide  
occupational qualifications on the basis of sex. LB120, however, fails  
to address such nuances with respect to the added categories of sexual  
orientation and gender identity. Third, LB120 undermines concerns for  
privacy. LB120's reach extends to the terms, conditions, or privileges  
of employment because of the individual's gender identity. The terms,

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conditions, and privileges of employment include the use of multiuse locker rooms, restrooms, showers, among other facilities and LB120 creates legitimate privacy concerns in our public, public, parochial, and private schools, churches, supermarkets, and restaurants, just to name a few examples. And then fourth, LB120 seeks to not only address statewide employment law, but also addresses local public accommodations law in Section 1. This would inevitably raise serious constitutional issues. In 2019, a three-judge panel of the Eighth Circuit Court of Appeals recognized that when such laws seek to regulate speech itself as a public accommodation, it has gone too far and its interests must give way to the demands of the First Amendment. With that, we would urge your opposition to LB120 and I thank you for your time and consideration and would take any questions.

**LATHROP:** I do not see any questions this afternoon, but thanks for being here.

**TOM VENZOR:** Thank you very much.

**LATHROP:** Good afternoon. Welcome.

**DAVID HAHN:** Thank you. My name is David Hahn, last name, H-a-h-n. Chairman Lathrop and members of the Judiciary Committee, I'm here to oppose LB120 for the reason that the passage will enable and likely mandate the liberal policy and practice of forced speech in the workplace, which would violate Nebraska's foundational commitment to pluralism of free speech and free thought. I'm an attorney with admissions to the state, all courts in the state of Nebraska, federal courts as well as state courts, the Eighth Circuit Court of Appeals, and the United States Supreme Court. I'm also personally and professionally committed to the importance of free speech as a component, component of free and diverse thought and as a part of a healthy political environment. Also, I was an early Internet entrepreneur and have been active in the progress and development of Internet laws, digital laws, technology company policies and practices. Some of you may remember Senator-- Governor Jim Exon. I sat with him many hours to help draft the Communications Decency Act, which you hear so much about. I was on the American Bar Association's committee on the law of Congress in cyberspace, a founding member of the internet committee at the Direct Marketing Association in New York City, and I hold a certificate from Massachusetts Institute of Technology for technology management. I say that not to preen about my

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background and so forth, but simply to say that I have a lot of contacts, current and former, with regard to digital companies. I've also been a strong advocate of First Amendment rights. Our company had developed the largest network of college and university newspapers in the United States. We spent a considerable amount of time developing special technology for historically black colleges and universities and we also developed the first school of journalism in Kosovo after the war when free speech was denied-- people in Kosovo. In late 2018 and '19 and through '20, as both a lawyer in continuing legal education and also in connection with company representatives, digital technologies, I learned that they were adopting policies that mandated the use of gender-specific or personal pronouns to identify gender identity and in fact, were breaking contracts and hurting people who would not use prefer-- what is called preferred programs-- preferred pronouns, excuse me. You're going to hear from a young man here in Nebraska who built a business and had it lost simply because he would not honestly kneel down to the mandates of a digital company. Now I'm very close to the policies and practices. I also have talked with key representatives and lawyers who represent large organizations and corporations in Nebraska and they are intending, without question, to use the Bostock decision and this type of legislation to mandate the use of preferred pronouns for gender identity in the workplace. Thank you for your time and would be happy to answer any questions.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. Just to clarify, are you saying that your translation of free speech is the right to discriminate based on sexual orientation and gender identity?

**DAVID HAHN:** No.

**McKINNEY:** Can you clarify then because that's what it seemed like.

**DAVID HAHN:** Well, certainly anybody that would know me would know that that's certainly not my background, both in my personal and professional life. When I ran for governor in 2006, I had the opportunity to visit with then Senator Barack Obama and we talked about Nebraska and the importance of language and the use of language in public discourse and the importance of people being able to express, with free speech and free thought, views from both sides and what I see is a trend now, at least in the digital technology world--

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**McKINNEY:** So--

**DAVID HAHN:** --to enforce language, which is the beginning of thought,  
as the United States Supreme Court has told us.

**McKINNEY:** So would you say in, in your definition of free speech, it  
would be cool for you to be in a workplace and just say, you know,  
racist things that--

**DAVID HAHN:** I'm sorry, I didn't hear the last part of the question.

**McKINNEY:** So would it-- in, in your definition of free speech, would  
it be OK to just spew racist views all day?

**DAVID HAHN:** To erase the views?

**McKINNEY:** No, to say racist things in the workplace?

**DAVID HAHN:** I don't think so. I think there certainly is a doctrine of  
a hostile work environment--

**McKINNEY:** So would--

**DAVID HAHN:** --and, and, and language that--

**McKINNEY:** So--

**DAVID HAHN:** --by common sense is known to be demeaning and so forth.  
That's a, that's a common legal principle that-- I mean, lawyers get  
together to talk about that. On the other hand, preferred pronouns, to  
say that you must use a certain pronoun of the many that are advanced  
by the LGBTQIA community in total disregard of the history of that--  
of the ideological baggage that language carries is also a form of  
discrimination and leads to, in my view, discriminatory practice. You  
know, it was Justice Kennedy that reminded all of us that at the heart  
of liberty is the right to define the meaning of existence, the  
mystery of the universe, and that works for all people. It has to. You  
can't work for one side of this, this very important subject. You  
can't or we'll never get there and work through it. And that's my  
concern, is that in the private workplace, I mean-- didn't need to be  
here and, you know, things are going fine for me, but in the private  
workplace, people are being hurt because they won't give up their own

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deeply felt, whether religious or, you know, philosophical or  
sociological, viewpoints.

**McKINNEY:** I, I get that. Just because something is a tradition or  
you've always done it, doesn't always make it right. I just think that  
there are individuals who currently live in our state that don't feel  
that-- don't feel comfortable in the workplace because employers are  
discriminating based on their sexual identity and their gender. And we  
always talk about the good life and Nebraska as a good place for  
people to live, but how is it a good place if I could be fired if I  
say I'm gay or express my sexual identity? I just don't--

**DAVID HAHN:** I agree. I mean, again, if you knew me and my wife and  
our, our social life and who we sort of hang out with and, and how I  
run my own companies, you would know that I'm-- on the other hand, I'm  
also a classical liberal, have been when I was president of Young  
Democrats, belonged to the ACLU, litigated cases for people whose  
right to speak and think was being damaged. So I'm saying that if this  
law is-- I know because I know that there are law firms-- I've read  
legal opinions that are promoting the notion that if this law is  
passed without some special notice of the First Amendment rights that  
need to be protected, they will already start using the law to mandate  
the use of speech in the workplace and that hurts other Nebraskans, as  
you will hear in the next testimony.

**McKINNEY:** Thank you.

**DAVID HAHN:** Any other questions?

**LATHROP:** Where in the bill does it mandate that you use certain  
pronouns? Trying to look through it here and, and I'm skimming it, so  
I'm--

**DAVID HAHN:** Sure, it doesn't.

**LATHROP:** Do you think it's a consequence of the bill and the, the  
protection created in the bill or does it explicitly require it?

**DAVID HAHN:** It's not-- it doesn't say it in the bill, but with regard  
to the legal reasoning that would take place, I have seen legal  
opinions, memos from corporate lawyers of some of the, some of the big  
corporations named here today. Large, mostly digital companies that I

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know of are already developing plans to require not only the use of  
certain pronouns, but reeducation.

**LATHROP:** But isn't that the problem in the corporate world? Because  
the bill doesn't require it and if, if Apple or Google or Union  
Pacific says from now on, you're going to use the right pronoun,  
that's something that's happening at the corporate level and not  
government requiring it.

**DAVID HAHN:** Well, yes, except that the legal reasoning-- the line of  
legal reasoning is very clear. They rely on-- they rely on the hostile  
workplace environment notion and then coming out of Bostock and then  
this specific-- I'm not against necess-- is I'm not against, you know,  
including nondiscrimination--

**LATHROP:** And I'm not accusing you.

**DAVID HAHN:** --but I--

**LATHROP:** I'm just trying to get to the bottom of your testimony.

**DAVID HAHN:** Yeah, the bottom of it is it will be used and I think it's  
not a-- I've been in continuing legal education sessions in Omaha  
where partners of a large law firm told the audience they will need to  
start prescribing speech in the workplace and it will be OK.

**LATHROP:** Well-- OK, I don't know, I don't know what-- how--

**DAVID HAHN:** And I have written memos of it.

**LATHROP:** --how corporate America is going to respond to this, but I, I  
look at this and in response to your testimony, let's say that there  
are two gay gentlemen that are in the break room. Boss comes through  
and says come on, ladies, let's get to work. Now don't you think  
that's creating a hostile work environment?

**DAVID HAHN:** It sure could.

**LATHROP:** So I don't know that I'm buying that because the flip side of  
it is there are circumstances where somebody could, could use that to  
create a hostile workplace.

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**DAVID HAHN:** Absolutely. There's no question about that, Senator, but there's also no question that this is now moving to the point, in terms of legal development, past Bostock and with so-called [INAUDIBLE] laws, with the addition of these nondiscrimination laws, that that is seen as a legal reason to retrain people how to speak. I mean, the notion of reeducation, how to speak, should be scary to every American. It is to me. Requiring--

**LATHROP:** Well, I think, I think we've been doing that. What about teaching people not to use the N-word? I mean, we've been, we've been doing those kinds of things in response to advances we've made in discrimination. And I just have to say-- and, and then I'm, then I'm, then I'm done because I don't, I don't want to tie up the afternoon--

**DAVID HAHN:** I understand.

**LATHROP:** --with a debate that you and I could have for a long time and I would enjoy it. But I don't know that the fact that corporate America may have a response to this is us mandating, mandating speech. I agree with you. We dealt with it on, I think conversion therapy last-- two years ago and on, on an abortion bill that maybe Senator Geist-- pardon me, Senator Albrecht brought two years ago. I understand mandated speech and that we can't do that, but I don't think we're doing that. That may be the reaction of thoughtful people to the consequences of unthoughtful speech.

**DAVID HAHN:** Maybe, but what I'm here to testify about is this is more than some idea that I've thought about. I've witnessed it. I have memos from digital companies. I have memos from really good lawyers in Nebraska, major law firms, indicating that this is the approach they're going to take and telling companies they should do it. So to say that somehow you don't want to deal with it because it's not specifically mandated in the law is really putting your head in the sand. At least this, at least this committee should include a statement of purpose that nothing they are doing would require or permit mandated speech or amend the bill to specifically say that. If that's what you believe, then let's tell people that.

**LATHROP:** But-- well, how is that different than passing a law that says you can't discriminate on the basis of race and corporate America is sending a memo out that says stop using the N-word?

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**DAVID HAHN:** Two different things, it-- a better analogy would be to say if you had a Muslim in the workplace and told them that the word they must use for Allah is Yahweh. Totally different circumstances. Of course using the N-word is discriminatory and creates a hostile work environment. I don't think anybody with common sense re-- you know, objects to that, but what I am suggesting is this is not theoretical, OK? And it's not theoretical-- I'm not talking about California. I'm talking about Omaha, I'm talking about Lincoln, and this is an issue with which you will have to deal partially because it's already happened. Your next witness is going to explain how he's lost everything because of this kind of activity.

**LATHROP:** OK.

**DAVID HAHN:** So I urge you to take some time and make it clear to the state of Nebraska if this moves forward, that your activity and your votes do not permit the violation of the most fundamental civil right, which is the right of thought and consequently, the right of speech. Thank you for your time.

**LATHROP:** OK, thanks, Mr. Hahn.

**DAVID HAHN:** Yeah.

**DIRK KONOPIK:** Hello.

**LATHROP:** Good afternoon.

**DIRK KONOPIK:** Hi, my name is Dirk Konopik, spelled D-i-r-k, last name, Konopik, K-o-n-o-p-i-k. I'm just going to read pretty much from what I wrote.

**LATHROP:** That's fine.

**DIRK KONOPIK:** Chairman Lathrop and other senators of Nebraska, good afternoon and thank you for taking the time to hear my thoughts on LB120. My name is Dirk Konopik and I live in the Florence community of Omaha with my wife, four young children, and dog. I am a fifth-generation Nebraskan and proudly served in the United States armed forces as a nuclear submariner. I deployed to the Persian Gulf after 9/11. Service to country is a sacred obligation that I hold dear. I'm also a strong believer in the idea of the American dream, that if you work hard, are honest and fair, then you can and will be

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successful. That being said, I greatly appreciate your work on this legislation. I know your work is not easy and I'm humbled to address you on behalf of my family and company. I drove down from Omaha today to give you first-hand knowledge of what happens when proposed laws and ideas such as those included in LB120 are implemented as the law of the state because unfortunately, it works to the detriment of Nebraskans like me and my family. In the summer of 2018, my wife and I applied for a coveted business opportunity to work with Amazon as a delivery service partner or DSP in the brand new DSP 2.0 program out of Gretna, which was being promoted by Amazon as a path forward for young business people and especially targeted to veterans like myself. From an intense selection process, we were chosen. In fact, our company, Konopik Courier, which was the very first operational DSP 2.0 in Nebraska with operations beginning in October 2018. Like all small business owners and founders, we worked very, very hard. Thankfully, this hard work paid off and we are blessed with success. At the very beginning of our courier recruitment, our company advocated-- even sold to Amazon for the hiring of African-American rehabilitated felons that showed exceptional promise and motivation. Amazon disagreed with us on that one. We cared and still care about the success of our fellow Nebraskans. Our company consistently reached the highest possible delivery performance rating based on Amazon's self-created metrics. We have a team of over 35 professional couriers and we're growing. In the fall of 2019, various mid-level management people from Amazon called and wanted to know if we discriminated against transgender people, which we do not and never have. Konopik Courier was always open to hiring anyone who wanted-- were interested in working hard and too desired to become an excellent courier. I even shared a story with this Amazon staffer about a positive hiring experience between myself and a staff member that self-identified to us as transgender and made no discriminatory decision against this person and actually hired them and promoted them based on performance. Suddenly, after a year of very strenuous work to grow our business, Amazon told-- well, ordered us that we would have to take retraining to use transgender words and pronouns and to reeducate our entire staff, otherwise Amazon would cut us off immediately. I replied that we had never discriminated, had always worked hard to be thoughtful and courteous to all of our employees. That didn't matter. Amazon specifically said it would be mandatory for us to use transgender preferred pronouns regardless of our faith and any convictions one may hold dear. I said I could not, I would not, as this was contrary to

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our core beliefs, our faith, and our view of the world. Amazon would not listen to any other ideas to talk, brutally telling us to submit or we were done. As a Nebraskan with strong convictions, I refused to bend a knee to Amazon, their ultimate-- and their ultimatum to adhere to their oppressive mandate, but we did try to come to some sort of agreement with them.

**LATHROP:** OK, we got to enforce the, the light rule or--

**DIRK KONOPIK:** Ultimately, they shut our business down. They left us with \$50,000 worth-- plus-- of bills. They took our people and distributed them to their other teams and that's just how it worked.

**LATHROP:** OK. Senator Geist.

**GEIST:** Yes, I, I just wanted to clarify. You said you had hired--

**DIRK KONOPIK:** Um-hum, yep.

**GEIST:** ---someone who was transgender?

**DIRK KONOPIK:** You bet and they got promoted.

**GEIST:** And did that individual file a complaint?

**DIRK KONOPIK:** Nope, nope.

**GEIST:** So how did this accusation come about?

**DIRK KONOPIK:** So a disgruntled employee who had decided not to show up to work on time ended up getting fired. This person put in a call to complain that we were discriminating by not using any transgender pronouns, even though we did use the individual's preferred name in all of our rosters and all of our written communications. They contacted me. I informed them that no, we're-- that's our strong belief. We were then called from a lawyer in New Jersey from Amazon that informed us that we were in violation of law and if we did not change and do that, we were gone and that's what happened. And they shut our company down and we were, we were very good at what we did. We delivered over 1 million packages. We led the way in Omaha and they shut us down based on that.

**GEIST:** And did you have representation on your side?

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**DIRK KONOPIK:** No, nothing. They apparently conducted an investigation behind my back-- probably my staff-- without communicating to me and gave us this ultimatum and that was it. By November, one month before the holiday season, where we had previously done before, had experience, had-- fully staffed, paid off our fixed costs, they kicked us out and essentially kicked out our-- all of our staff members. And I was able to work with another solid owner to transition them over so their families would not be put in the same place as my family was.

**GEIST:** Thank you.

**LATHROP:** OK. I do not-- oh, Senator DeBoer.

**DeBOER:** I'm sorry. I can't, I can't always hear when people--

**DIRK KONOPIK:** I'm sorry, yeah.

**DeBOER:** --speak to Senator Geist. So did you say it's-- that a disgruntled employee said that you didn't use the correct pronouns? Is that what the problem was? And Amazon then said because you didn't use correct pronouns--

**DIRK KONOPIK:** Well, not that I didn't use-- they said in the future, I wouldn't do that. They said you will use it in the future and you will be required to take one-hour sexual harassment training course and you will use these or you will be out of the program and they kicked us out of the program.

**DeBOER:** OK. All right, thanks.

**DIRK KONOPIK:** Yep.

**LATHROP:** So they offered-- they said you need to do this and this or you'll be out and then you're out, so did you not do what they asked you to do--

**DIRK KONOPIK:** No.

**LATHROP:** --corporate Amazon? No what?

**DIRK KONOPIK:** I did not do what they did and what they mandated me to do, Senator.

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**LATHROP:** OK, OK. I don't see any other questions. Thank you for being here, Mr. Konopik.

**DIRK KONOPIK:** Thank you.

**LATHROP:** Welcome. Good afternoon.

**MATT SHARP:** Thank you, Mr. Chairman and members of the committee. My name is Matt Sharp, M-a-t-t S-h-a-r-p, and I serve as senior counsel with Alliance Defending Freedom, the nation's leading legal advocacy organization dedicated to religious liberty. Laws like LB120 that add gender identity and sexual orientation to state employment laws strip away the ability of churches, religious schools, and ministries to make employment decisions based upon the sexual practices or identifications of applicants or employees. The primary mission of many religious organizations is to teach their beliefs to the next generation. This constitutionally protected right is infringed if religious organizations can no longer reply-- require their employees, the very people responsible for teaching these doctrines to the next generation, to live consistent with those beliefs and doctrines. And that's precisely the consequence of adding gender identity and sexual orientation to state employment laws and supporters of LB120 have claimed that this bill is required after the Supreme Court's decision in Bostock. This is incorrect. In fact, the Bostock Opinion explicitly rejected any effort to extend its decision beyond the context of Title VII, the federal employment nondiscrimination law at issue in the case. Quote, the employers worry that our decision will sweep beyond Title VII to other federal and state laws that prohibit sex discrimination, but none of these other laws are before us. We have not had the benefit of adversarial testing about the meaning of their terms and we do not prejudge any such question today. The Supreme Court refused to extend its reasoning to state employment laws because it recognized that there are vital differences between state and federal law, particularly as it relates to protections given to religious organizations under federal law. Specifically, the Bostock court noted that the federal Religious Freedom Restoration Act provides religious employers with an additional layer of protection against efforts to use Title VII to infringe their freedom. The Bostock at court explained that, quote, because RFRA operates as a kind of super statute displacing the normal operations of other federal laws, it might supersede Title VII's commands in appropriate cases referring to religious employers. In other words, the Supreme

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Court knew that RFRA would provide a guard rail against abuse of federal employment law being used against religious employers. Nebraska does not have a RFRA. There are no guardrails to prevent LB120 from being misused against religious organizations. And as a result, if LB120 is enacted, churches, religious schools, and ministries will have less protection under Nebraska law than they would in-- than they're given under federal law. This bill deals a significant blow to the freedom that Jewish, Muslim, Christian, and a variety of other faith-based organizations need to accomplish their religious missions. As such, it should be rejected. Thank you. I'm happy to answer any questions.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. Thank you for your testimony. Are you saying that it's OK to use religion as a form of discrimination?

**MATT SHARP:** Thank you for that question. I think what the Supreme Court said and is recognized in a variety of cases is that in order to-- for religious organizations, churches, and others to fulfill their religious mission, they have to have the freedom to be able to hire and employ people that believe those same beliefs and act consistent with those beliefs. So I think the, the Supreme Court has ruled-- and, and why it was so important to Justice Gorsuch in the Bostock-- that we need to make sure that these laws are not used in a way that undermines that freedom, that undermines the ability of religious organizations to accomplish their mission.

**McKINNEY:** OK. Do you think we should change our state's motto from the good life to you are not welcome to the good life?

**MATT SHARP:** Not at all. I, I think everyone deserves to be treated with dignity and respect and to have their constitutional freedoms protected. And as we've seen-- that our firm has represented, we want to make sure that that also applies to religious organizations, religious schools, ministries, and churches.

**McKINNEY:** All right, thank you.

**MATT SHARP:** Thank you, Senator.

**LATHROP:** Senator DeBoer.

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**DeBOER:** Thank you for testifying today. Is there-- I know I looked at this a couple of years ago. There were-- there are some states that have these sorts of laws that have religious institution exceptions. Have you-- are you aware of any of these?

**MATT SHARP:** I know-- I do know that different states have, have done these differently. There's other states that, like federal law, have state RFRA laws or things like that and obviously other definitions of religious organizations, the exemptions. But as you're well aware, the Nebraska law is modeled very similarly off federal law, yet lacks some of those important federal protections that the Bostock court pointed to.

**DeBOER:** If this bill contained in it an exception for religious institutions, does that then take away your objection?

**MATT SHARP:** I think it, it perhaps could address some of them. I think part of the concern is how the, the interplay between protections for religious organizations and the other nondiscrimination laws sort of plays out. But I do think in addition to that, as, as some of the other testifiers have brought up, there are other concerns even outside of the religious context that, that they spoke about. And so I think primarily, I'm-- I was wanting to focus on the religious aspect and the concerns that it raises there, but I do think that is one of the important issues that this bill raises.

**DeBOER:** But if we can deal with-- I mean, I think that it's-- I mean, we have to in some way deal with religious institutions and that sort of thing. And there are a number of, as I recall-- and this is-- there are cobwebs in between me and remembering all of this when I did the research-- but as I recall, there are a number of different ways of handling it and I think probably there are enough intelligent people in this room that we could write an acceptable religious exemption. Other states have these sorts of things and they seem to be able to handle the, the religious institutions within their borders fairly well. So then what objections are left? I mean, I don't understand-- well, anyway. All right, thank you.

**LATHROP:** I see no more questions. Thank you.

**MATT SHARP:** Thank you.

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**LATHROP:** We have time for one more opponent. Good afternoon.

**KAREN BOWLING:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, and I serve as the executive director at Nebraska Family Council and provide testimony on their behalf. We believe every person should be treated with dignity and respect to not suffer unjust discrimination. Our opposition to LB120 is due to the problematic consequences of making sexual orientation and gender identity a protected class category. In a diverse and pluralistic society, it's not surprising that there are differing views and beliefs pertaining to issues of marriage and human sexuality. These views are held in good faith by sincere and reasonable people, as was noted by the U.S. Supreme Court's Majority Opinion in Obergefell v. Hodges. Sadly, the government has used laws like LB120 to target small businesses and punish people like Jack Philips and Blaine Adamson for declining to create custom art that expresses messages that conflict with their beliefs. Just weeks after Jack Phillips, owner of Masterpiece Cakeshop, won a 7-2 victory in the U.S. Supreme Court, which wipes away the Colorado Rights Commission's punishment of Jack under Colorado's statewide sexual orientation and gender identity, the same commission used the same law to launch a new attack on Jack to force him to create a custom cake to celebrate a gender transition. An advocacy group filed a complaint under Lexington, Kentucky's municipal sexual orientation and gender identity against Blaine Adamson, who owns Hands-On Originals, a promotional printing company, for declining to request a print-particular design. Blaine serves everyone, but can't print messages that conflict with his conscience. When the government picks winners and losers, we all lose. Sexual orientation and gender identity require employers to try to discern and honor the many different genders with which their employees might identify. For example, New York City recognizes over 30 different options, including bigendered, agendered, and two spirit. Other proponents believe gender is fluid and that it varies-- that it varies in people over time. This creates a burden on employees to try to discern and honor the many different genders with which their employees might identify. Employers face costly lawsuits over gender identity. Businesses are currently free to adopt their own policies, of which many already have. And I just want to say something maybe to your question, Senator Lathrop. I do want to give you an example in how would this play out and it happened actually in a break room here in a company in Lincoln. And a

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couple were sharing about a Weekend to Remember, which is a marriage weekend to enhance what we would say a traditional marriage, and there was a complaint from a employee that that was offensive to them. And that person was written up simply by only sharing that they'd had a great weekend to remember. So with this-- comments that I'd like you to not advance LB120. Thank you.

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

**KAREN BOWLING:** Thank you.

**LATHROP:** That will end our opposition testimony and take us to neutral testimony.

**AMBER PARKER:** My name is Amber, A-m-b-e-r, last name is Parker, P-a-r-k-e-r. I just want to say to everybody in this room, I'm so sorry all your voices can't be heard due to rules that as-- we, the second house, are silenced by. I'm not an attorney, but I live in the United States of America and in the United States of America is the governing law of the land, which is the Constitution of the United States of America. But it seems in our state legislatures across this country, now even in our, our federal government, that there are more and more that want to make our Constitution evolving. A state senator had recently spoke and said something pertaining to the state that-- about the religious institution and I'm sitting here and I was like, you know what? Right now in State Senator Megan Hunt's bill, she's becoming like a religious institution and enforcing it upon this great state of Nebraska. And Amendment I is clear that you can't do that in the Constitution, but because many Americans do not understand the Constitution of the United States of America and because we have Marxists and communists coming in to destroy the bedrock and the very foundation of what families are built upon, marriage between a husband and a wife, then we have these crafty legislation to come in with the, the precedent and the goal to rip apart and to enslave us and make America a plantation of slavery, to say if you don't worship our religion of government, you're our slave and we're going to bring persecution upon you. Hearing the testimony of the gentleman that came up in a delivering service was kind of hard to hear back there. My heart went out because one of the things that LB120 would do is it's creating a government church. By an unspoken power, hiding of forcing state religion. There are other countries who have done this and it

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didn't end up good, millions of people died. And right now what we're seeing in the state with Mr. Klein being-- or the clients who I believe were bakers, they're, they were fined over \$200,000. And it's this type of legislation that brings persecution and, and then encourages bodily harm against those who are not going to abide by it. But it is, it's recruiting through a state-made religion. So I want to address the bill, not the, not the people and the voices and the feelings and the emotions, because legislation is built upon thinking of what it's going to do at the present time in the middle and also in the future. And those are-- these are the building blocks that we have to look at. So nobody is being discriminated. But what this does is if somebody is not on time to work 20 to-- they're tardy a lot or they're using print materials for something that the company doesn't believe in, that they now could go LB120 and say it was discrimination and bring persecution upon a business, false accusation.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. This is not necessarily a question for you, it's just a comment. Religion was used to enslave my ancestors and if, you know, some of our elected officials had decided not to change that view, I wouldn't be a state senator and I would probably be a slave. So I think we--

**AMBER PARKER:** Not my religion, just to clarify on record.

**McKINNEY:** The world evolves and I think we have to change. And to just say no to something because it is against my beliefs, but you're disregarding the negative effects that it has on millions of people is a issue. But thank you.

**AMBER PARKER:** Well, it's infringing upon constitutional liberties and the governing law of the land, LB120. And any senator bring type that legislation, it should be concerning for all of us. And I do apologize for those who of your family were slaves. You know, Galatians 5:1 says, You have been set free for freedom, therefore no longer allow yourself to be burdened again by a yoke of slavery. And I want to say to you, I don't see color, I see beauty. And God is way outside the box. This has nothing to do with racism. This has to do with bringing persecution and in a crafty way of creating legislation to uproot the Constitution of the United States of America through sexual

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orientation and gender identity laws. Furthermore, pedophiles want to  
be recognized under sexual orientation as well so.

**LATHROP:** OK, I have to say this. There is a place for neutral  
testimony. You are excused.

**AMBER PARKER:** Senator Lathrop, you are infringing upon the freedom of  
speech. And it is across state senators that have said this. So, sir,  
you cannot bully me. And this is what I'm talking about.

**LATHROP:** I'm not.

**AMBER PARKER:** All those people deserve to be heard and you're cutting  
them off. Thank you.

**LATHROP:** There is a place for neutral testimony and it is not--

**AMBER PARKER:** You're not going to bully me, Senator. Thank you.

**LATHROP:** It is not to be an opponent or a proponent. And believe me,  
we have to observe this because I have-- this committee has observed  
from the time we started hearings this year, not-- many of the rules  
aren't mine. This is a rule of this committee because of the volume of  
bills we have and the limited time we have to hear them in. I would  
appreciate everyone respecting this and not using neutral testimony to  
come up and express opponent points of view. Those who did not have an  
opportunity to testify as an opponent on this bill, I would encourage  
opponents on the next bill to afford them an opportunity to speak  
instead of having the same people jump up and not allowing those who  
wanted to speak in on this bill an opportunity. OK? I'm not trying to  
be-- I'm not trying to shut people down or not hear what people have  
to say. But in order to get through the bills that we have to hear and  
to do it in a fair and orderly process, I have to, I have to enforce  
the rules that we have. OK? I'm not trying to shut people down. I'm  
happy to hear you. And we can talk in the hall if you want to talk. Or  
if you didn't get a chance to visit, you can email senators. We have  
four ways to communicate with us and we're all happy to communicate  
with people who have something to say about the issues today. Is there  
any other neutral testimony? Seeing none, Senator Hunt, you may--

\_\_\_\_\_ : [INAUDIBLE]

**LATHROP:** Is it neutral testimony?

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\_\_\_\_\_ : No.

**LATHROP:** Seriously, this I don't want-- I do not want that neutral testimony to be abused today or any day. Yes, ma'am.

**GWEN EASTER:** So if there is no neutral, if there is no neutral people here, then why can't others go ahead and--

**LATHROP:** It's neutral-- we normally we don't have neutral testimony. That's when somebody comes in and talks about technical difficulties with the bill, typically. Not they're not for it, they're not against it. They are talking about it, technical difficulties with the bill. OK? Senator Hunt, you may approach to close. I will, for the record, indicate that we have 82 position letters, 20 of those are proponents, 54 are in opposition. We have the following written testimony offered this morning pursuant to the rules, proponent testimony from Robert Sanford, Nebraska Coalition to End Sexual and Domestic Violence. Also a proponent, Anna Eickholt with the YWCA. Abbi Swatsworth, OutNebraska is a proponent; Meg Mikolajczyk with Planned Parenthood of North Central States is a proponent; Kelsey Waldron, Women's Fund of Omaha, is a proponent; Jenni Benson is a proponent with the NSEA; Ellie Martinez, OutNebraska is a proponent; Craig Beck, OpenSky Policy Institute is a proponent; and Justin Brady is an opponent [SIC] representing the Nebraska Realtors Association. Senator Hunt, you may close.

**HUNT:** Thank you, Mr. Chairman, and thanks to the committee members. Thank you to all the testifiers who came here to engage today, whether, you know, in opposition or as a proponent. I just think it's really great when everybody comes and engages with their government. And I know that this committee gets more than a lot of other committees of that engagement, so I appreciate all of you. This bill does not infringe on anybody's free speech. It doesn't infringe on anybody's religious liberty. The court got it right in Bostock. Religious liberty can coexist with fairness and nondiscrimination. And religious liberty has never given a broad license to discriminate, whether that's on the basis of national origin or race or ability or gender or sexual orientation or gender identity. This bill also doesn't prevent people from being fired for being bad at their jobs. You know, it just says that if you are fired for being LGBTQ, if you're fired because you've got a photo of your husband or your wife on your desk and it's a same-sex spouse, that you can take that

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employer to court. And the court will, will, you know, go through its process and you'll be able to try and prove your case, just as you would in any other type of discrimination case. I would encourage you to reach out again to Ms. Marna Munn from the EEOC if you have any questions about how that would play out on the government side. It's certainly different from what it would be in a private corporation or something, when we're talking about how government would actually handle a problem like that. I appreciated so much, Mr. Ralph Kellogg coming to testify and talk about his experience in discrimination. And when he said that LGBTQ people understand how to play the pronoun game, that completely spoke to me. I've completely been in that position where you have to say "they" instead of "she" in my case, or you have to say, you know, "my friend and I", when you mean "my girlfriend." And that's a really painful thing because the reason you're censoring yourself and you're speaking that way, and basically lying and misrepresenting who you are, is because you don't know what the other person is going to do. You don't know if the other person is going to say, you know, use a gay slur at you, which has happened to me. You don't know if they're going to exclude you from events in the future or talk behind your back or worse, or fire you, or worse-- or commit violence against you. I mean, we have reason to fear these things. I also, you know, Senator Geist, my friend, you know, you asked about does Nebraska feel unwelcoming and do you feel unwelcome in Nebraska? And it is unwelcoming and it's hurtful when you use language like "choices you have made" to refer to sexual identity or to refer to being LGBTQ, that that's a choice that you've made. It's OK if you think that if anybody thinks that. But it's an unwelcoming thing to say to somebody. And even in my own workplace here, I find it unwelcoming when I read in the newspaper that it was reported that a colleague of mine said that I'm, quote, trans, and I talk about it most every day. And then when I asked that colleague about it, they said, I don't even know what you are. And I find it unwelcoming when we vote on legislation on the floor, like Senator Cavanaugh's bill from 2019 to change our marriage certificates from bride and groom to spouse and spouse. The least controversial thing we could do, even straight people have a spouse. This isn't even a gay thing we're trying to do. And that bill gets filibustered. We pass it, it gets vetoed, and we don't override the veto. And I have to listen to colleagues stand up and talk about, oh, they're going to be marrying their chair, they're going to be marrying their toaster. If we don't specify that it's a bride and groom, you know, who knows what their

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genitals are going to be doing in the bedroom. Like just listen to how prurient it is for people to talk about LGBTQ rights in Nebraska, and me being an LGBTQ colleague of you people, listening to them talk about it like I'm not even in the room. That is unwelcoming. I had colleagues here ask me if I've ever even been with a woman and what it was like. Does that feel welcoming? Do straight people get asked stuff like that? I have a colleague here who found out I was dating a man and he said, thank God, because I thought you were a little weird about that stuff. What the hell does that mean? You know? Like and, and I'm a state senator, that is my experience as a state legislator in the capital of our state. And so for people to say this isn't a big deal or it doesn't happen, I mean, I'm obviously fine. I, I get through it, life goes on. I do fine. But like, I have experiences that other people do not have to deal with. And then because they don't deal with it, they get to say, well, I don't know that it happens or I don't really think it's a big deal or, well, it's my religious liberty. And so, you know, but when does other people's dignity supersede your right to discriminate? And what religion are you that tells you that you are actually being the good guy by saying you should be able to lose your job because you've got a same-sex spouse? I hope that if your religion is right and you end up at the pearly gates and St. Peter or whatever asks you, did you do your best on earth? And you say, yes, I did, I obeyed the teachings of Jesus, whatever, that that doesn't come back to you. Because that is not Christian and that is not Jesus-like and that is not compassionate. And I'm not even a religious person and I shouldn't have to tell people that just so that I can mind my business and do my job and live my life and be here on behalf of other people in Nebraska who want to do the same thing. I am really excited that we have the support of Mayor Stothert and the city of Omaha for this bill. I'm grateful to Mr. John Carlton [PHONETIC] Kovach, who's here in the, in the room. And he submitted a letter conveying the support of the mayor. We have the support of Mayor Leirion Baird here in Lincoln, we have the support of the State Chamber of Commerce, which was a long time coming. And I will certainly work this bill. And there are so many stories of discrimination and people wanting to leave the state and people not seeing this as a place where they can build a future because we do not have this law. Because we do not have this law. It costs zero dollars and zero cents for any of you, for any testifier to come up here and say, well, I believe that nobody should ever experience discrimination. You don't even know me, you don't know my

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life. And if you knew me, you knew that I wasn't racist. You would know that I'm not homophobic, you would know that I'm not misogynistic. I have a wife, I have a daughter. I have black friends, I have gay friends. It costs nothing to say that. It's the least risky thing you can do is come up here and say that. What I want us to do is push the little green button on the floor of the Legislature and pass legislation so that we can actually change policy and do something about outcomes for these people and not just come up here and say, well, that's not what I feel in my heart. Prove it. Push your green button. Thank you.

**LATHROP:** Senator DeBoer.

**DeBOER:** Senator Hunt, I apparently don't know everything that's in this bill, so I, I'm wondering, we heard a lot today about using specific pronouns. Can you speak to how that's addressed in your bill and if your bill would require employers to use specific pronouns without facing reper-- like, can you speak to that issue, please?

**HUNT:** Reeducation? No, nothing in my bill would require or mandate uses of specific pronouns.

**DeBOER:** OK.

**HUNT:** No.

**DeBOER:** All right, thanks.

**LATHROP:** I think that's it.

**HUNT:** Thank you.

**LATHROP:** That will close our hearing on LB120 and bring us to LB230, also a bill of Senator Hunt's. I think we have some people moving around, so we'll let them move in and out of the hearing room before you begin. OK, Senator Hunt, you may open on LB230.

**HUNT:** Thank you, Chairman Lathrop and members of the committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8 in midtown Omaha. This is LB230. This is a bill very much in the same spirit of the last bill I introduced, and many of the arguments around it will be similar, though it applies to different arenas. Whereas LB120, the bill we just spoke about, applies to employment. LB230

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takes it further and it applies to discrimination in housing and public spaces. LB230 would update our laws regarding public accommodations and the Nebraska Fair Housing Act to ensure that Nebraskans, regardless of race, ethnicity, national origin, ancestry, religion or sex and now sexual orientation and gender identity, have a chance to fully participate in our communities here in Nebraska. To be clear, what we mean by public accommodations for Nebraska Revised Statute 20-133 are, quote, All places of businesses offering or holding out to the general public goods, services, privileges, facilities, advantages and accommodations for the peace, comfort, health, welfare and safety of the general public and such public places providing food, shelter, recreation and amusement, unquote. That would include, but not be limited to, hotels, motels, restaurants, anywhere with food service, gas stations, theaters and any publicly owned facility. Under LB230, it would be illegal to refuse service or otherwise discriminate against anyone in these places on the basis of their gender identity or sexual orientation, just as we currently protect other identity aspects like race or religion. With regard to the housing applications of this bill, the Nebraska Fair Housing Act, which is 20-301 to 344, generally applies to residential property owners, property managers, realtors and multiple listing services. However, exemptions do exist for dwellings owned or operated by religious organizations and bona fide private clubs for noncommercial purposes, housing for older people and owner-occupied private homes in which no more than three sleeping rooms are rented. So there are some limitations that there would be in this bill that are already in statute. Right now, there are hardworking Nebraskans who are gay and transgender that are unfairly treated by employers, evicted from their housing and turned away from a business simply because of their gender identity or sexual orientation. One in five LGBTQ-plus individuals report not using at least one type of public accommodation in the last year due to fear that they would be mistreated or abused as a trans person. A third of trans people report experiencing at least one type of mistreatment in a place of public accommodation, and a third also report being denied equal treatment or service, being verbally harassed or physically attacked in retail stores, hotels, restaurants or theaters. These kinds of discrimination are disproportionately directed toward trans people and LGBTQ+ people that have disabilities. This discrimination not only affects LGBTQ individuals, but their families as well. Nebraska is home to an estimated 67,000 of these residents. And of

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those over the age of 25, 32 percent are raising children, including me right here. No parent or child should be homeless just because of who they are or who their parents are. Gay and transgender people and their families deserve clear, consistent protections against discrimination under Nebraska law. There are protections that are present for LGBTQ individuals in 22 other states, including our regional neighbors of Iowa, Colorado, Illinois, Minnesota, Utah and Wisconsin. In states with LGBTQ anti-discrimination laws, we see a significant decrease in bullying, cyberbullying and school performance-- an increase in school performance. Employment, housing and public accommodation laws are associated with a 30 percent decrease in bullying when compared to students in states without anti-discrimination laws. Additionally, they have seen a decrease of 25 to 40 percent of cyberbullying instances. LGBTQ students have reported a grade point average drop of 0.25 points, a difference that is narrowed by 33 percent in states with nondiscrimination laws. Marna Munn from the NEOC is here to testify today, I believe, on this bill, and I can let her speak to some things in more detail. But for the same reason described in my testimony on the last bill, it's important for the commission to have these gender identity and sexual orientation bases be clearly and explicitly included in the Nebraska Fair Housing Act and in our public accommodation laws. As I mentioned in my last bill opening, I recently conducted an informal survey of Nebraskans and they overwhelmingly stated that young people want to live in places where they are accepted and their culture reflects their values. Seventy-three percent of Nebraskans support policies to prevent LGBTQ-plus discrimination in housing and public accommodations. This support not only keeps residents here, but encourages visitors and LGBTQ organizations to come and expand into the community, thus helping our economy. But of course, regardless of your position on this bill, you already know this. Providing a commercial service doesn't mean that a business owner endorses or agrees with everything their customers believe, it simply means that the business owners are providing goods or services to the public and that they must be open on the same terms to everyone. No one should be denied the ability to get a sandwich, a haircut or a vehicle because of their sexual orientation or gender identity. Please vote yes on this bill to protect our residents from eviction, rental application denial or denial from a business or public facility simply for being gay or transgender. Thank you.

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**LATHROP:** Thank you, Senator Hunt. Any questions for the senator? I see none.

**HUNT:** Thank you.

**LATHROP:** I'm confident you will be around.

**HUNT:** I will.

**LATHROP:** OK, good.

**HUNT:** This is my favorite place.

**LATHROP:** I know. This afternoon it is for sure. Thank you. We will take proponent testimony. Anyone here to testify in support of the bill?

**JUDY KING:** Make sure I've got the right bill here. This is LB230, right?

**LATHROP:** This is LB230. You're in the right place. Welcome.

**JUDY KING:** Thank you. Thank you, Senator, for stopping me on that last one.

**LATHROP:** Let's start with your name.

**JUDY KING:** OK, it's Judy King, J-u-d-y K-i-n-g, and I am a proponent of LB230. And would you please make this part of the record? I wasn't quite sure what to write down for this, so I thought, well, I'll look up the testimony from the Catholic Conference for LB229 on February 24, because I wanted to see how they thought about gender identity so I could counter their ideas. But to my surprise, this is what they said. The Catholic faith, faith recognizes the supreme dignity of every person as it is made in the image and the like, likeness of God. The only appropriate response to this reality is charity. For this reason, the Catholic faith also recognizes that no one, including those who are experiencing-- sorry, I can't breathe --experiencing same-sex attraction or questions about their own gender identity should be subject to violence or unjust discrimination. Everyone should be treated with the respect and dignity. And any act that violates charity and justice, including criminal acts, should be categorically condemned. And I was surprised. They could have left it

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right there. I mean, I couldn't have said it any better, but they could have left it right there. And then they continued to contradict the previous comment by saying LB229 seeks to import the definition of gender identity that undermines the biological and given reality of sexual difference. It is one thing to be understanding of human weakness and the complexities of life, and another to accept ideologies that attempt to sunder what inseparable aspects of reality. The aspect of reality is not mere theological rumination for people of faith, but a basic building block of any flourishing society. And any policy that undermines it should be assiduously resisted. That's when they contract-- they contradicted it. And to me, the words gender identity are a description of a human being. The bill will stop the discrimin-- against a human, but the Catholic Church-- but to the Catholic Church, it means much more. It means the ruination of a flourishing society that should be assiduous-- however you say it --resisted. Actually, my God expressed to me that in a flourishing society, people need to educate themselves. And the group of pious hypocrites that harbor pedophiles should not be our moral compass and should not have any say in the laws that are heard in Nebraska Legislature or anywhere. My God has also told me that there are several ways that you can get to heaven, and it's not necessarily by the Catholic ideology. But I do appreciate their first, their first comment on that. And that's all I have.

**LATHROP:** OK, any questions from Ms. King? I see none. Thank you--

**JUDY KING:** Thanks.

**LATHROP:** --for your testimony. Anyone else here to speak as a proponent? Anyone else here as a proponent? Welcome back.

**SARA RIPS:** Thank you. It's been a long time. My name is Sara Rips, S-a-r-a, last name R-i-p-s. I just want to thank Chairman Lathrop and the members of the committee, as well as Senator Hunt for bringing this bill. I'm here today in support of LB230, which updates and harmonizes our existing civil rights laws to align with recent Supreme Court decisions and the NCO's application thereof. It is common practice in countless contexts that when federal law changes due to legislation or court decision, that state and local governments then update and harmonize their laws. This happens frequently and is honestly just a good governance practice. So this Legislature handles that regularly: tax. I mean, not this committee, but this Legislature.

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Tax, agriculture, transportation, public benefits. It is important that we send a clear message that Nebraska's motto of "Equality before the law" applies to every Nebraskan. It is important to send a clear message that Nebraska is open for business. It is important to send a message that Nebraska is welcoming. I'm not listing mere platitudes. These are literally the factors for things like brain drain business and academic retention and recruitment, things for metrics on things like Zillow and overall economic development rankings. Senator Hunt's bill aligns with the beliefs of the majority of Nebraskans. In polling conducted by UNL in 2018, Nebraskans across the state, political spectrum and religiosity support LGBTQ nondiscrimination. Statewide, 75 percent of Nebraskans support having protections for gay, lesbian, bisexual and transgender people in jobs, public accommodations and housing. A 2019 poll from an independent organization, PRRI, found that 73 percent of Nebraskans favored these laws. It is important to update our civil rights laws for legal, policy and practical reasons. Most Nebraskans prefer filing these types of cases in venues that are closer to home in state or local courts. It also saves time and money. Rather than having to deal with this in the form of Supreme Court lawsuits, you can amend the law now and save taxpayers' money. Despite all of the progress that LGBT people have faced in the, you know, and have experienced in the last 10 years, we have a long way to go. And as an LGBTQ Nebraskan, I know personally we have a long way to go. But I know we can get there and I am absolutely excited for the committee to help us get there. Thank you.

**LATHROP:** Very well. Thank you for your testimony.

**SARA RIPS:** Thank you.

**LATHROP:** Good afternoon, welcome.

**KAYLA MEYER:** Good afternoon, Chairman and senators. Thank you for having me today. My name is Kayla Meyer, K-a-y-l-a M-e-y-e-r, and I'm currently the coordinator for the Lincoln Young Professionals Group. You heard from Paige earlier today on LB120. And I'm here to support LB230 on behalf of YPG. As you heard from her, we are the largest YP group in the state. We are one of the top 10 largest in the country, with over 2,000 members here in Lincoln and Lancaster County. Lincoln YPG Leadership Council supports this issue unanimously time and time again. As Paige said earlier, we have been at the forefront of this issue for over seven years. We firmly believe that all people should

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be treated fairly and equally. Discrimination is already against the law when it comes to factors as race, color, religion, sex, national origin. We need your help to, excuse me, even that playing field and protect our fellow LGBTQ Nebraskans. Just yesterday, the United States House of Representatives passed the Equality Act, which would expand protections for LGBTQ people by prohibiting discrimination based on gender identity and sexual orientation. President Biden said, Full equality has been denied to LGBTQ+ Americans and their families for far too long. This can clearly be said for the LGBTQ community in Nebraska as well. Whether the Equality Act will make it into law is yet to be determined. But as a state, we have the opportunity to step up and act now to ensure that these protections are provided for our citizens. It is not just the LGBTQ community who is attuned to this issue. Straight Gen Z and millennial employees who will soon make up the majority of the workplace also care deeply about this inclusion and are more likely to advocate for it than previous generations. Our society is becoming more diverse and steadily becoming more inclusive and more accepting. This is a positive development and a strength that our state should cultivate and encourage, not disregard. Attraction and retainment of young talent is crucial to Nebraska's economic future. When we look at recruitment, LGBTQ individuals make up about 5 percent of this workforce. As I mentioned, that's not the community-- that is not just the community that's paying attention to this issue. Allies, friends, families, those that want to live in a welcoming environment are paying attention too. You can go to Zillow right now and scroll down and find out that we are not a welcoming community in two clicks. People are paying attention to that. And we need to LB230 to make sure that Nebraska remains attractive and competitive.

**LATHROP:** Very good. Thank you for your testimony. I do not see any questions at this point, but thanks for being here.

**KAYLA MEYER:** Thank you.

**\*JUSTIN BRADY:** Chairman Lathrop and members of the Judiciary Committee, my name is Justin Brady and I am testifying today on behalf of the Nebraska Realtors Association in support of LB230. Since 1917, the Nebraska Realtors Association has prided itself as being the voice of Real Estate in Nebraska. The Nebraska Realtors Association has nearly 5,000 members that take pride in the communities in which they live, work, and serve. The Nebraska Realtors Association works to support legislation that protects property rights and facilitates home

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ownership. Realtors also take pride in the fact that they have continually been a leader of organizations that have policies to prevent discrimination. Under the National Association of Realtors Code of Ethics, "Realtors shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. Realtors shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity." Further, "Realtors, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity." LB230 would expand current law by prohibiting discrimination on the basis of sexual orientation or gender identity in public accommodations and under the Nebraska Fair Housing Act. The Realtors believe that this is a positive addition to Nebraska law that will bring other businesses in line with what Realtors already practice. We commend Senator Hunt for her dedication to this subject and hope that the Committee will see fit to advance LB230 to the full Legislature for further debate.

**\*KELSEY WALDRON:** Chairman Lathrop and members of the Judiciary Committee, my name is Kelsey Waldron and I am the Policy and Research Associate at the Women's Fund of Omaha. The Women's Fund testifies in strong support of LB230, to prohibit discrimination in public spaces and housing based on sexual orientation and gender identity. The Women's Fund seeks to build a community and a state free from discrimination, where all Nebraskans have the opportunity to obtain safe housing. Nearly 1 in 4 transgender individuals report experiencing housing discrimination in the last year, such as eviction or being denied a rental application. Concurrently, transgender individuals experience significantly higher rates of housing insecurity, with 1 in 3 transgender individuals having experienced homelessness at some point in their lives. Of these individuals, 70 percent who stayed in a shelter reported being mistreated because of their gender identity. Tenants also face significant discrimination for sexual orientation, as heterosexual couples receive favorable treatment in the rental housing market as compared to same-sex couples by nearly 16 percent. 22 states and the District of Columbia have explicitly included gender identity and sexual orientation protections

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under housing nondiscrimination law. Following the Supreme Court ruling that discrimination of sexual orientation and gender identity is covered under Title VII of the Civil Rights Act of 1964/i the Department of Housing and Urban Development (HUD) has issued a new rule that gender identity and sexual orientation likewise fall under protections of the Fair Housing Act. Our laws must reflect this commitment to safe housing and equality before the law. We recognize sexual orientation and gender identity discrimination has been pervasive in the housing market, and LGBTQ Nebraskans remain particularly vulnerable to such housing inequity. Our laws must affirm and reinforce these federal decisions, ensure all Nebraskans are able to obtain safe and equitable housing. Equitable housing is also a matter of investing in our community and workforce. Nebraska employers have made clear that their primary challenge is meeting their workforce needs. By not adopting these protections from housing discrimination explicitly into our statute, our state is sending a message - loud and clear - to young adults about to enter the workforce and to existing workers and their families that they are not welcome here. By passing LB230 and explicitly affirming housing and public space nondiscrimination based upon who you love or what reproductive organs you were born with, Nebraska will take a significant step towards the realization of our state's motto of "equality before the law." The Women's Fund supports safety and freedom from discrimination for all Nebraskans - straight, cisgender and LGBT individuals. The Women's Fund respectfully urges the committee's support of LB230 and advancement to General File.

**\*ABBI SWATSWORTH:** Thank you Senator Lathrop and Senators of the Judiciary Committee for the opportunity to provide testimony. My name is Abbi Swatsworth. I am the Executive Director of OutNebraska - an organization working to celebrate and empower LGBTQ+ Nebraskans. OutNebraska stands in support of LB230. Protecting people from discrimination is simply about treating others as we want to be treated. LGTBQ Nebraskans want to be treated equally in housing and public spaces. Everyone should have a fair chance to provide a home for their families and to go about their daily lives without fear of harassment or discrimination. Most Nebraska housing providers and businesses want to do the right thing, but there will always be a few people who fail to treat LGBTQ+ people fairly. For those times when good judgment breaks down, we need laws so that all people, including those who are gay or transgender, have equal access to housing and

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public spaces under state statute. In June 2020, the Supreme Court ruled in *Bostock v. Clayton County* that Title 7 of the Civil Rights Act prohibits employment discrimination on the basis of sexual orientation and gender identity because they are types of sex discrimination. While this landmark ruling is a crucial step forward in addressing discrimination against LGBTQ people, updating the law to include housing and public spaces is still important. Discrimination threatens not only access to housing but the stability of communities. Members of the LGBTQ community are more likely to become homeless, and once homeless, more likely to endure discrimination and harassment that extends their homelessness. In a survey of transgender Americans, 1 in 5 report having been homeless because of their gender identity. Opponents may try to argue that this bill infringes on women's rights by allowing transgender people to use facilities that match who they are. This bill ensures that LGBTQ people are protected from discrimination in their daily lives. That includes public places like movie theaters, restaurants, parks, public transportation, and coffee shops - nothing more. It's already expressly illegal under federal law to engage in criminal activity in a public space, and LB230 doesn't change that. Opponents may try to argue that this bill will result in numerous and frivolous lawsuits. Laws permitting those who have been harmed by wrongful discrimination to sue employers or businesses for damages have been on the books for many years for all kinds of illegal discrimination, including race discrimination. In states and municipalities where comprehensive LGBTQ nondiscrimination is the law, there is no evidence to support the frivolous lawsuit argument. The same system for investigating discrimination remains in place and experience shows the system works to dismiss frivolous cases. No one will ever be sued for treating LGBTQ people with dignity and respect. Additionally, this update clearly and without question brings Nebraska in alignment with our state motto, Equality Before the Law. It uplifts our reputation to say that Nebraska welcomes and values the diversity of the people who live, work, and play here. Simply put, no one should be refused access to housing or public services because of who they are or who they love. We respectfully request that you advance LB230 to general file.

**\*ANNA EICKHOLT:** Good afternoon Senator Lathrop, members of the Judiciary Committee. My name is Anna Eickholt, with the YWCA Lincoln. The mission of the YWCA Lincoln is the elimination of racism, the empowerment of women and the promotion of peace, justice, freedom and

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dignity for all. We have been engaged in this movement for over 134 years in the state of Nebraska. Nationally the YWCA boasts more than 200 local associations across the United States. Our programs serve over 2 million individuals in the U.S., and 25 million worldwide. We are in strong support of LB230, a bill that prohibits discrimination on the basis of sexual orientation or gender identity both in public accommodations and under the Nebraska Fair Housing Act. I want to express my gratitude to Senator Megan Hunt for introducing this important bill. I also want to thank the members of the Judiciary Committee for their time and their consideration. Even though our official state motto has changed, in Nebraska we still like to think of ourselves as the state that offers, "The Good Life." For many Nebraskans this is true. Among other positive attributes, we have housing nondiscrimination laws prohibiting individuals in certain protected classes from being discriminated against in public accommodations and under the Nebraska Fair Housing Act. Unfortunately though, for some, "The Good Life" is not a reality. On the basis of their sexual orientation or gender identity, LGBTQ+ Nebraskans or LGBTQ+ visitors to our state are not offered the protection of housing nondiscrimination laws that would prohibit them from being unfairly evicted, denied housing or refused the ability to rent or buy housing. Interestingly, 22 other states and the District of Columbia have seen fit to pass housing nondiscrimination laws protecting LGBTQ people. Furthermore, an additional 6 states explicitly interpret existing prohibition on sex discrimination to include sexual orientation and/or gender identity. According to the Center for American Progress (CAP), "28 percent of LGBTQ people and 45 percent of Black LGBTQ people reported that discrimination negatively affected, either moderately or significantly, their ability to rent or buy a home in the past year." The same report, "Improving the Lives and Rights of LGBTQ People in America", points out that the lives of LGBTQ youth and LGBTQ older adults are even more adversely impacted by the absence of housing nondiscrimination laws. Senators, all Nebraskans deserve to be treated equally. All Nebraskans deserve the right to live without the fear of being evicted unfairly, denied housing or refused the opportunity to rent or buy housing. I respectfully request that you vote to advance LB230 to General File.

**\*ROBERT SANFORD:** Chairman Lathrop and Members of the Judiciary Committee: My name is Robert Sanford and I am the Legal Director for the Nebraska Coalition to End Sexual and Domestic Violence. The

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Nebraska Coalition stands in support of LB230 and I ask that this testimony be made a part of the Committee statement. The Nebraska Coalition recognizes that societal power and privilege contributes to violence within our communities. We believe that we must strive, as an organization and as a community, to create a world where everyone is treated fairly and respectfully to eliminate that violence from existence. This causes us to evaluate the impact our laws have on individuals within our state and in doing so we have to assess who is oppressed within our midst. Anti-discrimination bills show that we want each person in our society to have the same level of respect and dignity as the next person. The Nebraska Coalition supports LB230 and we ask that you advance this bill out of committee.

**LATHROP:** Other proponent testimony? Anyone else here to speak in favor of the bill? OK, we're going to take opponent testimony. And before it anybody jumps up, I would like to have those who did not have an opportunity to speak on the last bill and oppose this bill to come forward first, so that we have a time, an opportunity to share the opportunity. If that makes sense. Welcome back.

**GWEN EASTER:** Hello. My name is Gwen Easter, G-w-e-n E-a-s-t-e-r. I did not prepare to speak at these two hearings, but sitting here listening to all this going on, first of all, I want to say that I'm a person that I don't believe that people should be discriminated on the job or housing. I offer a housing program service in north Omaha and I've done that for 20 years, helping families find homes, advocating for them to get utilities assistance and things like that. So I don't believe that people should be discriminated. If they are able to do their jobs, then that's what they should be, you know, hired for, to do their jobs. Not if they are gay or straight or married or, or single. And, you know, some of the things that was said here today, I feel like it is being put out there like, you know, people who have a different opinion about the lesbian, gay, LBQ or gender, that we are homophobic, that we are mean, nasty. I'm a Christian and I'm not, I'm not ashamed and will never be ashamed to say that. I love God and I love people. And what God told me to do is to love people, respect people. You know, we have to love people, you know? So loving someone doesn't mean that you agree with everything. OK? So I'm not a gay hater, you know? I don't hate gays, I got gay people in my family. But that does not mean that I have to agree with everything. Now, am I going to discriminate against somebody? No, I'm not. But you all don't have a right. You know, this gay and lesbian, this whole thing is

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being pushed up on people that don't, that may not necessarily agree. And that's OK. They don't have to agree. We don't have to agree with somebody else's choice. And yes, it is to me a choice. It's a choice because I see other people who I know who used to be and is not now, you know? And yes, it angers me, because when I see somebody just sit up here and say, you know, because I love Jesus, that I hate somebody or I'm or, or, you know, I discriminate against them because I don't agree. I have a right to speak how I want. And I tell you this, you know, all this the, they language and all this stuff, it is a violation to other people who don't agree. You know, you're pushing this, this in our schools. They're pushing this on, on TV. They're doing all of this. Oh, but if other people speak out to say that they're against something or don't agree, we're hating people. No, I don't hate nobody. But I refuse to allow people to push what their lifestyle, their choices are upon my lifestyle. You don't have to agree with me, you know what I mean? I'm not going to hate you. I'm not going to hate you. I love people. And I don't care what people think or say. You know, you still do not have a right to push your lifestyle upon all, all other people. And no matter that is being done in our schools, everywhere we turn around. You know, everybody don't agree, and that should be OK. I still say don't be firing people if they are living that lifestyle. That is their choice, though. That is their choice, and nobody should do that. But don't infringe upon my, my right to think how I feel and how God give, gave, gave it to me. He gave me to love people. I don't have to agree with your lifestyle. And that's all I have to say.

**LATHROP:** OK, I don't see any questions. Thank you, Ms. Easter. Anyone else here to testify as an opponent?

**KAREN BOWLING:** Long afternoon.

**LATHROP:** Yes, it is.

**KAREN BOWLING:** Thank you for the opportunity to come before you, Senator Lathrop and members of the committee once again. I'm Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, and I serve as the executive director at Nebraska Family and testify, testify on behalf of them today. Across the country, government officials and others are using state and local sexual orientation and gender identity as protected classifications to threaten Americans' constitutionally protected freedoms and infringe upon free speech conscience. And what I really

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want to focus on now is bodily, bodily privacy. Who are the victims of SOGI laws that violate bodily privacy and safety in a public accommodations? For example, the Downtown Hope Center, a women's homeless shelter that provides a safe place for women who have suffered great physical abuse and domestic violence, was investigated by the city officials and actually taken to the court of law in Anchorage, Alaska, who claimed that the city's SOGI public accommodations and housing required the shelter to house biological men alongside women in overnight sleeping facilities. Pascha Thomas, a five-year old daughter, was sexually assaulted in her school restroom by a male classmate who identified his gender fluid and allowed to use the female restroom under the Decatur, Georgia, school district's SOGI policy. During her junior year at Boyertown Area Senior High School in Pennsylvania, Alexis Lightcap was both scared and embarrassed when she walked into the girl's restroom at school and found a boy inside that proceeded to follow her into the locker room. Recently, I received a call from a Lincoln businesswoman who experienced the tragedy of sexual molestation by a family member growing up. As she travels to conduct business, she communicated to me in several airports where SOGI public accommodations exist, she is triggered when a biological male enters a woman's bathroom. She doesn't look at this as a political, she doesn't look at it as a hateful, but she has to make a decision. Is this safe for her because of her personal experience? In order to continue to make a living, she has reengaged in trauma-informed counseling to develop strategies so she can continue to do her job and make a living. Government officials have also used SOGI laws to force churches and faith-based organizations to violate their sincerely held beliefs. Iowa and Massachusetts officials interpreted their statewide SOGIs to apply to churches, meaning they could be prosecuted for operating consistently with their churches' faith statements and ensure visitors use sex-specific restrooms and changing areas. These are real-world implications. Bodily privacy and dignity must be protected. We ask that the Judiciary Committee not advance LB230 to General File. Thank you for your time.

**LATHROP:** OK, I don't see any questions, Ms. Bowling, but thanks for being here--

**KAREN BOWLING:** Thank you, Senator.

**LATHROP:** --as always. Next testifier.

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**MATT SHARP:** Mr. Chairman, thank you. My name is Matt Sharp, M-a-t-t S-h-a-r-p, I'm senior counsel with Alliance Defending Freedom. Our firm has had the pleasure to represent incredibly talented artists that have experienced firsthand the consequences of law like LB230. We represent Barronelle Stutzman, she's the florist in Washington state, had a longtime gay customer. She knew he was gay, loved him, loved the creative challenges that they would come up with when she was doing floral arrangements for him, considered him a close friend. And one day after years of service, he asked her to do the floral arrangements for his same-sex ceremony. And she politely declined, explained why that would violate her faith. Next thing you know, Barronelle was dragged into court, sued both personally and corporately, such that everything she owns is now on the line. She's been battling that case for years and gone up to the Supreme Court, back down to the state Supreme Court and is now waiting at the Supreme Court. We also represent Jack Phillips, who Karen Bowling had mentioned earlier and who you all had the opportunity to meet four years ago. He's the Colorado cake artist that similarly serves everyone but declined to create a same-sex wedding cake and was sued. And even after winning at the Supreme Court, has now been sued twice again and is still in litigation over one of these laws. With both Jack and Barronelle, they gladly serve everyone. And what they object to is the government being able to force them to create messages, expression that violates their beliefs. But that is, again, what laws like LB230 unfortunately do. They enable this ongoing persecution against people like Jack and Barronelle and other creative professionals. And I want to contrast that treatment of Barronelle and Jack with a story from just last year of a Detroit cake artist, her name was April Anderson. She's very talented. She's also a lesbian. And she was asked to create a custom cake for-- with a religious message criticizing same-sex marriage. She declined because she found it objectionable and the customer accused her of religious discrimination. But while Barronelle and Jack have been scorned, April was celebrated by national news outlets. In fact, the ACLU of Michigan stood by her, stating, when you were asked to do a particular message, you might be crossing the line of what could be compelled speech, especially if it's offensive. And I agree. That same principle should apply to Jack and Barronelle and to creative professionals here in Nebraska, that the Constitution doesn't play favorites when it comes to speech. Rather, it protects the freedom of all Americans to express or not express their deepest beliefs, no matter whether others in the community or in the halls of government

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disagree with that expression. Tolerance and respect for good faith differences of opinion are essential in a pluralistic society like ours. They enable us to peacefully coexist with one another. But laws like LB230 will result in kindhearted Nebraskans being dragged into court and punished by the government for peacefully seeking to live and work consistent with their beliefs. Thank you for your time, and be happy to answer any questions.

**LATHROP:** Thank you, Mr. Sharp. Senator McKinney.

**McKINNEY:** Thank you. I do believe you have the right to believe what you want and think what you want and say what you want. But I also believe that you also have to take on the consequences of your beliefs as well. I forgot my question. But I guess my question is-- I forgot my question [INAUDIBLE]. I come back to it with somebody else with my question.

**MATT SHARP:** Thank you, Senator.

**LATHROP:** OK. I don't see any other questions. Thank you, Mr. Sharp.

**MATT SHARP:** Thank you, Mr. Chairman.

**LATHROP:** Next opponent.

**DeBOER:** Welcome, Mr. Venzor.

**TOM VENZOR:** Hi, good afternoon. I don't know if you're Vice, Vice Chair, is that the role you play? So and members of the Judiciary Committee, my name is Tom Venzor, T-o-m V-e-n-z-o-r, I'm the executive director of the Nebraska Catholic Conference. I've got some testimony going around to you, but I'm going to kind of-- I'm not really going to read it word for word. I might talk about a couple of things that are in it, just, just so you know, so you're not trying to follow along necessarily. If you go down to that second to last paragraph, I have a piece in there about LB230, kind of like LB120, it has an application to the local and statewide public accommodations law. And as I raised earlier in that testimony in 2019, a three-judge panel, the Eighth Circuit Court of Appeals, recognized in part of its sort of holding or its rationale that when laws seek to regulate speech itself as a public accommodation, it has gone too far and its interests must give way to the demands of the First Amendment. The point there being is, is in that case in Telescope Media Group v. Lucero, which I think

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is actually also an Alliance Defending Freedom case, in that case, basically what you had was-- I can't remember if it was a local or a statewide, basically public accommodations law. In there you had Telescope Media Group which did sort of videography work, and essentially they were asked to do a same-sex wedding ceremony. They declined to do that. And again, they were, they were brought in, they had a claim brought against them for violation of public accommodations law. And the Eighth Circuit ultimately said they, they sought a preliminary injunction against that. It wasn't dealt with. Then the Eighth Circuit Court of Appeals basically remanded back down to the lower court to say that you need to revisit the preliminary injunction issue based on the fact that this public accommodations law, as applied to the area of speech, raises fundamental First Amendment free speech problems because it's, it's forcing the hand of Telescope Media Group to engage in speech that it does not agree with in terms of basically viewpoint content-based discrimination. So I want to-- that's one angle here of one of the aspects of the implications of a law that deals with public accommodations law. The second thing I wanted to mention, this bill also deals with statewide housing issues. And there I think, I think what's notable is that there's-- we've talked again what's going on in other states. What have we seen? I know that there's another case that has a petition for writ of served at the U.S. Supreme Court, Aloha Bed and Breakfast versus Diane Cervelli, which is in my footnote four. And there you've got a situation of a woman basically running a B&B out of her home and again had a same-sex couple come to her to want to utilize her B&B. She was a Christian who had a particular belief on marriage, that it's between one man and one woman. And basically a discrimination claim was filed against her and the entity that she was, the bed and breakfast that she was basically running. So, again, these laws have an impact on somebody who has a differing belief system on the, on the nature of marriage and human sexuality. And I will get to one point that I think Senator McKinney just raised about, you know, you can hold your view, but there's consequences for that. And I think obviously, you know, I think we would all know that. There's consequences for the beliefs that we have. And this is where I would just, one last thought if I, if I could wrap it up. Thank you. To go back to Justice Anthony Kennedy like I did earlier, where he said in Obergefell v. Hodges case, that those who hold the traditional views on marriage and human sexuality have held these in good faith by reasonable and sincere people here and throughout the world. So the

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question ultimately is, if people hold sincere and reasonable beliefs on marriage and human sexuality, do we basically want to bring down the heavy hand of government when they hold on to that sincerely held religious or moral view? So with that, I'll take any questions. Thanks for the extra second.

**LATHROP:** We do have one from Senator Pansing Brooks.

**TOM VENZOR:** Yeah, thank you.

**LATHROP:** I'll read it to you, Mr. Venzor. When people used to discriminate against Catholics and other religious groups, the religious groups rose up and demanded protections against discrimination, even though people from other religions did not agree with the Catholics and other faiths. When is it OK to use your protections as a sword now that you have the shield of protection against discrimination?

**TOM VENZOR:** Yeah, thank you for that question, Senator Pansing Brooks. So, again, you know, the thing here is we're not talking about engaging in some sort of unjust forms of discrimination. What we're talking about is the problems with these proposals, LB120, LB230, is that, that they're not treating those who hold a differing view on marriage and human sexuality-- again, to go back to Anthony Kennedy, there are people who in good faith, by reason-- there are people who have held these in good faith and they're reasonable and sincere people here and throughout the world. OK? That's what he said in Obergefell v. Hodges, when he crafted the right to same-sex marriage. The idea there is in this law is, how are we going to treat those people who have differing reasonable views on marriage and human sexuality? Are we basically going to go after them with the force of governmental power or are we going to recognize that they have differing and competing views on this issue? And that's kind of the situation we're going to be in. So I don't, I don't think we're here to basically, you know, say we're here to defend our own special protections or, or what-- we were once protected, so nobody else should be protected. And we've had this discussion before, too. If there can be a place where there's a real showing of unjust, ongoing, systemic, widespread discrimination, and if we can identify that and really get to that issue without having all these other repercussions and intended and unintended consequences on, on people of faith, on other people who hold moral values on marriage or human sexuality, and

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they're not going to be dealt with in an unjust manner as well, I mean, we can have that discussion. But the problem with these bills is that while it tries, while they attempt to deal with some unjust discrimination, it's doing a lot of other things also that, that are problematic. And again, we've seen that across the country. You know, if we want to go into the, into the housing and that kind of area and talking about the, the effect on, on places of faith, like in the adoption/foster care context, you know, what we've seen there, right is, you know, Catholic Charities of Washington, D.C., Catholic Charities of Boston, Massachusetts, Catholic Charities in Illinois and San Francisco, we're seeing a case right now in front of the U.S. Supreme Court, it's *Fulton v. city of Philadelphia*, where essentially you've got questions of nondiscrimination laws coming up against foster care and adoption providers. In all of the ones that I listed before the city of Philadelphia case, all of those entities had to shut down their foster care adoption agencies because the city was essentially requiring them that if you don't serve the LGBT community, in other words, if you want to hold your sincerely held religious belief on marriage and human sexuality, that's nice. But you have no place in foster care and adoption services. So you're out of, you're out of the industry essentially.

**LATHROP:** I think we get your point.

**TOM VENZOR:** Yeah.

**LATHROP:** And I want to make sure there's time for other--

**TOM VENZOR:** Yeah, you bet.

**LATHROP:** --opponents--

**TOM VENZOR:** Yeah. Thank you.

**LATHROP:** Mr. Venzor.

**TOM VENZOR:** That was a ramble.

**LATHROP:** Unless there's other questions. Senator McKinney.

**McKINNEY:** Thank you. Mr Venzor, I got a question.

**TOM VENZOR:** Um-hum.

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**McKINNEY:** How can someone peacefully coexist in a society when there are individuals that don't want to recognize who an individual is as far as sexual identity or gender? How can you peacefully coexist? How can you be comfortable in a society when there are people that believe that you shouldn't be somewhere, you should be denied housing because you choose to identify as something that they don't believe in?

**TOM VENZOR:** Yeah. Thank you for that question. I mean, I think that's the question on both sides of the, sort of on both sides of the issue here. How can a society, and a pluralistic society, a society that has a diversity of different people who come from different backgrounds, faith backgrounds, understanding of their human sexuality, et cetera, how can we create a situation where, where yeah, they can, you know, sort of to use your language, peacefully coexist? Because again, on the other side of this, you have people with sincerely held religious or moral beliefs, they don't even have to be religious beliefs about what marriage is and what human sexuality is, whether marriage is between one man and one woman or that we were created male and female. The question then becomes, how can we also basically recognize that fact that you have people who hold that view, that they do want to participate in the economic life. They do want to participate in the community social services. They do want to participate in the housing industry, et cetera. But, but if they hold that view, they're going to be sort of coerced or disciplined by the state because of their view on marriage and human sexuality.

**McKINNEY:** I know. I just think there's a fine line to that. There were people earlier saying that if one of Senator Hunt's bills was passed, that we're forcing government upon people. And I think in the same vein, you could say individuals are using their religious beliefs to discriminate against people, and that isn't fair either. And I just think, you know, there is a-- you can believe what you believe, but you don't have to hate somebody because they don't identify with something you don't identify with. I'm against oppression and discrimination in all forms, especially as a black man in this country. And I just think if somebody is living their life, let them live their life. Why do we have to have things in place to say you can't be something or do something or live somewhere? Let people be. Like, what is the purpose of saying this is bad, this is horrible? Like, just let people be. If they're not punching you in the face or doing something wild, why, why do we constantly have people coming in

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here being against this type of legislation? Why can't we just  
function as humans and be humans?

**TOM VENZOR:** Well, so I guess that's what I'm getting at, is that laws like this have had intended and unintended consequences on people who hold the particular view on marriage and human sexuality. So the idea that we just want to let people be and do their thing and just let them exist and what, whatnot. The issue here is that legislative proposals like the one we're talking about actually do have a serious adverse consequence on actual people who hold, again, views on marriage that, again, Justice Anthony Kennedy said these are held by reasonable and sincere people. That we're not talking about these are hateful views, we're not talking about people who, who just have, you know, deep animus and hatred in their heart. Now, it could be that some people maybe also hold those views in that area, and that's, that's a deep problem with their own heart. We're not coming here to talk about being able to-- people being able to just hate on people. And, and I don't think we should basically make synonymous religion and hatred. I think, I think there's sort of a fallacy underlying that sort of concept or that equivocation. And I don't think we should go that route because that's not what we're talking about. What I'm talking about here today is the impact that this has on people of faith who hold the particular view on marriage and human sexuality. I think that's what we're talking about at the end of the day. This legislation has real impact on real people as well. So if we want to talk about the existence of unjust discrimination against those who are in the LGBT community and do that in a way that it's not going to be harming also other people who hold sincere and religious and moral beliefs on marriage and human sexuality that have been held by all sorts of people for thousands of years, you know, we can have that discussion. But these bills aren't striking that balance by any stretch of the imagination.

**McKINNEY:** Thank you.

**TOM VENZOR:** Thank you.

**LATHROP:** Thanks, Mr. Venzor. Yeah, thank you.

**TOM VENZOR:** Appreciate it. OK, thank you.

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**LATHROP:** We will take the next opponent. Seeing none, we will take neutral testimony.

**MARNA MUNN:** Good afternoon again, Chairman Lathrop and members--

**LATHROP:** Welcome back.

**MARNA MUNN:** Thank you-- to the Judiciary Committee. Again, my name is Marna Munn, M-a-r-n-a M-u-n-n, and I'm an attorney and the executive director of the Nebraska Equal Opportunity Commission. And I'm coming to testify on LB230 in a neutral capacity. I'm going to try to surprise you all and not gain steam like a freight train and remain calm here, and just make a couple of points and then be available for questions. First, you may wonder why I'm in a neutral capacity on this bill as opposed to the last bill. And just in the interest of the discussion regarding neutrality, if this were simply the housing arena, which would be the equivalent of Title VIII in the federal law, then I would be testifying as a proponent to it as well for all the same reasons as I would for, I did for LB120. There are a couple of nuances to the law because Bostock applied specifically to Title VII, but I was on the record in the news and the commission backed this last August that given the, given that Bostock applied to a section of the, the civil rights legislation that Title VIII is predicated upon and often intertwined with, we felt we were on solid legal ground spreading essentially Bostock to Title VIII and then to the state Fair Housing Act. That has borne out in that the president signed an executive order saying as much. And two weeks ago, HUD, Housing and Urban Development, our federal partner in housing, issued new guidance and rules consistent with that. So that's the solid ground with regard to the housing piece. I'm testifying in a neutral capacity because there wasn't a check mark for "it's complicated." And for the portion, for the portion that relates to public accommodation, I think you all know, but for the benefit of the record, public accommodation falls under Title II of the civil rights legislation on the federal-- and the Civil Rights Act. There, it does not contain the word sex on the federal level. So where sex appears in public accommodations laws, it's been added there by states, and over 40-some states in the country added the word sex to their own state-level public accommodation laws. We also have no federal partner with whom we look, to whom we look for guidance on Title II issues with regard to public accommodation. But again, even if we did, they wouldn't have anything to say on sex, as it's not in the law. The Equality Act, which passed

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the House yesterday, was raised and should be noted for the purposes of the hearing because it does in fact-- would actually add sex and sexual orientation and gender identity explicitly to the federal public accommodations law. And that might put us in a different position. The commission itself, while backing the housing interpretation, decided that we should do more research and look into other states. And there are at least 17, and then municipalities and there are over 200 which have sexual orientation and gender identity protections for public accommodations. And we're still in the process of doing our research. And because the commission has not taken a position post-Bostock on public accommodation, I can't in good faith come and testify in anything other than a neutral capacity. I would say I probably-- I think the most important thing to note is Obergefell fellow gets raised and Masterpiece cake get raised--

**LATHROP:** Wait a minute, can you say that again because I couldn't--

**MARNA MUNN:** I can. Obergefell, you know, the federal case for same-sex marriage and Masterpiece cake, the case about religion and the cake out of Colorado, are raised and, and I'm going to invoke them right now because I think they're a good illustration of how we have to come to a balancing act. One says that religion isn't more important than the protection of sex in that context for marriage. Masterpiece cake says exactly the same thing in the reverse. And that's the balance. And our agency would have to strike that balance as all agencies looking at public accommodation, you know, issues would have to do. So I wanted to note that for public accommodation, because so often it comes down to religion versus, you know, sexual orientation and gender ident-- identity, and how can we ever find a balance? Well, all of the court cases listed to you to suggest that there is a mechanism out there that allows us to figure out that balance. Any time you have a new law that intersects with something else from a, you know, a different law, you always have to go through that process. And it sounds like based on the court cases and the ones I'm aware of, that process is working just as it should in a country of laws. And so I just wanted to go on the record and say we don't have any qualms about figuring that out, because I think there's guidance out there and the law has been contoured in other places prior to coming here. So I just thought it was important to bring, you know, bring that to the table and explain that I think that we can handle it. And then the restroom issue always gets raised as well, again, 17 states have it in place. There are anecdotal issue, there were anecdotes brought earlier. But I

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just want to say, if you think about what was brought, some of those wouldn't fall under this law in the first place. And again, it was a few examples and it's unfortunate, but I'm not sure that, as far as I can tell, there are not a high level of statistics supporting that there are issues when these kinds of laws of that nature when these laws go into effect. And so I just wanted to bring that clarity. And, and while we are neutral, I have not decided that Bostock automatically applies to public accommodations. I just wanted to address those issues and answer any other questions you might have that I could address, that you think I could address for you.

**LATHROP:** OK, any questions? I don't see any. I, I know that you come down every time we have a discrimination bill here or in Business and Labor. I appreciate the information you give the Legislature, specifically this committee and Business and Labor on these issues. Sometimes, as you say, it's striking a balance between competing interests, but we always learn something when you're here and it's helpful.

**MARNA MUNN:** I will, I will, I'm not going to prolong it. I would note that in each of the laws that have been addressed today, there are already on the state level exemptions relating to religion and religious-based organizations already in our public accommodation law, in our housing law and in our employment law.

**LATHROP:** Where are those found?

**MARNA MUNN:** I will send you the list across three--

**LATHROP:** Please.

**MARNA MUNN:** The one in my mind is 20-137 for public accommodation, but I can, I'll--

**LATHROP:** Why don't you share those with the committee, if you will.

**MARNA MUNN:** I absolutely will.

**LATHROP:** And I think that would be helpful as well.

**MARNA MUNN:** They may not be as robust as what was being addressed today, but I wanted you to understand that there are, they exist in

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each of the law on the state level already, at least some, in some  
form or fashion.

**LATHROP:** OK, thank you. I appreciate it. Any other neutral testimony?  
Seeing none, Senator Hunt, you may close on LB3-- or LB230. We do have  
53 letters, position letters, 21 of those are proponents, 32 are  
opponents. And we also have written testimony which I will next read  
into the record. A proponent, Robert Sanford with the Nebraska  
Coalition to End Sexual and Domestic Violence. Also a proponent, Anna  
Eickholt with the YWCA. Also Abbi Swatsworth with OutNebraska is a  
proponent. Also a proponent, Kelly Waldron with the Women's Fund of  
Omaha. And finally, Justin Brady, representing Nebraska Realtors  
Association, is a proponent of LB230. That was written testimony  
received this morning. And with that, Senator Hunt, you may close.

**HUNT:** Thank you, Chairman Lathrop and members of the committee.  
Everything I said in my opening on this bill and all the discussion  
that we had, the things I said in my opening and closing on the  
previous bill stand. I appreciate Ms. Munn's point about the religious  
exemptions in state statute already. That's totally true. I don't--  
if, if people would like to clarify that in this bill, we can do it.  
But I don't like to do redundant things in statute. You know, if it's  
already included in our law, I don't think that we should clarify it  
because that would be redundant. On this bill as well, this public  
accommodations bill, I'm proud to have the support of Mayor Stothert  
and the city of Omaha and Mayor Gaylor Baird and the city of Lincoln.  
These are cities run by amazing women who see the future of our state  
and what kind of culture we have to invest in creating if we want to  
keep people here in Nebraska and be the kind of place that people can  
see themselves living. People don't have to agree. Nothing in this  
bill says that people have to agree, but people cannot discriminate.  
If people would like to run a business or a hotel or a public  
business, if they want to employ people, state government, all of  
these different political subdivisions, they cannot discriminate. And  
we don't accept discrimination on the basis of sex or on the basis of  
race or national origin or religion, ability. And we have these  
protections in place because we believe in the dignity of human  
beings. And LGBTQ people are in that same basket. And it doesn't  
matter what your sincerely held beliefs are, if your beliefs are  
discriminatory, you need to keep them in your head where they belong  
and not put them on people who want to rent a hotel room or get a job  
or buy a birthday cake, whatever. It doesn't go both ways with that.

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And as government, we have to err on the side of nondiscrimination. We can't police what's in people's heads, but no one's trying to do that. I just want-- I think that, I think that in order for people to live their best life and have the high quality of life that we want people to have in Nebraska, we just need folks to be able to mind their own business. And that's all LGBTQ people are asking to be able to do, is just mind our business, go to work, buy a birthday cake and not be worried about facing discrimination or violence. Thank you.

**LATHROP:** OK. I do not see any questions in follow up, so that we're closing our hearing on LB230 and bring us to LB231. Let's give everybody a chance, people if they want to step out or an opportunity to move around. OK, there wasn't as many people move around as I thought. With that, Senator Hunt, you may open on LB231.

**HUNT:** Thank you, Chairman Lathrop and members of the Judiciary Committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8 in midtown Omaha, which includes the neighborhoods of Dundee and Benson. LB231 is a bill to prohibit medical professionals from conducting conversion therapy on minors. Conversion therapy refers to interventions meant to alter an individual's sexual orientation or gender identity. Contemporary science now recognizes that being LGBTQ is part of the natural spectrum of human identity. In recent decades, society has evolved to accept the rights and humanity of LGBTQ people. Gay people can get married, gay people can adopt, and many policy changes have been made to help ensure that LGBTQ people do not suffer discrimination as ramptantly as they once did. However, remnants of hateful ideas about gay people, such as the practice of conversion therapy, still need to be addressed. Conversion therapy, sometimes called reparative therapy, if you recall last time I introduced this, Senator Chambers called it perversion therapy, and that stayed with me, too, is a practice that seeks to change an individual's sexual orientation or gender identity. The therapy employs a variety of shaming, emotionally traumatic or physically painful stimuli to make their victims associate those stimuli with their LGBTQ identities. It is practiced by some licensed professionals in the context of providing health care, as well as by clergy or other spiritual advisers in the context of religious-based views. Techniques having included institutionalization, castration, forced sexual interactions, lobotomization, electroconvulsive shock therapy and talk therapy. Regardless of the medium, whether you're castrating somebody or giving them electroshocks while showing them gay pornography, or

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whether you're doing talk therapy that reinforces hateful ideas about the self-loathing you want these people to feel so they will change who they are, these treatments have proven to be harmful and they've proven to be ineffective. They don't work. We've seen in the last five years, if you do a little Google search, all over the country and all over the world, people who used to engage in conversion therapy, who used to run these camps, who used to run these practices, they-- many of them have come out as gay themselves or bi or trans and apologized for the harm that they've caused. And this just goes to speak to the root of so many of these treatments, which are really rooted in the self-loathing and the shame that is taught to us culturally, you know, by a culture that sees homosexuality or anything other than heterosexuality as an illness to be treated. A growing body of research overwhelmingly demonstrates that conversion therapy is not rooted in medically sound practices, is unethical and causes substantial harm, especially to adolescents. That's why all of the national standard setting organizations for the major health and mental health professions have come out against conversion therapy as against their ethical standards: the national associations for psychology, pediatrics, school counselors, physicians, psychiatrists, nurses, social workers and many others. I am handing out a list of organizations that oppose this therapy, along with some quotes from them about why. And I hope you take a look at it because I want to make sure that on the floor, you know, a lot of times on other bills we'll say, well, the American Medical Association says that this is the standard of care for this and that and the psychological association says that this is what we need to be doing for students. Well, then this is exactly the kind of thing that we should be supporting, because the American Medical Association, the psychiatrists, the school counselors, the nurses, every reputable medical organization says that we need to stop doing conversion therapy. Those who have gone through conversion therapy, they talk about the medically unsound methods employed by these therapists and organizations, such as behavioral therapy, electrical shock therapy, chemical aversive therapy, drug and hormone therapy, surgery and psychotherapy. These treatments include homophobic counseling, isolation, unnecessary medication, including hormone treatment, subliminal therapies designed to enforce feminine or masculine behavior, and desensitization therapies that teach young people to associate homosexual feelings with disgusting images. These forms of treatment frequently result in nervous breakdowns and feelings of

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guilt and depression and anxiety. Name the, the negative consequence, this is associated with conversion therapy. Some patients have witnessed other people in their programs die by suicide or mutilate themselves. Many reparative therapy tactics are likely to cause just really, really bad distress in otherwise healthy people who never should have had to go through this. Since I introduced this bill in 2019, opponents have raised concerns about the constitutionality of this bill in terms of free speech and religious freedom. I've worked with advocates and legal experts to make updates to the bill that will address any potential court challenges while keeping our youth safe. Changes from the bill that I introduced in 2019, since most of you were here then, I'll include, I'll talk about some of those. First, this bill limits the credentialed professionals that are prohibited from administering conversion therapy. The previous version included any professional holding a license under the Uniform Credentialing Act. This version limits the application of the ban to a targeted selection of relevant credentialed professionals, so that would be those regulated by the Medicine and Surgery Practice Act, the Mental Health Practice Act, the Nurse Practice Act, the Pharmacy Practice Act and the Psychology Practice Act. So if you're like a plumber or an electrician, like, you don't really have to worry about being-- losing your license over this or something. This bill also includes safe harbor language that explains what conversion therapy is not. This language demonstrates that so long as a credentialed professional is not seeking to change a person's sexual orientation or gender identity, this bill does not restrict their practice. It also removes language prohibiting the advertising of conversion therapy due to First Amendment concerns. It prohibits state funds from being used for conversion therapy or state funds from being provided to organizations that conduct conversion therapy. It also adds an exception for treatment conducted by a clergy member or a religious counselor who is acting in a religious capacity and not in the capacity of a health care professional. So nothing in LB231 prevents faith leaders from practicing what they believe regarding gender issues or LGBTQ people, nor will it criminalize speech based on religious viewpoints. So it's not preventing a pastor or anybody from saying what they want to say in church. That's not the intent of the bill. The language of this bill was carefully crafted with the advice of many attorneys who specialize in civil liberties and First Amendment issues to ensure that no freedom of religious or freedom of speech issues would occur. Similar pieces of legislation from other states have been upheld in

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federal appeals courts over the last few years, as courts recognize that the state and local governments have the authority to protect youth from the serious harms caused by conversion therapy. There is no evidence that shows that gender identity or sexual orientation can be treated or cured. Regardless of your personal views about morality of homosexuality or nontraditionally conforming gender identities, there is no science backing this practice up. Under LB231, we're saying that those credentialed medical professions that would typically conduct conversion therapy cannot do it on minors, with an exception for clergy members. You will hear personal testimony today from people who have experienced detrimental effects from conversion therapy, especially as children. One person I met through the previous bill I introduced who became a friend can't be here today, but you may remember his story from 2019. He, he went through conversion therapy treatments and he received electroshock treatments here in Nebraska and he had a seizure and he bit off part of his tongue and woke up with his mouth full of blood. And this was because of a pseudo-scientific treatment that was meant to prevent him from being gay, to turn him straight. And he has dealt with the trauma and scars physically and mentally from that treatment and he will have them for the rest of his life. And we have the opportunity to do something here to make sure that no more children are subjected to that kind of treatment. Conservative legislatures all over the country have passed this legislation, including, most recently Utah, with the support of the Mormon Church. So I know my reputation as like the flaming gay liberal or whatever, but like this is a policy that is really about human rights and it's about children's rights and it's about making sure we're protecting the most vulnerable people in Nebraska. And it's something that regardless of your religious belief, something on a moral basis that I think we can come to some agreement on. Whether we accept the LGBTQ community or not, as the government responsible for licensing and standard setting for medical practitioners, we're doing our constituents a great disservice by allowing this debunked pseudoscience to be offered under the guise of medical treatment. Being LGBTQ is not an abnormality. It's not something to be treated or fixed. Twenty states have passed this legislation banning this harmful practice, including-- well, not including, 20 states and the District of Columbia, 9 of them have been signed into law by Republican governors. When I first introduced this bill, I think we were at 14 or 15 states had passed it. I was really hoping Nebraska would be the 15th. Now we could be the 21st. But that just shows you how, how many

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people across the country are seeing this as an important issue today, in large part because of the testifiers, because of the people who are brave enough to come and say, this is what I went through and experience and I don't want anybody else to have to feel this. Just this week, of course, the Lincoln City Council made history as the first city in Nebraska to ban conversion therapy, and I would really like us to build on that momentum. More people in Nebraska are becoming educated about what conversion therapy is. And I think that we can build on that momentum and get it passed at the state level. Year after year, members of the LGBTQ community reach out to me and tell me that this is a really high priority for them. I met with a group of kids from Project Everlast, which is a nonprofit that works with homeless and formerly homeless youth, especially ones that are LGBTQ, and they made me the most beautiful poster that was, it was really sweet. One side of it was like derogatory names that they had been called, that all the other kids had been called, like gay slurs and stuff like that, and it was like very dark. And then the other side was how they see themselves. And it was, you know, all the words of, of pride and of confidence and love and all of the things that I want our LGBTQ youth to feel deep inside. That they're valued, that they're welcome, that they're born perfect the way they are. And meeting with those kids and hearing their stories about conversion therapy, many of them homeless because their families kicked them out because they weren't straight, these are our neighbors. These are people in Nebraska. And these are also folks that the state ends up taking up a responsibility for when they become wards of the state or when they get into other trouble or they become dependent on state services because they were abandoned by those who are supposed to support them. I urge you to make a decision informed by the mounting evidence against conversion therapy as the humane, inhumane practice that it is and move this bill forward, and be happy to take any questions.

**LATHROP:** I don't see any.

**HUNT:** Thank you.

**LATHROP:** Thanks, Senator Hunt, for introducing LB231. Let us next take up proponent testimony. Welcome.

**VINCENT LITWINOWICZ:** Hello, members of the committee. Thank you for-- my name is Vincent Litwinowicz, L-i-t-w-i-n-o-w-i-c-z, and I might ask

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for a little more time here because my cognitive issues. I generally like to talk, I'd like to talk in general personal, personalized ways about topics like this. I guess we're never going to have a utopia where we, where we can all get along. And anyway, I forgot what I was going to say, but I guess I should really introduce myself because some people, I know I've come here before and had communication issues, is that I have, I-- in 1995 I had to leave my grad school. I was working for an internationally well-known professor in his field, due to bipolar one depression. But based upon that recommendation and without 11 years of being out of my field or any field of engineering, I walked into a professor's office here at UNL and got a funded doctoral position. So I just want, sometimes people have a misconception of people in wheelchairs. And I just thought, I'll never have to say this again, maybe for a few more years. But I'm just going to read, I just want to say one thing with regard to conversion therapy, along with my brother who was gay and tried going straight when he married a woman he loved many years earlier in his life and is now happily married to his male partner for many years, I think it would be ridiculous and impossible to convert my feelings of a female gender identity from my feelings deep inside me. I don't know of any drug, stick, voodoo or talking to that could possibly change my disposition of a female gender identity. Even though I don't know what it's like to be a biological woman, I firmly, finally and completely believe I am a woman on the inside. At least I am much more woman than man, believing that we are all on a spectrum in many ways. Most of us are just genetically clumped to one side or the other, and some of us are not. I, I know I feel better with my new identification and publicly acknowledging this fact. I know it will and has made me feel far more happy, peaceful and genuine on the inside. That is all I need to know. I am certain of this, and I wouldn't want to be converted anyway because I would like to be the me that God, if he exists and is not an idiot savant, created on the inside. I don't know, but I think we were also perhaps scattered from the Tower of Babel as well, to use a Christian analogy. And our mission is for all of us to love each other and get along. It's just more complicated-- it's just a more complicated story than we think. Why wouldn't a loving God give us this challenge as well in the genetic creation of all the people who identify themselves as who they are and how they genuinely feel on the inside? Are we up to the challenge of getting along? Please vote for this bill.

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**LATHROP:** Thank you.

**VINCENT LITWINOWICZ:** Thank you, committee members. Are there any questions?

**LATHROP:** I do not see any questions, but thanks for being here this afternoon.

**VINCENT LITWINOWICZ:** Thank you. I spoke first, I'm very exhausted. Thank you.

**LATHROP:** That's fine. That's fine. Next proponent. Good evening.

**ABBI SWATSWORTH:** Good evening. Thank you, Senator Lathrop and senators of the Judiciary Committee for the opportunity to provide testimony today. My name is Abbi Swatsworth, A-b-b-i S as in Sam-w-a-t-s-w-o-r-t-h. I'm the executive director of OutNebraska, an organization working to celebrate and empower LGBTQ Nebraskans. OutNebraska stands in support of LB231. It is time to add Nebraska to the growing list of states that have banned conversion therapy. We believe Nebraskans want our young people to be safe and to have every opportunity to thrive in our great state. From a collaborative report by the Substance Abuse Mental Health Services Administration and the American Psychological Association, sexuality occurs across a continuum. Same-gender attraction and relationships are normal variations of human sexuality. Sexual minority adolescents face the same developmental tasks that accompany adolescents for all youth, including sexual orientation identity development. Gender development begins in infancy and continues progressively throughout childhood. Gender diversity may emerge as early as a child's preschool years or as late as adolescence. Many gender minority children will develop a cisgender identity in adolescence or adulthood. The majority of these will identify as lesbian, gay, bisexual in adulthood. Other gender minority children will experience worsening gender dysphoria with the physical changes of adolescence. These youth generally identify as transgender in adolescence and adulthood. Conversion practices aimed at a fixed outcome such as gender conformity or heterosexual orientation, including those aimed at changing gender identity and expression and sexual orientation, are coercive, harmful and should not be part of behavioral health treatment. End of report. As a member of the LGBT community, I understand personally the danger of believing that some part of your identity is bad. While I am not a survivor of

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conversion therapy, I did grow up in a church that regularly preached that AIDS was God's punishment for being gay and that all gays were going to hell. I absorbed these messages and struggled with depression and substance misuse until I received affirming therapy, therapy in young adulthood and began the process of accepting myself. Eventually coming to believe that I have inherent worth as a queer woman. This legislation will not impact parental or religious rights. Parents and churches retain the right to reject the science of sexuality and gender over their interpretation of biblical teachings. This legislation will curb licensed professionals from using damaging practices, shown through research to produce serious, life-threatening harm for young people who are subjected to them. OutNebraska believes that Nebraska should value and honor the lives of all our young people. Doing so means protecting them from conversion therapy. We respectfully encourage you to declare that young Nebraskans are born perfect by advancing LB231 to General File. And I can take questions.

**LATHROP:** OK, I don't see any questions this evening.

**ABBI SWATSWORTH:** Thank you.

**LATHROP:** But thanks for being here.

**ABBI SWATSWORTH:** Thank you.

**LATHROP:** Other proponent testimony? Good evening and welcome.

**AARON AUPPERLE:** Good evening and thank you. Thank you, senators. Thank you, Megan Hunt. I also want to thank Abbi Swatsworth and Matthew Shurka from Born Perfect. My name is Aaron Aupperle, A-u-- or A-a-r-o-n A-u-p-p-e-r-l-e. I'm here to testify and explain the mental trauma of conversion therapy and collapse of my faith that I experienced shortly after I had come out to my family in the mid 90s. In 1995 and also in 1998, I had attended a residential conversion therapy ministry called Love in Action. They had staged a mock funeral for me because I had an affair with a man. Instead of kicking me out of the program, which is what I wanted, they staged this funeral to teach me a lesson against my destructive behaviors. Clients in the program had to approach me while I laid on a table with my eyes closed to express their feelings of disgust, anger, abandonment, sadness, you name it, for what I had done. They were basically eulogies. Today, I'm here to talk to you about how that time in my life has affected me

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now. The key words in that previous sentence being, I'm here. Trust me, I know of a few friends when I was in that program who took their own lives. The effects of that funeral have left permanent scars on my life today and others who witnessed that horrific exercise years ago. Very recently, I have just begun piecing together what a higher power means for me. Since my experience with Love in Action, I have been agnostic with a tendency towards atheism. However, recently I've realized that hasn't helped me much. I still struggle with the same behaviors, leaving me empty, that I did 20-plus years ago. I'm currently seeing a clinical hypnotist to help me get in touch with my inner child, a part of my life way before God was tainted by people. A time before puberty. It's sad for me to still believe that the best years of my life were in grade school and that I won't have any better years in the future. Love in Action told me that if I left the program, I would surely die and that if I joined a gay-affirming church, I would be creating my own exbrand of religion to gain the respect, approval and love of God. Please think about that for a moment. Just by default that statement strips any hope of a relationship with God to ever happen so long as I stay gay. Presently, I'm really trying to ignore these voices of the past. How my life might have been different if I was told growing up God loves me and he could care less if I'm gay. I can have a relationship with him and it can be correct without bias. It's sad that I don't trust anyone to lead me to God ever again. But I will tell you this, I'm still hopeful, hopeful that someday again I will hear his voice like I did when I was a kid. To regain that innocence again and feel a love I've never felt before. To hope for a future where the love of God can be taught to LGBTQ-plus youth without limitations of God's acceptance of who we are. I have to believe that. I must believe that.

**LATHROP:** Thank you, Mr. Aupperle. Is that a-- you holding your hand up?

**MORFELD:** Yep.

**LATHROP:** OK, Senator Morfeld.

**MORFELD:** Mr. Aupperle, I just want to thank you for coming out today and--

**AARON AUPPERLE:** Sure.

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**MORFELD:** Yeah, on behalf of Senator Hunt and I. Your story is very  
compelling, so thank you.

**LATHROP:** Oh, hang on a minute, hang on a minute, I got a question from  
Senator Pansing Brooks.

**AARON AUPPERLE:** Sure.

**LATHROP:** This is an imperfect system. There's a little time lag  
between the video and the, and the questions. Senator Pansing Brooks  
says, thank you, Mr. Aupperle, for coming out and taking time off work  
to tell your cruel, tragic story. Once again, you are brave, strong  
and a role model for many Nebraskans. Thank you.

**AARON AUPPERLE:** Thank you.

**LATHROP:** OK.

**GEIST:** Got one.

**LATHROP:** Oh, I'm sorry, Senator Geist.

**GEIST:** No, that's fine. I just, I appreciate your testimony. And very  
personally, I just want to tell you the God I serve does love you.

**AARON AUPPERLE:** Thanks. Still trying to figure that out for myself.

**GEIST:** Yeah, I encourage you to keep on that journey.

**AARON AUPPERLE:** Thank you.

**LATHROP:** I think that's it. Thanks, Mr. Aupperle.

**AARON AUPPERLE:** Thank you.

**LATHROP:** Next proponent. Good evening. Welcome.

**MATTHEW SHURKA:** Hi, thank you for having me. Committee Chair and  
committee members, thank you. My name is Matthew Shurka, I am a  
conversion therapy survivor representing myself. I'm also the  
co-founder of a national organization called Born Perfect, which was,  
as myself created by survivors of conversion therapy. We've worked  
nationwide with elected officials to introduce legislation that would  
specifically protect minors from such practices by licensed

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professionals. And, you know, we have a network now of thousands of survivors who've joined our organization from all across the country, including here in Nebraska. Just to share a little bit about my own story, at the age of 16, my father-- I had come out to my father and he was very loving and very caring and told me that, you know, whatever support I needed, he would be by my side. And in his search for a therapist, for just for someone for me to talk to, you know, my father had never heard of the term conversion therapy or the other terms that exist out there, such as reparative therapy or reintegrative therapy. My father was promised that I had the opportunity of becoming heterosexual or straight because anything LGBTQ is caused from childhood traumas and it is a psychological condition, and that there really is no such thing as homosexuality as it was explained to him. And so my father, in his care for me, saw this as an opportunity that he could, you know, not live what he thought was a horrible life and what he was told by the therapist, I would face all of these uphill battles, such as suicide, depression. What would happen to my career and our family as a whole. And so at age 16, I was placed in conversion therapy by a licensed professional and I was diagnosed on the basis of how sexually experienced I was. Given that I was inexperienced as a 16-year-old, they had promised my parents that I would start to see my heterosexuality come back within six weeks. And a lot of the techniques they used, and I just wanted to add to the fact that I was in it for five years. And so that never came to fruition, what they promised my parents in the first place, which, you know, was at their own cost. I was instructed to not only spend time with other male peers so that I understood masculinity and who I was as a male, and I had to avoid female peers, including my mom and my sisters. And they thought a cause of my homosexuality was being too close to them. And so I wasn't allowed to speak to my mom and my two sisters for three years. It was my father's adamancy to me really succeeding in this therapy, they really did everything they could. This was, had a devastating impact to my family and to all of us. I have rebuilt my family since then. I was contemplating, I did contemplate suicide for two to three years and actually had to go through the process of seeking out therapy and understanding what a therapist actually does with their patients when I left. So I just want to add on top of that, I know I don't have time, but the UCLA Williams Institute their own research and it shows that 700,000 people living in the United States today have gone through conversion therapy. Half of them were under the age of 18, placed by their

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guardians. I also want to make it clear that conversion therapy is not a mere discussion or exchange of ideas. It is a mental health treatment in which a therapist seeks to effect a specific predetermined outcome to change a child's identity from gay to straight or from transgender to nontransgender. Therapy is not a form of self-expression for therapists. It is a medical treatment, which is why every state in the country regulates it, regulates it to enforce professional standards and to protect patients from harm. In addition, conversion therapy don't-- conversion therapists don't just talk, they direct their minor patients to take specific actions that cause serious harm, such as instructing a gay man not to talk to his mother and female siblings as it was in the case for me. Or the false belief--

**LATHROP:** Mr. Shurka.

**MATTHEW SHURKA:** Yeah?

**LATHROP:** I have to enforce that light.

**MATTHEW SHURKA:** Sorry.

**LATHROP:** OK, no. Fascinating story. I really appreciate. Where are you from, by the way?

**MATTHEW SHURKA:** Originally I lived, I am from New York.

**LATHROP:** OK, OK. No, we appreciate the fact that you're here, but I got to enforce--

**MATTHEW SHURKA:** No, by all means.

**LATHROP:** I got to enforce time limits just to, just to keep it fair. Any questions for Mr. Shurka? I don't see any.

**MATTHEW SHURKA:** Thank you.

**LATHROP:** Sincerely, thank you for being here. Welcome back.

**SARA RIPS:** Thank you. Thank you, Chairman Lathrop and members of the committee. My name is Sara Rips, S-a-r-a R-i-p-s, I'm the LGBTQIA+ legal and policy counsel for the American Civil Liberties Union of Nebraska. To all the LGBTQ Nebraskans, I want to acknowledge you and

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affirm you and affirm our commitment to fighting for your rights. Thank you, Senator Hunt, for bringing this bill and Judiciary Committee for your time today. I'm here speaking in favor of LB231. And I will briefly note some of the most common questions and answers about legal issues regarding conversion therapy policies. Conversion therapy, as you've heard numerous times, has been disavowed by every leading medical association because it is unethical and, when applied to minors, can cause severe harm. Our government has an obligation to protect our youth from harm. The ACLU supports this measure because it aligns with best practices and it protects LGBTQ youth in Nebraska from harm. Opponents of these measures usually ground their opposition in the First Amendment, freedom of speech, free exercise of religion. However, it's really not that simple, and that is why courts have upheld similar measures and rejected those exact challenges. Admittedly, some courts have not, one circuit, but that's currently being challenged. So that could change and be on our side. I would draw the committee's attention to a very recent United States Supreme Court case, *NIFLA v. Becerra*, where Supreme Court explicitly ruled that there are two exceptions to the strict scrutiny requirement for free speech. Commercial speech doesn't apply here. And professional conduct regulations incidentally affecting speech, including factual disclosures via informed consent mandates. What does that mean? It means that legislatures can regulate the conduct of licensed professionals related to the treatment of their patients, even if that involves regulation of speech to ensure proactive ethical measures and to ensure that patients are not at risk of harm. Conversion therapy is a form of medical treatment, albeit an unethical and disavowed one. LB231 targets the quality and type of care that licensed professionals can provide to a minor patient. This bill protects the care provider's ability to express his or her own opinion regarding conversion therapy, it does not compel providers to disclose facts with which they disagree. This bill does not limit what religious leaders and parents can say to their children. This bill does not limit providers from discussing this as a treatment option. The only thing this bill prohibits is from a therapist from actually performing conversion therapy on a minor, given the significant risk of harm. Thank you for your time. I'm happy to answer any questions.

**LATHROP:** Thank you. Senator DeBoer.

**DeBOER:** Hi. Thank you very much. Thank you very much for being here today. What, who, who in Nebraska-- do we still have these camps like

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they're talking about in Nebraska? Are these things still happening in  
Nebraska that-- I don't know if you--

**SARA RIPS:** That, that's a wonderful question that I do not know the  
answer to. But I can definitely get back to you on, your office,  
regarding whether or not, like, those still exist.

**DeBOER:** OK.

**SARA RIPS:** But right, if, if it would, it would limit that in the  
state, but if there were ones in other states that a therapist really  
wanted to refer their patient to, this statute would not fall to that.  
It just limits their ability to conduct this medical procedure.

**DeBOER:** So even if we passed this, I can still, if I'm a therapist, I  
can still send someone to a camp like that in some other state?

**SARA RIPS:** Yeah, yeah. And you have the right to discuss it with your  
patient, to discuss sexual orientation change efforts. But you-- like  
this exists, but they're not allowed to do this-- to practice that  
form of medical care and treatment.

**DeBOER:** OK, so not just the camps now. What-- are there like  
psychologists and psychiatrists and therapists that are performing  
this, I don't even want to call it a therapy, this therapy?

**SARA RIPS:** Yeah. And so--

**DeBOER:** In Nebraska?

**SARA RIPS:** And this would limit their ability to practice that type of  
medical care.

**DeBOER:** This, this is happening in Nebraska right now?

**SARA RIPS:** Yeah.

**DeBOER:** OK. Thanks.

**SARA RIPS:** Thank you.

**LATHROP:** I see no other questions, thank you. Next proponent.

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**EVAN McCracken:** Good evening and thank you for having me. My name is Evan, E-v-a-n, McCracken, M-c-C-r-a-c-k-e-n, I'm a doctoral candidate in psychology and law at the University of Nebraska-Lincoln. And I'm speaking on behalf of the Nebraska Psychological Association this evening. So on behalf of the Nebraska Psychological Association, we would like to support LGBT-- LG-- I want to say LGBT, LB231, which would prohibit health care professionals from practicing conversion therapy on minors in Nebraska. The American Psychological Association, in agreement with the American Academy of Child and Adolescent Psychiatry, the American Academy of Pediatrics, the American Association for Marriage and Family Therapy, American College of Physicians, American Counseling Association, American Medical Association, American School Counselor Association, American School Health Association, National Association of Social Workers, World Psychiatric Association and the federal Substance Abuse and Mental Health Services Administration opposes the, opposes the practice of therapies intended to change sexual orientation from gay, lesbian or bisexual to heterosexual because such therapies are not needed, there's no credible evidence that they work and there is a significant potential that they could cause harm to participants. In 1973, the American Psychiatric Association, due to mounting research evidence that having the same-gender sexual orientation is not inherently pathological, decreed that homosexuality is not a mental illness. So while gay, lesbian and bisexual individuals are actually more likely than their heterosexual peers to suffer from depression, anxiety and thoughts of suicide, a significant body of research actually indicates that this is a direct cause of the discrimination that they face and not inherently due to their sexual orientation. To further support this point, a growing body of research indicates that when communities are actually accepting and supportive of LGBT individuals, they're not more likely to experience mental health issues similar to their heterosexual counterparts. In 2009, the American Psychological Association, after conducting a comprehensive literature review, concluded that there is little evidence that therapies attempting to change sexual orientation can be successful. And this is not surprising, given the decades of research have suggested that sexual orientation, like your handedness, is not a characteristic that can be altered therapeutically. Our final concern is that therapies designed to change sexual orientation are likely to cause harm to the participants themselves. Being required to change one's sexual orientation communicates this aspect of the self is undesirable, which

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logically could lead to self-hatred, depression and suicide, echoing some of the testimonies that you've heard behind me. In addition, such therapies often include inaccurate and very pejorative information about sexual orientation. Thank you for your time and consideration.

**LATHROP:** Thank you very much for being here. Any questions for this testifier? I see none, thank you. Any other proponents here to testify?

**JUDY KING:** Hello.

**LATHROP:** Good evening.

**JUDY KING:** My name is Judy King, J-u-d-y K-i-n-g, and I'm a proponent for LB231. And I want to thank Senator Hunt for bringing all these bills forward this afternoon, every one of them has been needed. I just kind of wanted to share a little bit of good news about a similar bill that went to the city council. And I walked going door to door for James Michael Bowers, to get him elected. I donated funds, and I'm just so proud of him for getting that, that bill passed-- or the, the, the ban on conversion therapy passed by at city council after a five to one city council vote on Monday. I'm just so proud of him. I'm going to read just a couple of things out of a newspaper article published February 26 this year. And it said that the move bars counselors, psychiatrists and therapists from seeking to change the sexual orientation or gender identity of a minor. Professional associations have condemned the therapy over concerns it damages the mental health of children and can lead to high coincidences of suicide. Survivors testified at that hearing about the shame, anxiety and depression that they felt when they were subjected to the conversion therapy. City Councilman James Michael Bowers said that his ordinance would not limit the speech of religious clergy or parents to counsel the children in accord with their beliefs. And federal courts have upheld similar conversion therapy bans. Bowers, who is gay, said the testimony of conversion therapy survivors and the ordinance's passage sends a hopeful message-- method, excuse me, hopeful method of support to LGBTQ youth who may still be in the closet. That message saves lives and this vote will too, Bowser said. And I am saying that the bill, LB231, will save lives. And I really appreciated Senator Hunt bringing them forward, and I hope it passes.

**LATHROP:** OK.

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**JUDY KING:** And I will walk door to door for anybody to get them  
elected.

**LATHROP:** OK.

**JUDY KING:** Doing the same thing.

**\*MEG MIKOLAJCZYK:** Dear Chairperson Lathrop and members of the  
Judiciary Committee, my name is Meg Mikolajczyk, and I am the Deputy  
Director and Legal Counsel for Planned Parenthood North Central  
States. Central to our mission is the conviction that all people  
deserve to live in communities where sexual and reproductive rights  
are recognized for what they are - basic human rights. All people,  
regardless of who they are or who they love, deserve to lead  
authentic, safe, healthy, and meaningful lives. Planned Parenthood is  
committed to fighting for the bodily autonomy of our patients and our  
friends and neighbors across Nebraska. Part of this effort includes  
voicing opposition to and acting to dismantle systems that seek to  
coerce and undermine an individual's identity, expression, and  
sexuality. Planned Parenthood proudly supports Senator Hunt's bill to  
ban conversion therapy, as everything about the hateful, unscientific,  
and dangerous practice flies in the face of our core values. Planned  
Parenthood is a trusted healthcare provider for the LGBTQ+ community  
because we offer compassionate, nonjudgmental care to all of our  
patients. No matter what. At Planned Parenthood, we know that the  
LGBTQ+ community faces higher rates of discrimination, including  
external efforts to try to fundamentally change or deny who these  
folks are. We also know that LGBTQ+ folks living in states without  
protective policies, such as Nebraska, are five times more likely than  
those in states with protective policies to have two or more mental  
health disorders. And, when LGBTQ+ folks experience "prejudice-related  
major life events", such as attempted or actual conversion therapy,  
those individuals were three times more likely to have suffered a  
physical health issue in the year following that event. This fact  
transcends age, gender, health history, and employment; it is true  
across the board for all LGBT folks. Practices with such quantifiable  
and negative health outcomes have no place in our state, where we  
pledge to offer our neighbors "the good life". Nebraska, historically,  
has been a hostile place for LGBTQ+ folks to live, work, and raise  
their families. Lincoln was able to ban this practice recently within  
their city - the state should follow suit. With this bill, our state  
has the opportunity to do better, particularly for the young people

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living here, who deserve to be safe and free from this coercive and emotionally violent practice. We must ensure LGBTQ+ Nebraskans are no longer subjected to practices that are peddled as health care and science, but are actually not supported by mainstream medical professionals, including The American Academy of Pediatrics, the American Counseling Association, the American Psychiatric Association, the American Psychological Association, the American School Counselor Association, the National Association of School Psychologists, and the National Association of Social Workers. Conversion therapy exploits negative feelings LGBTQ+ folks (or their parents) may already have, and the negative health outcomes for those subjected to them can include "depression, anxiety, and suicidal ideation." LB231 is an important step forward for Nebraska. Conversion therapy is not medical, it is not scientific, it is not ethical, and it is not moral. It has no home here. Thank you, Senator Hunt, for standing up for all Nebraskans. We ask the committee to please support LGBTQ+ Nebraskans by advancing this bill to General File.

**\*KELSEY WALDRON:** Chairperson Lathrop and members of the Judiciary Committee, my name is Kelsey Waldron and I am the Policy and Research Associate for the Women's Fund of Omaha. The Women's Fund testifies in strong support of LB231, banning the harmful practice of conversion therapy that currently inflicts trauma of Nebraska's LGBTQ youth. As an organization promoting freedom from discrimination for all Nebraskans and more trauma-informed laws, we recognize this bill as critical to keeping Nebraska youth safe and healthy. Conversion therapy is a harmful and medically unsound practice of attempting to alter one's sexual orientation or gender identity. Youth are particularly vulnerable to this practice, as they may be forced or coerced into this practice by unsupportive family members. Major medical, mental health, and educational experts assert the medically inaccurate nature and harmful impacts of this practice, including the American Academy of Pediatrics, American Academy of Physician Assistants, Mental Health America, National Association of School Psychologists, National Education Association, American Medical Women's Association, American Federation of Teachers, and more. The American Academy of Child and Adolescent Psychiatry finds no evidence to support conversion therapy and asserts the practice does not adhere to clinical methodology and is associated with harmful affects on those experiencing it, namely increase mental health challenges. As a result, the Academy holds that conversion therapy has no place in

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behavioral health treatment of children and adolescents. LGBTQ youth who were highly rejected their parents for sexual orientation or gender identity, such as through conversion therapy efforts, were over 8 times more likely to attempt suicide and nearly 6 times more likely to report high levels of depression. These statistics are reflected in Nebraska's high schools, as over 40 percent of Nebraska Lesbian, Gay, and Bisexual (LGB) youth report having seriously considered suicide (as compared to roughly 14 percent of heterosexual peers) and nearly 1 in 4 attempted suicide. In Nebraska, LGB youth experience significantly higher rates of bullying, violence, and discrimination than peers. More than 1 in 3 Nebraska LGB high school students report being bullied on school property and over 16 percent of Nebraska LGB youth reported having not gone to school because they felt unsafe at school (as compared to under 6 percent of heterosexual peers). In an environment where Nebraska LGBTQ youth are particularly vulnerable to discrimination, violence and trauma, our laws must work to protect them. However, with continued allowance of conversion therapy, our current statute instead perpetuates the trauma experienced by youth in our state. LB231 would address this safety issue, prohibiting traumatic and discriminatory practices that threaten the well-being of our youth. 20 states and the District of Columbia have already banned this harmful practice on minors. The Women's Fund supports safety and freedom from discrimination for all Nebraskans - straight, cisgender and LGBTQ individuals. We respectfully urge the committee's support of LB231 and advancement to General File.

**\*CARINA M. McCORMICK:** My name is Carina M. McCormick, PhD. It is both my professional opinion and moral belief that LB231 prohibiting "conversion therapy" for LGBTQ+ youth in Nebraska is both necessary and right. So-called "conversion therapy" is the opposite of therapy: it is child abuse. It teaches children that who they are is wrong and immoral and must be changed when, in contrast, scientific research consistently shows that sexual orientation and gender identify is not a choice made by the individual. Sexual orientation cannot be changed, which makes conversion therapy especially pernicious in forcing children to believe they can and should modify their essential nature in order to be accepted by their families. My professional education is in psychology and educational psychology, especially as it relates to child development and education. The time during which the awful practice of conversion therapy happens is a time when it is essential for children to develop their sense of identity. In addition to

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affecting children's development of a sense of identity, the practice creates a situation of lasting psychological harm in which the parents, who are supposed to nurture and protect their children, expose them to gruesome physical and emotional abuse at the hands of individuals acting under the pretense of being health care professionals. The preventable damage caused by this outdated and barbaric practice can be lifelong or life-shortening through suicide of individuals who were hanned by it. From a moral perspective as well as a legislative responsibility, we must end the practice of subjecting children to the lifelong psychological impact of enduring the cruel actions misleadingly referred to as "therapy. " Although Nebraska cannot mandate that parents love and accept their children, the state has a responsibility to prevent child abuse in all its forms, including psychological abuse at the hands of those who proprot to change inherent characteristics of youths' identity through the discredited means addressed in this bill.

**\*ADAM WITTE:** Esteemed members of the Judiciary Committee: My name is Adam Witte, and I have lived in Omaha since 1992. I come to you as a gay survivor of conversion therapy here in Nebraska to support LB231 for two reasons: first, conversion therapy ranges from damaging to barbaric; and second, it is ineffectual. I sought this treatment myself beginning in the summer of 1998, when I was 16 years of age and terrified of disappointing or angering my parents and church community by coming out as gay. My earnestness and genuine fear of discovery must have won over the receptionist at the treatment facility because she waived the parental authorization form so I could proceed. Afraid of my parents asking questions about my afternoon activities, I scheduled my sessions in the facility's overnight hours. While many high school students will admit to having sneaked out of their houses to cause trouble, I did so twice a week to subject myself to electric shock aversion therapy. This went on for a little over 15 months. Though I am happy to note that such monstrous physical abuse in the form of shock therapy is no longer commonplace, the mental wounds from the so-called "counseling" linger as well-structured entirely around trying to convince me that my homosexuality was a choice that irrevocably separated me from God, a rift which could never be bridged unless I stopped being gay. After those 15 months, I did not feel any less same-sex attraction-just more concomitant fear and shame. If those two feelings could ever have been enough to change my orientation, I would not have felt I needed to seek treatment in the

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first place. I was the poster child for the kind of youth this treatment should have worked on-and it did not. Because it does not. While my circumstances and specific experiences may be different from others', my outcome is not. Having met and contacted many other people who have also gone through some form of conversion therapy, I have yet to encounter anyone whose sexual orientation or gender identity or expression has been changed. You will hear today from providers and members of virtually every associated professional association that this treatment does not work. Even the United Nations has encouraged a global ban. I understand the very human, righteous desire to protect one's children; indeed, I sought conversion therapy myself out of a sense of self-preservation. If it did what it is purported to do, I might advocate for its continued existence and practice despite personal moral objections; however, it is not only harmful-it also does not produce results. Parents who are afraid for their children's safety-afraid of the difficulties and real dangers of growing up LGBTQ+ in Nebraska, and whatever social stigma is associated with them for raising an LGBTQ+ child-are being taken advantage of by providers, who know they are taking money for a treatment that has been disavowed and disproven. I would encourage you to take special note of the lack of testimony opposing this bill from survivors of the treatment it would ban. If this truly were a life-saving and life-altering therapy, it would make sense for survivors to come out in large numbers to advocate for its continued use. Instead, the only survivors you will hear from are the few of us willing to re-live the associated trauma to tell you our stories so that you might put an end to the practice. It is too late to save my 16-year-old self from embarking on that trip through Hell with nothing to show for it but scars-but you can pass LB231 and help save other families' fear from being preyed upon. Thank you.

**LATHROP:** Thank you, Ms. King. Anyone else here to speak as a proponent on LB231? Anyone here to testify in opposition? Welcome back.

**MATT SHARP:** Thank you, Mr. Chairman and members of the Judiciary Committee. My name is Matt Sharp, M-a-t-t S-h-a-r-p, and I'm senior counsel with the Alliance Defending Freedom. Who gets to decide what counseling goals a person can pursue, the patient and his or her counselor or the government? This should be an easy answer, yet LB231 allows government officials to insert themselves into the private conversations between patient and counselor, to dictate what goals can be pursued and what ideas can be discussed. The U.S. Supreme Court has

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long protected the First Amendment rights of professionals, such as therapists and counselors. And in the NIFLA case, which was brought up earlier, the court questioned the constitutionality of laws in California and New York that banned certain counseling related to a person's sexual attractions or gender identity, laws similar to LB231. Relying on that precedent to just a couple of months ago in a case called Otto vs. City of Boca Raton, the U.S. Court of Appeals for the Eleventh Circuit struck down a Florida ordinance that is virtually identical to LB231. The Florida ordinance prohibited, quote, the practice of seeking to change an individual's sexual orientation or gender identity, including, but not limited to efforts to change behaviors, gender identity or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same gender or sex. If you look at page 6, lines 5 through 9 of LB231, it is nearly a word-for-word copy of the language that was struck down as unconstitutional in Otto v. City of Boca Raton. The Eleventh Circuit ruled that the Florida ordinance discriminated based on the content of the counselor's speech in violation of the First Amendment. Quote, whether therapy is prohibited depends only on the content of the words used in therapy. And the ban on that content is because the government disagrees with it. And whether the government's disagreement is for good reasons, great reasons or terrible reasons has nothing at all to do with it. All that matters is that a therapist's speech to a minor client is legal or illegal under the ordinance based solely on its content, end quote. That was the basis for the court striking it down. If a therapist engages in abusive or unethical conduct, he can and should be disciplined. If he forces a client to undergo therapy against a client's will, he can and should be disciplined and even sued for malpractice. But the government cannot prohibit voluntary client-directed conversations between a therapist and client solely because of its content. The Eleventh Circuit, going back to that case one more, warned that, quote, People have intense moral, religious and spiritual views about counseling related to sexuality and identity. And that is exactly why the First Amendment does not allow communities to determine how their neighbors may be counseled about matters of sexual orientation and gender, end quote. Every person deserves the right to private conversations with their counselor as they choose, free from government censorship. LB231 interferes with that right. Thank you, and I'm happy to take any questions.

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**LATHROP:** I don't see any questions for you, Mr. Sharp. Oh, I'm sorry.  
Senator McKinney.

**McKINNEY:** Thank you. I think the nature of this bill is to protect  
minors who may not be able to protect themselves because it's the  
parents that are forcing them into conversion therapy. And I'm just  
wondering what's wrong with protecting minors when, when the parents  
aren't doing so? Especially in a situation where a minor is forced  
into conversion therapy and is electrically, electrically shocked.  
Like, what's wrong with us as a Legislature making sure that doesn't  
happen to minors?

**MATT SHARP:** Thank you, Senator. And first off, I would say I think we  
can all agree that those techniques are abusive, immoral, unethical  
and should be disciplined. I think what the court in the Eleventh  
Circuit addressed was the problem with laws like this, like LB231, is  
that they're not focused on those specific instances you bring up. We  
do have laws that prohibit child abuse and can be enforced in those  
situations. And we do have ethical codes of conduct. And as the  
Eleventh Circuit said, if you wanted to craft laws to target some of  
those practices, absolutely fine. But the problem with LB231, which  
again is similar to that, that Florida one, is it is incredibly  
overinclusive. It is broad and is going after not just the terrible  
practices but, but the protected speech as well. And so I think that's  
what the Eleventh Circuit was focused on, was the breadth of these  
laws and ways that are encompassing way too much rather than being  
targeted towards the specific harms that you and I both agree are  
wrong.

**McKINNEY:** What do you deem as acceptable conversion therapy practices?

**MATT SHARP:** Again, I would go back to what the Eleventh Circuit dealt  
with. And it said when you've got individuals going to their client--  
to their counselor and it's voluntary and it's, it's client-directed,  
it's the client saying, I want help with that, that's what the First  
Amendment protects. And unfortunately, just like the law there-- I'm  
sorry.

**McKINNEY:** I'm just-- how is a minor voluntarily seeking conversion  
therapy when it's the parents forcing them into conversion therapy?  
How is that voluntary?

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**MATT SHARP:** Sure. And I, again, would go back, if this is being forced, I think even under the ethical rules, counselors are not allowed to force therapies on a client against their wishes. But I think what the Eleventh Circuit was dealing with was that they actually had a counselor who had clients that were coming voluntarily, that they were seeking this out because of their religious convictions or other reasons, and that the court was saying you can't have these broad laws that infringe upon those protected aspects.

**McKINNEY:** So is it a good practice to stage a funeral for a minor to get them to say they're not gay anymore?

**MATT SHARP:** I'm sorry I missed part of that, Senator. I apologize.

**McKINNEY:** So do you think it's a good practice to stage a convert-- stage a funeral for a minor to get them to say they're not gay anymore? Do you think that's a good practice?

**MATT SHARP:** No, I think we can all agree that that's terrible. But the problem with LB231 is that it's not targeted towards those things. It's breadth encompasses a lot of protected activity, as the Eleventh Circuit Court of Appeals found.

**McKINNEY:** I was just curious if you could prove-- I'm, I don't know, I'm just wondering what's a good practice, because I think it's all horrible. But thank you.

**MATT SHARP:** Thank you, Senator.

**LATHROP:** Thank you for being here, Mr. Sharp.

**MATT SHARP:** Thank you, Mr. Chairman.

**LATHROP:** Next opponent. Welcome back.

**KAREN BOWLING:** Good evening. We've gone from good afternoon to good after-- good evening, Chairman Lathrop and members of the Judiciary Committee. Once again, my name is Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, and I serve as the executive director at Nebraska Family Alliance and testify on their behalf. We agree that everyone should be treated with dignity and respect. No one should receive shock, shock treatment, funerals, castration, none of that. That's all terrible. We can also agree that clients should be in the driver's

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seat and have the freedom to self-direct their own counseling goals free from coercion, use of force or viewpoint discrimination. Professional regulations prohibit abusive and coercive therapy. But LB231 uses broad language in Section 4(a)(1) to encompass any sort of counseling, including basic talk therapy. All individuals and families should be free to choose those forms of counseling and personal therapy that are in harmony with their moral convictions and life goals. Children, parents and their counselors should be able to talk freely about the issues the child is experiencing and determine what counseling goals are best for the child's mental, emotional and physical health. Given the widespread debate over the best course of treatment for children experiencing gender dysphoria, both minors and parents benefit from having access to a full spectrum of available counseling. Let's make an example. A 16-year-old girl seeks counsel from her pastor because she's experienced confusion over her gender identity and concerned about the unknown health impact of hormone therapy and surgery. She has decided that she wants to embrace her God-given biological sex. Her pastor and parents believe because of the complexity, she would benefit talking to a licensed mental health provider. Under LB231, the pastor maybe is protected. However, the counselor would be prohibited and actually found illegal to counsel the young girl to identify with her biological sex. Such counseling should be protected and not censored. Forcing only one form of counseling is viewpoint discrimination and infringement of professional speech, as noted in *NIFLA v. Becerra*, and may not be in the best interest of the minor. The essence of religion is the concept that human persons can experience change. Public policy should protect the right of individuals to practice their faith and not undermine it. In closing, I ask that the committee members ensure that Nebraska families and individuals be free to choose the forms of counseling and personal therapy that are in harmony with their moral convictions and their life goals and not interfere with the counselor and self-directed goals of the patient. Thank you for your time.

**LATHROP:** Thank you. I don't see any questions.

**KAREN BOWLING:** Thank you.

**LATHROP:** Thank you, Ms. Bowling. Welcome.

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**ANGIE KLEIN:** Thank you. Well, good afternoon, committee, Chairman. My name is Angie Klein, I'm from Bellevue, Nebraska, and I'm here in opposition of LB231.

**LATHROP:** Spell your last name for us, will you, Angie?

**ANGIE KLEIN:** K-l-e-i-n. It's tricky.

**LATHROP:** Say it again.

**ANGIE KLEIN:** K-l-e-i-n. Over 20 years ago, I got to make a decision to leave a homosexual lifestyle. During my six years of being a homosexual, I came to a point in my journey that I desired to change. I desired to seek freedom from same-sex attractions and then began my journey of inner healing. I explored this road to healing with help from professional counselors and pastoral caregivers. In these experiences, I was never forced, I was never pressured, I was never shamed, and I was never abused in any way. Each individual honored and loved me where I was at, and I was given the power of choice and the dignity to think for myself about the issue I was struggling with. Why take that away from an individual? They should be allowed to have their own individual counseling goals and so do families. In my choosing to live as a heterosexual woman, I have in no way felt repressed or unfulfilled sexually. In fact, just the opposite. I've been happily married for over seven years and I am a proud mother of two children, none of which would have been possible if I did not have the freedom to choose my own counseling objectives or if I was denied valuable resources. Furthermore, as a pastor over the last 15 years, I have worked with many individuals and young people who were questioning their sexual orientation or gender identity who were, like me, wanting to bring their sexual orientation or gender confusion into agreement with their faith. These individuals were given the same love, honor and dignity afforded me: the power of choice and the dignity to think for themselves. I still work with many individuals who are coming out of sexual confusion, sexual abuse and sexual trauma. I now know how important it is to make sure the individual is in charge of his or her own counseling goals. Please do not take away the yes or the no of individuals. The radical ideology and radical agenda that is consuming our country in regards to this is redefining the very fabric of this great country and our great state of Nebraska. There's no other health topic that a qualified health care provider is not allowed to talk about. Why this one and why now? I know many who

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have left the homosexual lifestyle and many who are transgender and are not anymore. My ex-trans friends are sterile for life because of the affirmation therapy they received and the puberty blockers they were given for transitioning. We need to press hold on this type of therapy because individuals are damaged for a lifetime because of a decision that a therapist affirmed in their office instead of exploring other options with the individual. Thank you for your time.

**LATHROP:** Thank you. Any questions for Ms. Klein? I see none. Thanks for being here.

**ANGIE KLEIN:** Yes.

**LATHROP:** You waited a long time to testify.

**ANGIE KLEIN:** Thank you.

**LATHROP:** Appreciate that. Anyone else here to testify in opposition?

**GWEN EASTER:** Hi, my name is Gwen Easter, G-w-e-n E-a-s-t-e-r, and I wanted to say, first of all, that to the gentleman back there, that God loves him. God loves all of us. He hates our sin. Homosexuality, fornication, adultery, all of those are sins to God. No, and you know, and we all fall short to the glory of God. First off, so I want him to know that God does love him and God looks up on the heart, so I want him to understand-- stand that. I wanted to also say pertaining to this bill that I think that it should be left up to parents and their child to decide what is best for them. The government I feel like needs to stay out of family affairs. I also feel that we can look at this on both sides equally. You know, I don't want to see anyone abusing children under this. You talk about the conversion, I mean, some of the things he said, like this gentleman said, they should be held accountable if they're doing certain things. But it should be left up to those families. I also want to say that we can equally say that it's abusive for two, three and four-year-olds and five-year-olds being put in a position pertaining to this lifestyle to confuse them. To me, that's abuse. To push a lifestyle when, when people do have a choice. You know, the chromosomes XXY and Y, it tells us, boy, girl, you know? You know, I, I look at a lot of videos on YouTube, and I was telling God how I wanted to understand some things because I don't like-- I don't want to hurt people, you know? And I wanted to get an understanding. And I listened to some of the people, you know, kids

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and adults, and they talked about this homosexuality, some, you know, and I was very disturbed by a parent saying like two and three-year-olds, you know, want to be a boy when they were a girl and things like that. As a daycare provider, I've been working with kids since I was 16. I never, ever have had a kid that didn't want to play with a toy. A girl wanted to play with a truck or a boy toy or, you know, vice versa. But I've never had a child say they want to not be a boy or a girl. These are things that are being planted in, in, in kids. And science, there's no science to say, say that people were born gay. As a Christian and people who stand by the word of God, God say he made man and woman. That's it. That's it. And if you believe in the word of God, then you have to believe what he said. And Jesus died for all of our sins. And if we repent, he will forgive us. I just want everybody to know that. Thank you.

**LATHROP:** OK, thank you, Mr. Easter. Welcome back.

**TOM VENZOR:** Good evening, Chairman Lathrop and members of the Judiciary Committee. My name is Tom Venzor, T-o-m V-e-n-z-o-r, I'm the executive director of the Nebraska Catholic Conference here to express our opposition to LB231. The Catholic faith recognizes the supreme dignity of each and every person. Each of us is made in the image and likeness of God, and the only appropriate response to this fundamental fact is charity, which is to will the good of the other. Charity extends every aspect of our lives, including the ways we counsel and assist others in their life's journey. LB231 attempts to address conversion therapy, which has been utilized in counseling situations. As defined by LB231, conversion therapy would include not only problematic practices but also include a number of benign practices. The task before us is to make critical distinctions between these two things. This committee has heard numerous heartbreaking stories this year and two years ago when LB167 was considered. It seems universally acknowledged that the problematic practices of conversion therapy are unhelpful, unsafe and unethical. Professional licensing bodies can already discipline a licensed professional for engaging in these inappropriate techniques. LB231, however, is not simply restricted to harmful practices of conversion therapy, it also includes practices such as talk therapy. And this therapeutic technique helps clients choose their counseling goals through the ability to explore the issues they are presenting. Consider the following example, which would be captured by LB231's problematic definition of conversion therapy. An 18-year-old male experiences sexual or romantic

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attractions for somebody of the same sex. He considers these unwanted and undesired attractions. Rather than act on these attractions, he would prefer to live chastity by integrating his human sexuality with his moral or religious convictions. LB231 would, would prohibit a counselor from helping him realize his counseling goals. To provide contrast, if the attraction were to somebody of the opposite sex, the same 18-year-old could seek such assistance without any issue. This unequal treatment raises serious constitutional problems for LB231, as you've already heard. LB231 also purports to provide some sort of, it seems like a religious accommodation. Besides being practically meaningless, it ultimately proposes a false understanding of the health care provider in their moral or religious commitments. Section 3 subsection (3) assumes that a person can simply suspend their pastoral and religious ministry from their capacity as a health care professional, as if one were hanging up their coat at the beginning of the workday, only to be thrown back on when they leave the office. Certainly counselors must suspend judgment and refrain, refrain from imposing their values onto their clients. But this subsection would force health care professionals who are clergy members or religious counselors, and I understand there's an amendment on that issue, to check their religious and moral values at the door. This treats pastoral and religious considerations as having no bearing on the overall well-being and health of a client or patient. And this faulty philosophical notion is especially problematic when the patient or client seeks a health care professional who understands and respects their moral or religious commitments. And for these reasons, we would ask you not to advance LB231, and happy to take any questions.

**LATHROP:** OK, I don't see any questions, Mr. Venzor.

**TOM VENZOR:** OK.

**LATHROP:** It must be a quarter to six on a Friday.

**TOM VENZOR:** Thank you for all your service on these late evenings.

**LATHROP:** Yeah, no, thank you. Thanks for being here. Next proponent, or opponent. Pardon me.

**AMBER PARKER:** My name is Amber Parker, A-m-b-e-r, Parker, P-a-r-k-e-r. I am an opponent to LB231. Again, the governing law of the land is the Constitution of the United States of America. And we are really in a

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bad situation when we have to create legislation or like Senator Hunt had created and said, well, there's a religious exemption. Because the truth is that the Constitution protects us, whether we're in a government building, private sector, whatever it would be, because worship is really the heart of the people and what they think, say and do and act upon. With that being said, LB231, I want to make sure I'm saying the right bill here, there's been a lot of bills today. What it does, too, is it infringes upon parental rights. Now, it also highlights that in the state of Nebraska, we really do need legislation pertaining to parental rights and bringing about compelling evidence of abuse, which would be through strict scrutiny. But right now it's a rational basis. So I would like to see legislation like that in the future. But with Senator Hunt's bill, an infringement upon parental rights, the parents should be taking care of their children. And I want to address Amendment 1, we talk about freedom of speech. And then somebody already addressed here today of saying when you come up and you have an-- basically right now, LB231 is inserting Senator Megan Hunt into a counseling session with every single person in the state of Nebraska that would be a minor. And that's wrong. That's not the government's job. And we all should be, whatever side one would be, should be against that, because that's an infringement upon the Constitution. The other thing I want to say about is let's say you have reading material, right? And a counselor talks about that how a man or a woman, you were made in the image of God as male or female, are we now going to out-- you know, according to LB231, is it outlawing the Holy Bible now because counselors can't use it based upon that it could be a conversion of a minor? I want to clarify, I'm not for any abuse, and I've heard some things I've never even heard today. And I'm so sorry for those who have went through it. That should have never happened. But we cannot pass LB231 for bills that are going to hurt people and insert government in counseling sessions and with minors and take away God-fearing, loving parents that want to care for their children. And that's all I have.

**LATHROP:** I don't see any questions. Thank you.

**AMBER PARKER:** OK. Thank you.

**LATHROP:** Anyone else here to testify in opposition to LB231? Anyone here to speak in the neutral capacity? Seeing none, Senator Hunt, you may close. I, I have position letters, actually, 477 position letters, 44 of those are proponents and 433 are opponent position letters. We

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also have written testimony received earlier in the day. First are as follows, Meg Mikolajczyk with, is a proponent of Planned Parenthood of North Central States; Kelsey Waldron is a proponent from Women's fund of Omaha; Carina M. McCormick, Ph.D., not representing anyone but herself, is a proponent; and Adam Witte, Witte, is a proponent not representing any organization. Those are the position letters and the written testimony received earlier today. And with that, Senator Hunt, you may close.

**HUNT:** Thank you, Chairman Lathrop. I know that we affectionately call this day in Judiciary Committee "Gay Day." It's the day when we kind of hear a lot of this subject matter bills around workplace nondiscrimination and public accommodations and gay panic defense and conversion therapy. And thank you, everybody, for sticking it out and hanging in here with me. Normally, we would go really late on this day. In 2019, when we first heard my first conversion therapy bill, we were in the Warner Chamber and the whole room was full and there was a line and there were cops and some guy stood up and started yelling. And it's, it's that type of mood. And so I want to thank all the testifiers for being here to, to testify. And I wish we could all go out and celebrate after this. But perhaps in future years, that's what we'll do. I say that to say that because of COVID-19, I don't want the fact that we didn't go until midnight today to indicate that we don't have enough support in the state to take us till midnight on this issue. In 2019, we had 24 in-person proponents and we had over a thousand letters of support. And this is something that comes up to me in my inbox all the time, on my social media all the time as an issue that's very important to Nebraskans, whether you're gay, straight. When you find out about conversion therapy and you learn how it works and what it is, it's something that across the board people oppose and they don't want it happening in Nebraska. It does happen in Nebraska. We have camps here in Nebraska, and we also have at least 12 conversion therapy therapists, providers that I know of who hold a license in Nebraska. Some of them submitted opposition testimony saying, I provide conversion therapy and I would like to keep doing that. So those people we certainly know, but we do know that there's at least 12 therapists in Nebraska that hold a license. Speaking of the, the Boca Raton court case, this was a really unusual decision. There have been four federal lawsuits, and all of them ended up upholding conversion therapy laws that have been passed in other states. The decision in Boca Raton was an outlier and currently

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they're waiting for a rehearing, the entire Eleventh Circuit. The opinion was two to one of the Eleventh Circuit Court, which ruled that the local ban on conversion therapy was unconstitutional. And the two judges that said it was unconstitutional are recent Trump-appointed judges who don't have a lot of judicial experience, honestly. If you look into who these judges are, you kind of understand why it is that they're going to have a rehearing on that. The dissenting opinion in that case got the law right and they affirmed that local governments have the authority to protect youth from the harms of conversion therapy. As the dissent noted, the majority opinion ignores the mountain of rigorous evidence that shows that conversion therapy is harmful, that it leads to bad outcomes for patients, and simply that it doesn't work. And that's what I would also say about claims that, well, what if people voluntarily want to do this? Who are we to stand in their way if they voluntarily want to consent to get conversion therapy? Well, first of all, this bill would only affect minors. And so if we passed this in Nebraska, it will just say that if you are a kid, no conversion therapy for you. Once you're 19, you can consent to receive conversion therapy. But regardless of age, this is a practice that is pseudoscientific, that's ineffective and harmful, and it's ineffective and harmful, regardless of whether or not it's something somebody wants. If a treatment doesn't work, if a treatment causes harm, it doesn't really matter if they really want it. And in some ways, it makes it even more dangerous because when they seek the treatment that is ineffective and harmful and it inevitably doesn't work, these people are going to blame themselves and they're going to inevitably double down on the self-hatred that caused them to go there in the first place. Also, nothing in this bill prevents gender affirming, you know, personally affirming therapy that helps people who are struggling with their sexual orientation make sense of that. Nothing in this bill says that you can't go to your counselor and say, you know, I've been married for 30 years and I'm starting to have same-sex attractions and I don't know how to process it. Can you help me? I don't want to live that way, I want to stay married. You know, nothing prevents somebody from working through feelings like that with their counselor or having honest conversations about, you know, fears or anxieties or problems around their sexuality. This is a very common thing for counselors to talk about with people. All this bill says, is that you cannot try to change somebody's sexual orientation and that, you know, if that happens and someone makes a complaint against someone holding one of these licenses in Nebraska, that would go to

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court and they would have to prove that that's what they were doing. And the bill is very clear about what conversion therapy is and isn't. And so we can decide in the Legislature what it is, and that would be for the courts to, to work out if there's ever a complaint brought against somebody. What else did I write here? I would also just note for the record that. You know, there are, there are men and women, but there are also medically intersex people. Between one and two percent of the population is intersex. And what that means is that they have chromosomes that are not XX or XY, they might be XYY or XXY. And odds are there are intersex people who work in this building statistically. And a lot of times these people you cannot tell from looking at them. But they have other, you know, conditions that they live with or things that they, they work through medically because of the chromosomal abnormality. So that's certainly something that exists in nature in one to two percent of people in the population. It again, it costs nothing to say that, my God loves you. I don't hate gay people, I don't want any harm to them. But it doesn't really make a lot of sense to say that stuff unless there's a vote behind it. And what we need to be hearing is not just words of faith and words, but we need to see faith through action. And if you say, my God loves you, I don't hate gay people, we have an opportunity here to use a vote to make that point instead of just using words to say that. There are plenty of things in this world, speaking from personal experience, to make a gay person hate themselves, to make a gay person feel like they're not welcome, that they're never going to be accepted, that they're never going to meet somebody and fall in love, that they're never going to have the, you know, normal adult experiences of getting your heart broken or falling in love or having a baby or a family. There's enough forces in this world working to confirm that for LGBTQ people every day. And conversion therapy is one more thing that adds to the stress and anxiety and pressure that we feel all the time, that there's something wrong with us, that we're not enough, that we are a condition, an illness that needs to be treated and cured. And Nebraska has a responsibility, at least, to protect children from the consequences of this, of these attitudes. This bill is similar to many other laws that we have that protect children from dangers. For instance, state law protects young people from child abuse and neglect at the hands of their parents and other adults. We don't let kids buy alcohol and tobacco. We say they have to wear seatbelts. We protect them from verbal harassment and discrimination at school. And children in Nebraska have the same right to expect that a therapist practicing

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with a license from the state of Nebraska is not going to put them at risk of severe harm, is not going to put them at risk of depression and substance abuse. Research from the Family Acceptance Project showed that 63 percent of people who went through conversion therapy experienced a suicide attempt. That is a remarkable correlation between people who go through conversion therapy, 63 percent, way more than half, end up experiencing a suicide attempt. This legislation is very carefully and narrowly drafted to define what this practice is. And I think it's in good shape. This is one that I will work and this is one that I think that we could join some other conservative states in saying this is something that we can all agree on that we need to stop. Thank you.

**LATHROP:** Thank you, Senator Hunt. I don't see any follow-up questions. So that will close our hearing on LB231 and close our hearings for the day. Have a great weekend, everyone.