

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee February 9, 2022

**LATHROP:** Certain irony, if you're not a usual traveler, that I'm late, and I have been lecturing my committee to be here on time and here they are, not all of them but many of them, and I think two of them are introducing bills in other committees. Welcome to the Judiciary Committee. My name is Steve Lathrop. I chair this committee. I'm the state senator from District 12, which is Ralston and parts of southwest Omaha. Committee hearings are an important part of the legislative process and provide an important opportunity for legislators to receive input from Nebraskans. I go through this at the front end, for those of you that aren't familiar with this process, so that you kind of know how to-- how to do, what the rules are here. So I guess I don't really take questions, but it's pretty straightforward. If you plan to testify today, you will find yellow testifier sheets on the table inside the door. Fill out a yellow testifier sheet only if you're actually testifying before the committee, and please print legibly. Hand the yellow testifier sheet to the page as they come-- as you come forward to testify. There's also a white sheet on that 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 in person on a bill and would like to submit a position letter for the official record, all committees have a deadline of 12:00 p.m. Central Time, the last workday before the hearing. Please note that there's a change this year. Position letters will be included in the official record-- or for them to be included in the official record, they must be submitted by way of the Legislature's website, which is at [nebraskalegislature.gov](http://nebraskalegislature.gov). This will be the only method for submitting letters for the record other than testifying in person. Letters and comments submitted by way of email or hand delivered will no longer be included as part of the hearing record, although they may be a viable option for you to communicate with an individual senator. Keep in mind that you may submit a letter for the record on the website or testify at the hearing, but not both. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents and, finally, by 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 name and spell them for the record. If you have copies of your testimony, bring up ten 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 will not be allowed to read it. We will be using a three-minute light system, and this is kind of an important part of this process;

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particularly, if you came down here with prepared text that you're going to read, you may need to pare it back, and so I would encourage you to edit that while you're waiting for your opportunity to speak. When you begin your testimony, the light on the table will turn green. It'll stay on for two minutes, then the yellow light will come on, and that's your one-minute warning, so green light for two minutes, yellow light for one minute. That's your three minutes. When a red light comes on, we ask you to wrap up your final thought and stop. Senators may have questions for you. That's not part of the three minutes, so before you jump out of the chair, we'll see if anybody has questions. As a matter of committee policy, I'd like to remind everyone, the use of cell phones and other electronic devices is not allowed during public hearings, though you may see senators use them to take notes or stay in contact with staff. I would ask everyone to look at their phone and make sure it's in the silent mode. A reminder, no verbal outbursts or applause are permitted in the hearing room. Since we have gone paperless in the Judiciary Committee, senators may well be using their laptops to pull up documents and follow along on each bill. 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 have other meetings to attend to. And with that, we'll have the members introduce themselves, beginning with Senator DeBoer.

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

**PANSING BROOKS:** Good afternoon. I'm Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln, and I'm the Vice Chair of the committee.

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

**GEIST:** Good afternoon. Suzanne Geist, District 25, the southeast corner of Lincoln and Lancaster County.

**LATHROP:** Assisting the committee today are Laurie Vollertsen, our committee clerk, and Josh Henningsen, we'll also have Neal Erickson in here after a bit, our two legal counsel; and our committee pages today are Bobby Busk and Lo-- Lo-- Logan Brtek, both students at UNL. And with that, we'll begin our first hearing today, which is the gubernatorial appointment of Gerald "Rand" Hansen to the Crime Victim's Reparation Committee. Mr. Hansen, by the way, is unable to appear today. He has provided a letter, which has been shared with committee members, and guess he's not here to ask questions, so that

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closes our hearing on that gubernatorial appointment. That is a reappointment too. Pardon?

**LAURIE VOLLERTSEN:** [INAUDIBLE]

**LATHROP:** Oh, yeah. Is there anybody here that wants to testify in support of his appointment? Anybody here in opposition? Neutral capacity? Seeing none, do we have any position letters, Laurie?

**LAURIE VOLLERTSEN:** No.

**LATHROP:** And we have no position letters. That will close our hearing on the gubernatorial appointment of Mr. Hansen to the Crime Victims Reparation Committee and bring us to LB1003 and Senator McDonnell. Senator, welcome to the Judiciary Committee.

**McDONNELL:** Thank you, Senator W Lathrop and members of the committee. My name's Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. LB10-- LB1003 seeks to affirmatively add parole officers under the protective service bargaining unit of the CIR. A number of parole officers reached out last year requesting the change, as it better reflects the work that they are doing. As this committee is very aware, as we move forward in the community supervision, the demands on parole officers to provide protective services will only be increasing, as will the demand for more social service workers to support programming for parolees. In our most recent budget there are-- there were four FTEs at 39 under the collective bargaining unit. Parole officers provided me with a list of 31 of those who signed a petition requesting this change. Behind me, there'll be testifying today, is Jerry Brittain, vice president of FOP Lodge 88. Here to answer your questions.

**LATHROP:** Just a quick one. Are they in a collective bargaining unit now?

**McDONNELL:** Yes.

**LATHROP:** And which unit are they in, Senator?

**McDONNELL:** NAPE/AFSCME. They're-- they're--

**LATHROP:** OK. And you have 31 of the 39 signed something that said they want to go to the FOP?

**McDONNELL:** Yes.

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**LATHROP:** I got you.

**McDONNELL:** So there's going to be some people testify today that are going to be in opposition, and after this process, I plan on trying to get everyone together to have this discussion and in the same room. And I think everyone that will testify believes that they should be represented. How we got here today possibly could have been handled differently, but the point is to make sure these people are represented and represented well.

**LATHROP:** OK. I see no other--

**McDONNELL:** I'll stick around for closing.

**LATHROP:** Pardon me?

**McDONNELL:** I'll be here for closing.

**LATHROP:** OK, perfect. Thanks, Senator McDonnell. Proponent testimony at this time? Good afternoon, welcome.

**JERRY BRITTAIN:** Good afternoon, Senators. Thank you. My name is Jerry Brittain; it's B-r-i-t-t-a-i-n. I do have a copy of that petition if you'd like handed out to the committee. I can get it to you right away. So I represent FOP 88. Some of you are familiar with us. We represent a lot of corrections staff, a few other similarly situated state employees. So Senator McDonnell hit it right on the head. Early this year, several parole officers came to us and said, we're not satisfied with the representation we currently have, what can we do? And so we turned them back to their current representation and they continued to not get the satisfaction they were looking for. And so we did a little probing via that survey to see if this is an isolated incident or if it affects the bulk of parole. I believe there's about 41 positions, of which 31 are currently filled. There has been a little bit of a turnover rate in Omaha particularly. Historically parole was part of Corrections until a few years ago. They are very similarly situated with the rest of our bargaining group. We looked at it. Our legal team looked at it to see if there was another way of handling this through maybe the CIR for a reclassification, and there is some unclear language. We're not sure that we would-- that these folks would get the outcome that they were seeking, and so that's why we approached Senator McDonnell to help us down this path. So that-- that's the gist of it. We do have a-- I know you have some written testimony that people have submitted. Again, parole is far and wide, so obviously it's very difficult for folks from the Panhandle to

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testify. And I-- I believe there's about six parole officers behind me that also want to kind of plead their case to your committee. So I'm happy to answer any questions.

**LATHROP:** OK. I don't see any questions at this time, but thanks for being here, Mr. Brittain.

**JERRY BRITTAIN:** I'll get you a copy of that.

**LATHROP:** OK, thank you. Proponents, if you are here to testify in favor of the bill, please come forward. And I would say we have sort of an on-deck row here, so if you intend to testify, maybe you could come up and-- and start filling in the front row and-- helps the hearings move a little more smoothly. Good afternoon, welcome.

**CLAYTON WELLS:** Thank you. My name is Clayton, C-l-a-y-t-o-n, Wells, W-e-l-l-s. My job description is I am a parole officer for the state of Nebraska, and I am here today for myself. I feel the-- whatever the proper wording is for whether or not this gets passed within the Legislature, I feel it would be appropriate, as I feel that we would be better represented by the Fraternal Order of Police Organization with their protective services bargaining unit. As Mr. Brittain made reference to, there has been some items that has come across in the past couple years that parole officers did not feel that they were completely represented in all aspects of the contract. That's really all I have to say at this time.

**LATHROP:** OK, fair enough. Thanks for being here.

**CLAYTON WELLS:** All right, thank you.

**LATHROP:** We appreciate what you do. This committee very much appreciates--

**CLAYTON WELLS:** Thank you.

**LATHROP:** --what our parole officers are doing. We know you don't have an easy job and it is an important role in our system. And so--

**CLAYTON WELLS:** Thank you, and I would like--

**LATHROP:** --you have our gratitude.

**CLAYTON WELLS:** Appreciate that very much, and I would like to thank the committee for taking the time to hear my words today.

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

**OSCAR LOPEZ:** Good afternoon. My name is Oscar Lopez. I am a specialized parole officer at the Lincoln Regional Parole Office. I've been with the department since 2013. I'm here representing myself. I'm here representing myself to let you know that we feel that is a better need for us to be in FOP. In the last couple years, we've had some ups and downs and we feel that if we had better care in a different union, some things may have-- not have happened. We've had a lot of overturn rate and we feel that, being in the FOP, some of that may not have happened. We're currently in a Class C bargaining unit. If you look across the agency in that bargaining unit, a lot of individual or a lot of agencies got hiring bonuses, got retention bonuses, and got pay raises. We are nowhere near in those conversations. There's a lot of bills coming up with changes that involve us, and we feel that, with those changes, we can help with those changes, but we need better representation to help better the agency, so.

**LATHROP:** How are you guys doing on staffing?

**OSCAR LOPEZ:** We currently have, I believe, 39 or 38.

**LATHROP:** Thirty-eight parole officers?

**OSCAR LOPEZ:** Yes.

**LATHROP:** If you're at full strength, how many parole officers would we have?

**OSCAR LOPEZ:** Forty-one.

**LATHROP:** And what's a typical caseload?

**OSCAR LOPEZ:** It could vary at times. Caseloads have been in the 60s to 50s to 30s to sometimes in the high 20s. It just varies at times on if we're full staffed or not.

**LATHROP:** Do you-- you call yourself a specialized parole officer. Does that mean you're handling more difficult cases or do you all handle the same variety of cases in terms of challenging?

**OSCAR LOPEZ:** Every parole officer is now a specialized parole officer; before, we were just considered senior parole officers, but then they bumped everybody up to be specialized parole officers. So currently, right now, if a new officer were to walk in the door with no

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experience, somebody like me, with nine years' experience, that person gets the same exact pay as I do also.

**LATHROP:** I appreciate that you're-- you're here about your pay, and I'm going to ask a couple questions just so that myself and the committee can better understand you, what the parole officer's situation is relative to watching people that are on parole. Do you handle just the more difficult cases or the high-risk, high-need guy, or does everybody have a caseload with a similar variety of needs and risk assessment?

**OSCAR LOPEZ:** Everybody has the same similar caseload, from high risk to moderate risk to low risk and to-- also to our LSOs, which are the lifetime sex offenders.

**LATHROP:** All right. Just one or two more questions for my benefit, if you don't mind. Is there a-- some kind of a national standard about the number of people you should be supervising per parole officer?

**OSCAR LOPEZ:** We've gone to trainings before and they said the best caseload to have to give that one-on-one contact is to have a caseload of 25. That gives you the time and ability to spend a little more time and concentrate on the-- on their caseload. They say, once it gets past 25, it kind of just really gets a little chaotic after that.

**LATHROP:** And what's the-- what's the current caseload for a parole officer?

**OSCAR LOPEZ:** The current caseload right now, I'd say, is between 30 to 35.

**LATHROP:** Are you able to manage that well or is it a problem?

**OSCAR LOPEZ:** We manage it the best we can, yes.

**LATHROP:** OK. I don't have any other questions. I appreciate you answering those questions. They were a little out of the scope of your testimony. Anybody else? I've seen none. Thanks for being here.

**OSCAR LOPEZ:** Thank you so much. I appreciate you--

**LATHROP:** We appreciate your testimony.

**OSCAR LOPEZ:** --giving me the time.

**LATHROP:** Good afternoon, welcome.

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**DYLAN ROTERT:** Good afternoon. My name is Dylan Rotert, D-y-l-a-n R-o-t-e-r-t. I'm also a specialized parole officer here in Lincoln. I have been since 2021. I'm here to talk from my own point of view, not the opinion of the agency or my colleagues who are also here today. So I believe the transition to protective services will help us in multiple ways. I don't feel that we are strictly a social work-type job. We have a kind of a area between law enforcement and social work that kind of doesn't get seen as much. I feel like it doesn't fully capture our job duties, and I feel like I feel like FOP would better relate to our job duties and better align with other counterparts who su-- supervise the same type of clients. As a parole officer, I'm tasked with main-- maintaining public safety, working to reduce recidivism, assist clients in their integration back into society, and I personally believe we supervise higher risk clients because they're all coming out of prison into the community. Parole is not a alternative to incarceration. Everybody has been incarcerated. That's my belief, and I feel that, as a parole officer, I'm involved in nearly every aspect of my clients' lives. We have to approve their residences. We have to approve changes in employment. We have to give them permission to travel outside county. We monitor them on the ankle monitor when they go into the community. It's-- we're very involved in their lives, and I feel that goes under-noticed at times. I enjoy my job and the people I work with and assisting clients to become productive members of society. I have a passion for that and I want to do it for a long time, but I feel that I earn a wage that's lower than the standard or for people that work a similar job. I think we have a lot of hard work being done, and I think it's only an area that's going to increase in need. As other bills come, criminal justice reform, whatever, we're going to be needed more, and more staff, more representation and advocacy for us, and I feel that it's important that we switch to a place where we're advocated for as much as similar places. So --

**LATHROP:** OK.

**DYLAN ROTERT:** --I appreciate the time, so that's all I have.

**LATHROP:** No problem. I do have one question for you, unrelated. How are we doing on transitional housing for parolees?

**DYLAN ROTERT:** I would say it's definitely a need area. Transitional housing with programming there in-house, so they don't have to go seek it elsewhere, is a place that I feel is needed.

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**LATHROP:** How many-- how much capacity do we need to increase to be doing it adequately?

**DYLAN ROTERT:** I don't know the-- the answer to that question, what [INAUDIBLE]

**LATHROP:** A hundred units or you just-- it's impossible to say?

**DYLAN ROTERT:** I'd say-- I'd say anything would help. Places where our clients can have structure is important, obviously. I don't know a number that would satisfy that. I think the more, the-- the merrier. A place where it's structured, they have a place to go that they are also supervising have services there, I don't think it'd be a bad option for any number, so.

**LATHROP:** OK.

**PANSING BROOKS:** I guess--

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you very much for coming today, Mr. Rotert. So I-- I'm sort of catching up here a little bit, and so you-- you are not part of a bargaining group, is that correct, or the bargaining group that you're in, you do not care for?

**DYLAN ROTERT:** I feel that we would be better represented in an area where it better aligns with our job duties as like law enforcement.

**PANSING BROOKS:** OK. But you're in a bargaining unit?

**DYLAN ROTERT:** Yes.

**PANSING BROOKS:** What is that unit?

**DYLAN ROTERT:** NAPE is who we're with [INAUDIBLE]

**PANSING BROOKS:** Oh, it's NAPE.

**DYLAN ROTERT:** Yeah.

**PANSING BROOKS:** OK, sorry. And you-- and so you sort of alluded to the fact that you are under NAPE's bargaining conglomeration or group--

**DYLAN ROTERT:** Correct.

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**PANSING BROOKS:** --because of the fact that you're seen as more of a healthcare or psychological or what was it?

**DYLAN ROTERT:** So we provide case management. I feel that it is kind of a mixture between like social work, like a--

**PANSING BROOKS:** Social work.

**DYLAN ROTERT:** --like a Child Protective Services-type deal. I'm not trying to compare the two job duties, but it's similar in the case management aspect. I feel that our job expands beyond that because we have the task of maintaining public safety. We work with people who are high risk coming out of prison, then through the criminal justice system have a lot of needs that, depending on their choices, could subject people to harm.

**PANSING BROOKS:** OK, so I understand that I see some people that are coming behind you that may not agree, and so unfortunately you're coming up and you're telling your side, but we can't re-ask you the questions after, so I'm trying to sort of piece it together a little bit. But so you're under NAPE because you aren't seen as law enforcement?

**DYLAN ROTERT:** I don't know what led to us going there. I wasn't here at that time. That's just where we've been since I've been employed as a parole officer.

**PANSING BROOKS:** OK, well, we'll try to ask the other people then what happened on all that, but-- OK, that's all I have then. Thank you.

**DYLAN ROTERT:** All right. Thank you.

**LATHROP:** I don't see any other questions. Thanks for being here--

**DYLAN ROTERT:** Yeah, thank you.

**LATHROP:** --and for what you do. Any other proponents of this bill that want to be heard? Anyone here in opposition? Good afternoon, welcome.

**JUSTIN HUBLY:** Good afternoon, Senator Lathrop, members of the committee. My name is Justin Hubly, J-u-s-t-i-n, H-u-b-l-y. I'm the executive director of the Nebraska Association of Public Employees, NAPE/AFSCME Local 61. Our union represents about 8,000 workers in 50 different state agencies and about 600 different job classifications across the state of Nebraska. We're in opposition to this bill for two main reasons. The first is very simple: that it's asking you to do

something that already exists in statute, in the State Employees Collective Bargaining Act. So maybe to Senator Pansing Brooks's questions that were just asked, the State Employees Collective Bargaining Act establishes 13 bargaining units. And what the law says is that the Commission on Industrial Relations will mediate disputes if the people feel that they're in the wrong bargaining unit, so parole officers are in the C bargaining unit, counseling and social service work. They could be placed in the law enforcement bargaining unit. They could be placed in the P-- protective services-- bargaining unit, which is what this piece of legislation would do, but the law defines the P bargaining unit as institutional security personnel, so I don't know that that's the best fit. But what I do know is the law says how this should be mediated, and the answer is to file a petition for unit clarification before the Commission on Industrial Relations. They would hold an evidentiary hearing and determine if the employee should be placed in a different bargaining unit, so that's really the appropriate way. And that's why we're in opposition to this bill, mainly, is because there's over a thousand different job classifications and if, instead of using the CIR, the tool that you've designed to mediate these disputes, are we going to come to the Legislature every year to have you place people in bargaining units? Secondarily, really all this does is it moves them out of our unit and into the Fraternal Order of Police. And I'd like to clarify a couple things that-- that were said before. After talking with Senator McDonnell, I went back and I looked at our log, our staff logs, all the phone calls we take for assistance; took 2,100 phone calls from state employees in the last 12 months. Five of them came from parole officers, all of whom were facing disciplinary action, all of whom were not members of our union, and we represented them at our expense. Mr. Brittain testified that it sounded like they were redirecting focus back to our union. I have seen no evidence of that. Part two, you heard some testimony from Clayton Wells, who said that he didn't feel that our union was doing a good job representing him. I'd just like to point out that Mr. Wells, during that period, was on our board of directors for two years and never raised any concerns, so that's concerning to me. Finally, I would just like to say, for the record, we have invited parole officers at our expense; we've sent them letters and emails and invited them to monthly meetings in Omaha and Lincoln and Scotts Bluff and Kearney and everywhere, and they haven't been terribly interested. So I'm appreciative of where they want to be. I want them to know that we have an open-- open ear at all times if they would like to chat. But I also just don't think we want to have committees of the Legislature doing the CIR's job for them, which

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is to hold an evidentiary hearing and figure out which bargaining unit any set of employees belongs. Thank you very much for your time today.

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

**JUSTIN HUBLY:** You bet.

**LATHROP:** Any other opposition testimony? Anyone here in the neutral capacity? Seeing none, Senator McDonnell, you may close. We do have position letters. And let me-- if you'll give me just a second to read those into the record, we have two-- sorry, wrong bill. We have four letters. Three are proponent letters, position letters, and one opponent position letter.

**McDONNELL:** As I mentioned in my-- my opening, I do plan on bringing the proponents and opponents together to have this-- this discussion. I know one thing we all agree on, that these people are doing important work and we want them represented and we want them treated fairly based on their wages and benefits. So we will have more discussions. And thank you, and I'm here to answer your questions.

**LATHROP:** We'll just kind of wait to hear back from you. How's that sound?

**McDONNELL:** Thank you.

**LATHROP:** Perfect. Thanks, Senator. And, and thank you to the parole officers that came down here today, regardless of how this bill goes or what collective bargaining unit you end up in. We have really come to appreciate the importance of the work you do and this committee is grateful for what you do every day to keep our community safe and help these people transition. So that will close our hearing on LB1003 and bring us to Senator Albrecht and LB1213. If you want to wait just a second while we move some people through? How many people-- and we ask this, this next question so that I can alert the next person. How many people intend to testify on this bill; for, against, or neutral? What do we got? Six or so. OK, perfect. Senator Albrecht, welcome to the Judiciary Committee.

**ALBRECHT:** Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Joni Albrecht, J-o-n-i, Albrecht, A-l-b-r-e-c-h-t. I represent Legislative District 17 in northeast Nebraska, which includes Wayne, Thurston, Dakota, and a portion of Dixon Counties. LB1213 will be replaced with AM1839, which will become the bill. I will be speaking directly to the amendment. First of all, I'd like to thank Senator Lathrop for meeting

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with my staff and I and for bringing other key players like the ESU and the IT specialist from Millard Schools to the table. We met together and we all agreed that monitoring the content that is provided to our K-12 students is very real problem. It happens-- it has been a reward-- it's been rewarding to work together to bring about an amendment that not only addresses that problem, but stands in vital protection of Nebraska's K-12 students. I want to make myself perfectly clear that this bill is not meant to harm teachers, librarians, administrators, or schools. In fact, this bill protects them. This bill is solely targeted toward educational research database providers and vendors. The entities responsible for filtering obscene content as defined by the Nebraska law in Section 28-808 for children in K-12 grades. What I'm about to share with you was very foreign to me about a year ago. In fact, when I first heard about it, I found it quite difficult to believe. After a year of research and investigation, I stand before you today with a concern so great it has developed into my priority bill. Let me start by settling in the context. There are primarily two companies that provide educational research databases to nearly every school, not only in Nebraska, but in America, also in Australia, Great Britain, and all around the world. Their names are EBSCO and Gale. Marketing themselves specifically for K-12, EBSCO and other educational research database providers will tell you that they provide a safe environment for students to learn. The reality is that many people from many states have told EBSCO and Gale about the inappropriate content the students are coming across, often accidentally. Though these companies will remove the specific identified link for that school, they do not remove it from all schools and make no attempt to clean them all up. Be aware that we are not dealing with a mild or arguable pornography. Researchers have found the most vile and graphic obscenity on K-12 school databases, including many that encourage violence. I met with the Nebraska Library Commission and learned that they are the entity in our state that negotiates the, the contract with EBSCO. Their contract provides educational research databases for nearly every school district and many private schools in Nebraska. I've provided you with a nine-page list, front and back, of these schools. Obscene and objectionable materials can be accessed within a few clicks. Think about that. In as little as three clicks, our children can be exposed to things that some of us would find revolting at the very least. Some might say that the schools have filters that keep harmful content out. Whenever a student takes their device outside of a school building and therefore often out of-- from under the control of-- the protection of the school's filtered network, they can use the school-assigned log-in from anywhere, within three clicks, be on a site such as Pornhub, all

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in the name of education paid for by the Nebraska taxpayers. In some cases, their school's name is even added to the websites, giving the appearance of the school's endorsement, once again, leading our children down a path that they should never be able to take in the name of education. It's easy for any educational resource data company to fix this travesty. See John Horst's testimony that I've included in your packet who was not able to make it due to COVID. One technology specialist told us it would take the international businesses less than 24 hours to clean up the content and the links that allow our K-12 children to have access to. It's important that we hold these educational research database providers accountable. Many other states have already taken measures to force them to clean up the learning environment that they so boldly market to our schools. Georgia, Minnesota, Utah, Tennessee, Idaho, and Texas, just to name a few, have taken steps to create legislation to bring a halt to this material being readily available to K-12 children. So LB1213 through AM1839 does four things: (1) it requires education research database providers to filter and block materials obscene as to minors defined by Nebraska state statute; (2) it gives a school and/or the Nebraska Library Commission the legal authority to end a contract if the provider does not remove the inappropriate content in a sufficient time and sufficient way; (3) it establishes an annual reporting mechanism where all schools in Nebraska submit all noncompliant incidents to the Governor and to the Legislative Education Committee; and (4) finally, it allows for a parent or guardian to bring legal action against the education research database provider or vendor for any injustice incurred by their child. Nebraska parents and teachers are more astute than ever as to what is happening in our schools. We owe it to the Nebraska children, parents, teachers, librarians, schools to stop K-12 from being exposed to obscene content in the name of education paid for Nebraska-- by Nebraska tax dollars. Together, we can easily hold education research database providers accountable for obscene content included in the databases that they're currently providing to our K-12 children. I know the Judiciary Committee hears many bills. Out of respect for your time, I've intentionally kept this hearing small by inviting just a few key testifiers. They and I will be happy to any questions-- to answer any questions you have and we would like to garner your support to bring LB1213 with AM1829 to the floor of the Legislature. Thank you.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** Do you have copies of the amendment because I-- somehow I don't have it. So do you have copies?

**ALBRECHT:** We can get some, you bet.

**DeBOER:** I don't have it. So is it-- if it's somewhere-- I was just curious about that. And then you might have somebody that you say asked somebody later on down the line, but do you know-- you said that schools have the ability to kind of geofence so that the material can't be accessed within sort of the confines of the school area.

**ALBRECHT:** But it still gets through.

**DeBOER:** It does still get through within the, the geofencing?

**ALBRECHT:** People to talk about that behind me.

**DeBOER:** OK. What I was going to ask is could parents-- you know, all these gadgets. Do they have ways of, you know-- sort of parents can go in and do some kind of parental control thing on the gadget itself?

**ALBRECHT:** You know, people with more IT information and--

**DeBOER:** That's OK. Do you have somebody--

**ALBRECHT:** --somebody would probably be able to answer that. But, you know, when they leave our schools and they're out of that umbrella of protection, even though they can still get into that at school, there has to be a way for us to control the devices that we provide for the children. That's the--

**DeBOER:** Will someone with that kind of technical expertise be testifying?

**ALBRECHT:** I hope so.

**DeBOER:** Thank you.

**ALBRECHT:** Yes, yes. Do you want me to get copies? I'm sure you could-- would that be OK, all right?

**LATHROP:** That'd be, that'd be fine. We can have that page get some copies for the committee. Thank you, Senator Albrecht. We will take proponent testimony. Good afternoon. Welcome.

**MATT HEFFRON:** Good afternoon, Senator Lathrop, members of the committee. My name is Matt Heffron, H-e-f-f-r-o-n. I'm an attorney, I'm an attorney in Omaha and Senator Albrecht contacted me to see if I'd help drafting this bill because I have some previous experience with database litigation. We worked extensively with other tech

support people with school districts in several school districts in Nebraska. Several of them will be testifying next. We also worked extensively with a database expert out of San Diego, John Horst, who was intending to come and answer all your questions today, but he got COVID and so I asked him to write a short report and he did. It's a two-pager and it-- for us laypeople, it explains pretty well how this problem works. In a nutshell, it goes like this. Despite the best filtering software schools can get-- and we talked to these gentlemen. They have a good filtering software. When the student goes onto the school's website and then selects a database, one of these corporate commercial databases, the filtering after that point is largely ineffective; not entirely ineffective, but it doesn't get really the meat of it and there are a number of reasons that John Horst's report explains simply and I can talk about it further or maybe one of these gentlemen will talk about it. That's the problem, that once they get into the database, despite the best school filter, despite the best home filters, they can't-- the pornography, the obscenity actually is available to them and often times really graphic stuff. Here's the second part that's important from John Horst's report and that is it's very simple-- and I heard Senator Albrecht say this. It's very simple fix for these large multinational database companies. They simply refuse to do it. It's something they could do. It's the same sort of thing they're already doing, labeling and indexing. They could do it for obscene content as well. They just refuse to do it. Now as to the bill, because I'm the attorney for, for Senator Albrecht, there are a number of legal matters: private right of action, irrebuttable presumptions, and presumed knowledge. The private right of action comes right out of the Nebraska Consumer Protection Act with some changes for this issue. The irrebuttable-- irrebuttable presumptions are added so that-- to protect the school district so they, they can avoid litigation or if they do get litigation with the, with these database companies, they will stand in a good position. Presumed knowledge is actually right out of another Nebraska statute, so. I would say this too. There are many people, even people who are in the libraries and working with schools, who aren't aware this exists and don't understand the problem because it is a highly technological problem. And I want them to know no one is blaming them for that. Some people get kind of defensive and sometimes there's confusion as to what the facts are. The important thing about this bill is that it-- this confusion among some of the facts won't matter. It's just requiring that the databases-- if you're providing a database to children here in Nebraska, then you have to prove-- you have to assure that it complies with our obscenity laws. The schools are protected,

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the Nebraska Library Commission is protected, and the children are protected.

**LATHROP:** Very good. Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you very much for being here today. Given that you're the attorney on this issue, so can you walk me through a little bit what, what's the reasoning behind giving the parents right of action to sue?

**MATT HEFFRON:** Sure. From having seen this in other parts of the country, one of the problems is that parents, sometimes, especially if their children really are severely damaged-- and there are some real severe damage by some of this obscenities-- sometimes they feel, and rightfully so, that they have no, no basis for remedy because in most states, what you have to rely on is a prosecutor who's willing to prosecute a case like this and if they don't, then you're just out of luck. And one thing I noticed was that the thing that was needed in most of these sort of actions was a private right of action. That's what we give them here. If you're worried that there's going to be a lot of lawsuits, I doubt it. And the reason for that-- one reason for that is that they have to show damages that their child has been damaged. And one thing we found in other states, at least I've read about in other states, is that it's a rare thing that parents really want to bring their child forward as having been damaged. So that will be a limitation on it. And also, I mean, look at the Consumer Protection Act. This is that language and that language is not causing a flood of-- and the Consumer Protection Act is not causing a flood of litigation either.

**SLAMA:** Thank you.

**LATHROP:** Senator Geist.

**GEIST:** You mentioned that there was a simple fix for the national company.

**MATT HEFFRON:** Right.

**GEIST:** Would-- can you enlighten us what that simple fix would be?

**MATT HEFFRON:** Sure. And I think I'll have to take a page from Senator Albrecht here and say that I am a layman on this.

**GEIST:** OK.

**MATT HEFFRON:** But it is explained in, in John Horst's two-page testimony. It's also-- could be addressed by a couple of other gentlemen coming up next. The simple fix is that when these-- these multinational database companies, their whole business is labeling and indexing sites and material coming back from sites and that's how they want it run. If you were just, say, a college kid and you wanted the best research, that's how they do it and that's in-- and like they only have to do the same thing for obscenity related sites. That's the first thing. That's filtering. And then material coming back, they have to-- it's called pattern matching, but you have to also indicate what the problem is with that too. And it's-- that's what they do for business and that's why it, it is, it is so, so easy for them, for them actually can do. And, you know-- and honestly, EBSCO markets and it's right on their website-- I just looked at this, I think, within the last couple of days-- that this is quote age appropriate. They know it's not age appropriate. There's also confusion at times when-- particularly EBSCO is the company I'm most familiar with, but they will tell people, well, you're not using it right. They usually pin the blame on the users, the schools and it frustrates the schools because they are using it. If you go to EBSCO's website today, Explora is what they promote. On the website, the junior high schools and high school students, that's the same Explora, which is on NebraskAccess, and it's promoted for schools. It's got a-- other people can testify that you can get quickly into obscenity in Explora, despite the fact that it's promoted for junior high and high school students.

**GEIST:** Thank you.

**LATHROP:** Senator DeBoer.

**DeBOER:** Can we have other--

**LATHROP:** I will say this, that the two guys behind them are the, if you'll pardon the phrase, the geeks, the guys that, the guys that understand the, the process of filtering this.

**DeBOER:** I wanted to ask a legal question.

**LATHROP:** OK.

**DeBOER:** OK. I wanted to ask you a legal question.

**MATT HEFFRON:** Go ahead. All right. Well, I'm happy to talk--

**DeBOER:** Can you tell me what the law in other states has been with respect to this?

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**MATT HEFFRON:** Yeah. I can't give you a complete, but I know there are a number of states in various stages of trying to get legislation through. I know one has already gotten it through two years ago. That's Idaho and that-- I think Senator Albrecht's office sent that to me as my start and that's what we used as a pattern to start with this, this particular legislation. There are a number-- I couldn't tell you how many, but I do know that Georgia, Texas, Utah, and a number of other ones are in some process. Several of them passed it through one house and they're now at the next house. It's not the exact same legislation, but it's similar legislation.

**DeBOER:** So is there any kind of uniform idea about this? Because this seems like if I'm EBSCO or I'm whoever and I'm trying to work on this, if I've got certain rules because the-- I don't have the amendment, but at some point, I think the page is bringing it. I'll have a chance to look through it. But you know, if I have one set of rules for Nebraska and it's based on Nebraska's obscenity laws and then I have another set in Idaho and another in Georgia and Texas and like that, does that-- I mean, is that going to make it difficult for me to know how to properly meet all the different states' regulations?

**MATT HEFFRON:** Well, actually, that's a very good question because what you're talking about is what sometimes known as a community standard for obscenity. I can tell you in this case, it appears that there will be not a problem with it. Here's why. It's already been handled nationally. It has for a long time. There's almost a national standard for these and I'll tell you two, two examples of that. The content filter, if you will, or the software filters that are used by many of the districts here in Nebraska are nationally market-- marketed. So they have to deal with-- and they're taking out obscenity just like we want EBSCO and Gale and some of the others to do as well. So they're already dealing with that problem in that these companies are marketing in the filters already that deal with an obscenity standard and they're using the same filters across the nation. So that's not a problem there. The other one I just tell you is CIPA. CIPA already requires a standard for obscenity harmful to children, almost the same as what we've got here in this act. CIPA is a federal act.

**DeBOER:** So, so-- OK, CIPA. What other, what other federal sort of regulation over these areas are there?

**MATT HEFFRON:** Well, the CIPA and the other one is COPPA, C-O-P-P-A, and that's the one that requires people not to market the identification materials or the identifiers for children. And I know we had actually provision law on that in the bill originally, but

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since it was just mimicking COPPA, we took it out. That wasn't necessary. CIPA is the Children Internet Protection Act and it already requires that if students-- or I'm sorry, if schools and school district want to get certain grants, they have to certify that they are compliant with the statute. And the statute talks about removing materials that are obscene, child pornography, or harmful to children and that is the same standard we're talking about here, but it's applied nationally. It's applied to the schools, but companies, database corporations are already giving their materials to those schools. So if those schools are certifying that they are complying, they may actually not be. Somebody like EBSCO or Gale or one of the database companies already know that they have to comply with the national standard. Does that answer your question?

**DeBOER:** Maybe, but it generated about seven more. Sorry.

**MATT HEFFRON:** OK.

**DeBOER:** I'll try to limit my questions here, so my colleagues don't get mad. So why would we not handle this on the federal level? Why handle it on a state level?

**MATT HEFFRON:** Because they're not doing it on the federal level.

**DeBOER:** The CIPA is not handling it?

**MATT HEFFRON:** Yeah. CIPA-- what-- CIPA doesn't have any teeth, which is one of the problems. CIPA is not handling it now, just by seeing what's going on around the country. What CIPA does is say if you want these grants, you have to certify that you are complying with CIPA and if not, you don't get the grants. It also requires reporting, but again--

**DeBOER:** Sorry--

**MATT HEFFRON:** --without-- reporting-- but without many teeth-- and quite honestly, it seems to me from what little I've seen is that if one of those laws that are honored in this breach-- and no one-- even if, even if they do report, doesn't seem to be much going on. For instance, EBSCO, by the way, knows that it's violating, that it's violating obscenity laws across the country. And one way we know that it knows is that it has been for two years at the top of the list of the National Center of Sexual Exploitations list of offending companies because of obscenity in their databases. They're not, they're not worried about-- they're just not worried about CIPA and that's why individual states need to take action, like Senator

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Albrecht's bill here, to put some teeth in the enforcement provisions or if not, to simply allow the schools or school districts, if they need to, to get out of their contracts because it's no longer obscenity compliant in Nebraska.

**DeBOER:** All right. Thanks.

**LATHROP:** OK. I don't see any other questions. Thanks for being here. Good to see you. We will take the next proponent. And I meant geeks in the most respectful way.

**BILL PULTE:** My family refers to me the same way, so.

**LATHROP:** OK, good. Good, good. Well, welcome to the Judiciary Committee.

**BILL PULTE:** Thank you very much. Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Bill Pulte, B-i-l-l P-u-l-t-e, and I'm the chief information officer for ESU 3 in Omaha. I'd like to thank Senator Albrecht and Senator Lathrop for providing me the opportunity work-- to work with them on the amended version of LB1213 that you see in front of you today and it is that amended version that I stand in support of at this time. The ESU 3 information systems department assists efforts for 18 public school districts in the Omaha metro area. We provide internet access networks for content filtering and other technology services to our districts who, who help over 85,000 students and 5,500 teachers. On page 2, you'll notice a survey we do every year for our superintendents and for our board of education at ESU 3 and this year, we see an average of 116,000 computers on our network every day and we expect that to grow by over 6,000 in the next year. Managing these devices and keeping students from harmful websites is a challenging, but extremely important task that all of my districts take very seriously. Of the 116,000 thousand devices, 75,000 of those devices are one-to-one devices, which means they're in school and they get taken home every night, which makes filtering these devices an incredible task that's, that's been compounded over the years as more devices have gone home and during the pandemic when we saw students learning from home more and more often. As we continue to address the issues covered by this bill, there's another issue looming heavily on the horizon and that is a comprehensive plan to deal with cybersecurity threats. We have a great need to expand our technology support and cybersecurity, but with the lack of growth in ESU core service funds, ESUs cannot keep up with the increasing cost to help our districts be safe from all cyber events. LB1213 adds another arrow to our quiver as we work to manage learning

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safe for children of all ages. Many of our districts are providing the same filtering for all district devices at school and at home and we recommend that districts statewide do the same. Holding contracting companies responsible for assisting with this security is a step in the right direction. Companies who curate educational materials specific to K-12 learning should have the ability to censor or delete those materials when they do not meet the standards set forth in Section 28-808. Even though we support LB1213, we have concern over the section which focuses on civil litigation. I would encourage you to review and narrow this section or possibly strike it completely. When a school district is notified and confirms this specific material does not meet the standards set forth in Section 28-808, the district needs to be responsible to take that vendor, vendor to task. If a company cannot meet those standards or is negligent, then they should be held accountable and replaced. Part of what makes my job as exciting is the fact that from day to day and year to year, things constantly change and look very different than they did just a couple of years ago. Technology is changing at a pace that is challenging for our schools and ESUs to keep up with. Protecting students from obscene material is one piece of the overall technology puzzle. Our technology leaders are focused on protecting students and staff in many ways, including the loss of data and identities. As mentioned earlier, cyber attacks in the K-12 sector have increased exponentially over the last decade and it is more important now than ever to partner with vendors who take all of these threats seriously as we do. We hope you will take a good look at LB1213 with the amendment and make sure this bill helps ESUs and school districts fight the battle against all types of cyber threats.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** Thank you so much, Bill. So it sounds like you said many of our districts provide the same filtering for all district devices at school and at home. Is that where they actually do something on the device itself to act as a filtering?

**BILL PULTE:** Yeah, so a couple of things. I'm going to hit on your questions from just a second ago. So CIPA is only if you're filing for E-Rate, which not every district in the state of Nebraska does. So districts who do not file do not have the-- do not have that requirement. CIPA also only requires the filtering to be done on school district property on the school district network. The 18 districts we work with at, at ESU 3 have said we want to make sure that we can filter devices offsite as well. So every time we look at a vendor-- and we're currently using a vendor called ContentKeeper-- we

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make sure that that's a piece so that when students go home with their device, that, that they're protected as well. Now what we can't protect and what we talked about with Senator Albrecht last week is a student goes home and gets on their parent's computer. That is now unprotected and everything that's been said-- and that's where I feel like yes, these companies should be able to curate that stuff and mark it as bad and, and not have it come through.

**DeBOER:** So-- and now I'm going to use words that I don't totally understand. So could someone that had bad content spoof their address so that, like, it sips-- it slips through the filters anyway? And so if I'm asking a company to not put this bad content in their database or to somehow mark it. Are they going to be able to keep up with all of that?

**BILL PULTE:** Yeah, we have that problem with our current solution, which is why I'm concerned about the civil litigation piece because when a new site comes up, it takes time-- and it's not a lot of time, but it takes time for it to be evaluated and marked in a certain category. And so our districts are split on this right now when a new website comes up, it a lot of times is considered uncategorized, uncategorized. We have districts that say if it's uncategorized, we're going to block it because we don't know what it is, but we have other districts who say there might be good material that's uncategorized so we're going to let it through. They're going to run into the same problem and they're just-- they're going to be constantly having to keep up with it, but so are, so are we, so are the other vendors. And so I don't think it's unreasonable and I think it probably should be on them to say you need to be going through this stuff. And if a complaint is brought forth, you need to get rid of it completely. If, if Pornhub is coming through and a district complains about it, there's no reason that it shouldn't be taken off for every district in, in Nebraska.

**DeBOER:** Is this the kind of thing where Joe Bob's web page, which has questionable material, comes through one time and EBSCO is now in trouble because it came through one time and maybe it was a brand new-- like, the next day, it's in trouble.

**BILL PULTE:** Yeah. Yes. That's my, that's my concern is, is--

**DeBOER:** OK.

**BILL PULTE:** --keeping up with that. But we also-- the bill, you'll notice, has a reporting piece where parents can report that stuff and

then districts would be able to hopefully turn that into an EBSCO or a Gale to get it, to get it taken care of.

**DeBOER:** OK. So now is it technologically possible to-- I've got Joe Bob's web page dot com and it gets reported. Can I somehow make it Joe Bob's web page dot org and the next day, after it's been reported, it's still there?

**BILL PULTE:** You would go through the same thing. It might be considered uncategorized until it's-- until it falls through the process and then it's recategorized again, which is why we have districts who say we're just going to do uncategorized--

**DeBOER:** Sure.

**BILL PULTE:** --so it's going to be blocked.

**DeBOER:** So if uncategorized then is blocked as a general premise, is that going to make it difficult to get new, useful material--

**BILL PULTE:** That, that-- yeah.

**DeBOER:** --in front of people and, and and/or is that not onerous, right? Like, it just takes review and then you get it through--

**BILL PULTE:** Right. That's one of the reasons that some districts have said we're going to allow uncategorized through it because if I'm a teacher and I want, want to put up materials, I might just go sign up for a free web page and then it's uncategorized. When I was in a school district, if we had that, the teacher could work with us and we could categorize it in our system so it was through at the district level, but that doesn't mean it goes through for everybody at that point.

**DeBOER:** Is there any other way-- and this is just because I don't have the technological expertise. Is there any other way that these things are going to kind of slip through the-- like, not just uncategorized, but somehow-- I don't, I don't know.

**BILL PULTE:** Yeah.

**DeBOER:** I don't know what I don't know. So is there some way that this is going to slip through the-- that really what we're going to end up with here is, you know, trying to, you know, I don't know, sieve the ocean or-- I don't know what the analogy is.

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**BILL PULTE:** No, it's a, it's a great question. It's what you're going to hear from Millard in just a second. It's one of the things that we, the technology leaders in the state of Nebraska, are dealing with because every student is bringing a phone to school now.

**DeBOER:** Yeah.

**BILL PULTE:** And so we're doing the best we can over here, but there are other ways for them to get to material that we would hope they wouldn't be going to. So it is; it does seem-- sometimes feel like you're not making a dent in it. But I can tell you in the last 20 years of working within ESU 3 districts, we've come a long way and we continue to improve the systems we have.

**DeBOER:** So if I'm a student and I have my own phone for my parents, which has a data plan on it--

**BILL PULTE:** Um-hum.

**DeBOER:** --if I'm in the school, can I look at whatever I want on my phone with the data--

**BILL PULTE:** Yeah, we have no way of blocking that. In fact, we've talked about sometimes we wish they would add their phones to our Wi-Fi because then we could block them.

**DeBOER:** Right.

**BILL PULTE:** So there used to be this idea that we don't want student phones on our Wi-Fis at school and now it's kind of changing. Maybe we do want them because we can then block the obscene or the objectionable material.

**DeBOER:** So even if we pass this bill, we're still going to have that problem with-- in terms of access for students and that's going to be a harder thing to figure out.

**BILL PULTE:** Yeah and again, the students who go home who don't have devices at home-- and I think filtering is, is something that we need to look at as a state because everybody is basing their filtering off of what is done at the federal level, which I think was just pointed out has pretty glaring holes in it. But when a student goes home, if they're not on our device, we have no ability to, to filter that.

**DeBOER:** OK, thank you.

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**BILL PULTE:** Yeah, thank you.

**LATHROP:** I don't see any other questions. Thanks for being here. I appreciate it.

**BILL PULTE:** Yeah, thank you.

**LATHROP:** Good afternoon. Welcome.

**KENT KINGSTON:** Thank you. Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Kent Kingston, K-e-n-t K-i-n-g-s-t-o-n, and I'm the executive director of technology for Millard Public Schools in Omaha, Nebraska. I'd like to thank Senator Albrecht and her staff for listening to concerns of school districts and allowing us provide feedback on introduced bill. We support the recommended amendment becoming the bill. We would not support the original bill as it was introduced. We do agree this is a serious issue in our districts, supports any efforts in helping to keep our students safe online. Education and research database providers should be providing age-appropriate materials free of harmful content. The recommended amendment to LB1213 requires and hold those providers accountable while not disabling school districts' use of technology. We also note our support on giving educational research database providers until January 1, 2023, to make the necessary changes to their systems to meet the technical requirements of proposed legislation. At this time, I'm happy to take any questions from the committee.

**LATHROP:** I got a couple for you. Just very basically, kids go to school and they get a tablet and then they get on-- then they go-- they take their tablet to school and they will have school Wi-Fi, right?

**KENT KINGSTON:** Correct, so--

**LATHROP:** That's how it works?

**KENT KINGSTON:** Speaking for Millard--

**LATHROP:** Where is the filter that we're talking about, the, the vendor that we expect to have a filter? Is it the Wi-Fi at Millard School or a school, is it the tablet, or is it both?

**KENT KINGSTON:** It's both, Senator. So our internet is filtered for anybody, any device that connects to our, our Wi-Fi at a school district building. And then when our-- speaking for Millard, when our

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devices leave our district, even in the, the phone-- well, if they connected to their own phone hotspot, our device would still filter against that. If they connect at home, our device filters against that. They're at Subway, our device filters against that. Once they leave our district-- but I'm speaking for Millard Public Schools and how our devices are configured.

**LATHROP:** So are we talking about two different vendors? One is the person or the outfit that's providing you with the Wi-Fi at your school district and the other is the outfit that's bringing the computer or, you know, the tablet like my, my iPad.

**KENT KINGSTON:** Yeah, I mean, this legislation is focused on very specific educational research databases and what they curate and what's provided from their system and that's, that's separate than the ability to filter the internet filter. We actually filter those research databases as well. They go through our filter as well. I think that's really what this bill is focused on, right? These are content providers in a pretty narrow area and we're asking them to curate and provide age-appropriate material back to the school districts.

**LATHROP:** If I'm a high school student and I want to do a research project on Abraham Lincoln, then I go to one of these providers, I click on there and I can type in Abraham Lincoln and I'll get a bunch of articles or--

**KENT KINGSTON:** Correct.

**LATHROP:** --edu-- approved content?

**KENT KINGSTON:** Correct. You could use one of the databases that we're talking about. You can use other research things. That is correct, Senator.

**LATHROP:** And currently, if I understand from-- because we did have a conversation in my office-- currently, there are ways for students to, to get into that database and then with a couple of keystrokes, be able to get outside of the database and into content.

**KENT KINGSTON:** Again, I'm speaking for, for how our Millard devices are configured. A student, let's say they're away from school and they're, they're at home surfing and they go through an EBSCO or Gale or PebbleGo or any of the, the other research databases we provide. If they were to link out to Pornhub in that situation that was talked about earlier, our filter would still knock that down because Pornhub

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would be considered pornography and would not allow it, even though they could see the link through maybe the article. But if they didn't have those filtering in place, then, then absolutely that material could, could potentially come through.

**LATHROP:** And maybe I'm just asking questions because I don't understand when-- if I'm a student and I'm doing a search and I have a computer and-- that's given to me by school and I'm doing a research project, do I just get-- I can't search the World Wide Web broadly. I can only search in these databases.

**KENT KINGSTON:** You can do both, Senator, in our, in our school district. So kids could search the web looking for Abraham Lincoln in your scenario. Our filter would filter that and return appropriate materials. They could also log in to one of these research databases, which are more academic in nature-- and depending on the requirement of the assignment, that may be what the teacher wants. And then they could also search Abraham Lincoln inside those databases. That also would be, in our district, filtered as well.

**LATHROP:** Is that all one vendor?

**KENT KINGSTON:** No.

**LATHROP:** When we say we're going to hold the vendor accountable and the vendor needs to have these filters, are we talking about one or if I get outside of these and I take my tablet and I'm searching the World Wide Web, they--

**KENT KINGSTON:** That's not what this bill was talking about. The bill is not referring to the World Wide Web.

**LATHROP:** OK.

**KENT KINGSTON:** It is referring to educational research databases.

**LATHROP:** All right.

**KENT KINGSTON:** Very specific.

**LATHROP:** One more question. If we pass this, put them on notice, can they fix it foolproof?

**KENT KINGSTON:** The expectation would be that they would curate their databases. They may have to do some technical requirements to allow different kinds of account log-ins, so that may take them some time. I

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mean, the question is like we would ask any vendor, you know, this is what we want for our school district. Can you provide those resources to us? And that's what this legislation is asking them to do.

**LATHROP:** OK.

**KENT KINGSTON:** It would be up to them to curate it.

**LATHROP:** And if I'm a student and I take this thing at school, I can do research and go into these curated databases--

**KENT KINGSTON:** Yes.

**LATHROP:** --these vendors. If I go home and I take this computer and I get on mom and dad's internet, their, their Wi-Fi, can I search and go into websites we don't want them into?

**KENT KINGSTON:** Yeah, I think that's what the intent in talking with folks when we talked earlier was that if, if I'm in a filtered environment, the returns could look different. So if I'm at my home computer and I'm searching a database that wasn't curated for age-appropriate material, some of it could get through in that unfiltered environment and I think that was some of the examples the senators and others were talking about.

**LATHROP:** OK and I'm just asking-- and I'll ask about Millard only because I can't ask you about anyone else--

**KENT KINGSTON:** OK.

**LATHROP:** --since that's where you work. If you gave me this computer because I'm a junior at Millard North and I take this home and get on Wi-Fi at mom's, is there still a filter on it?

**KENT KINGSTON:** Yeah, we're filtering you--

**LATHROP:** OK.

**KENT KINGSTON:** --no matter where you go.

**LATHROP:** OK.

**KENT KINGSTON:** You can connect to any internet and we are filtering your device no matter where you went. That's in Millard.

**LATHROP:** OK and lastly, you would agree this is a problem that needs to be addressed?

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**KENT KINGSTON:** I think we are constantly battling that kids are getting to material that's appropriate. It's an expectation that our board has for us and it's a battle that isn't getting any easier, Senator.

**LATHROP:** OK. That helped me. I'm, again, like Senator DeBoer, my understanding of these things is not as deep as probably the typical high school student. Senator McKinney.

**McKINNEY:** Thank you, Chair Lathrop, and thank you for your testimony. How often do you flag harmful content or content that you deem inappropriate? Like throughout the year, how often is that type of material flagged?

**KENT KINGSTON:** How often does that material get through, is that what you're--

**McKINNEY:** No, how often is it flagged and kicked out?

**KENT KINGSTON:** Well, our filter is actively using-- Mr. Pulte talked about uncategorized returns. So if we're talking about the internet, we're talking about a couple-- I just want to be clear. There's educational research databases and that's what we're talking about in this bill and then there's the big internet.

**McKINNEY:** I'm talking about when students are, students are using those educational databases--

**KENT KINGSTON:** OK.

**McKINNEY:** --how often are you getting reports back after the year that we flagged X amount of searches because of this, this and this?

**KENT KINGSTON:** Yeah.

**McKINNEY:** Do you have-- do you even get those type of data, data points?

**KENT KINGSTON:** In Millard, I would have to look and run a CK report. My hope would be that we would have none because we are filtering those databases as well as the internet. So even if a kid were trying to get to something that was not appropriate or considered pornography as defined by part of that statute, 28-808, my hope would be our filter would knock that down. Even though the database provider may be trying to push that content to my kids, our filter would be knocking that down. So I don't have a lot of those reports because our filter

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is pretty robust and does a pretty good job of knocking inappropriate material down for kids.

**McKINNEY:** Do you think the issue is more with personal devices than school-issued devices?

**KENT KINGSTON:** I think the intent of this legislation-- I'll-- yes, I'm going to answer question that unfiltered devices that are personal and at home, many parents don't realize what they're handing their kids and they have networks that are wide open and kids can get to a lot of things. I think the intent of this legislation was these are taxpayer devices, taxpayer systems, taxpayer-curated databases. And as taxpayers, should we be doing something to make sure we're providing a safe place for our kids--

**McKINNEY:** I, I--

**KENT KINGSTON:** --versus the private?

**McKINNEY:** I ask because I have a middle-schooler myself and she can barely access anything really outside of, like, acceptable, you know, content--

**KENT KINGSTON:** Right.

**McKINNEY:** --on, on her school-issued laptop or iPad. So I was just curious whether it's more so students accessing these type of sites on personal devices that were provided by parents than it was provided by school districts?

**KENT KINGSTON:** Absolutely. It would be much easier for them on a personal device, yeah.

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

**LATHROP:** OK. Thanks for all your work on this issue. I appreciate it. Next proponent. Good afternoon.

**BRIAN TEGTMEIER:** Good afternoon, Mr. Chairman and members of the committee. Thank you for your time today. My name is Brian Tegtmeier. For the record, Brian is B-r-i-a-n T-e-g-t-m-e-i-e-r. I'm from North Platte, Nebraska. I'm here to testify in favor of LB1213. I'm the technology director for North Platte Public Schools and here's what I have observed and concerns that I have. I recently learned that the EBSCO and Gale education databases that are provided to our school districts through Nebraska Access are not limited in content to

age-appropriate materials and the current provided versions of these databases contain links to material that is deemed, is deemed obscene by Nebraska law. We must require that these companies to work with schools to restrict access to inappropriate content provided in their product. It is my understanding that the companies have been asked to restrict content but are unwilling to do so. When accessing the Gale Student Resource Center from within our district network, it was demonstrated to me how you can search for the term "lifestyle" and it pulled up a link that took me to a site that sells items that are part of the cannabis drug lifestyle, such as glass pipes and other drug paraphernalia. Also, a Gale search referenced a dating site called Friend Finder Networks. Following this link led you to a site that contained links to pornographic sites. If an education database provider hasn't developed their resources with age-appropriate content protection for our students, then they have no business marketing and selling these resources to our public schools. LB1213 will require these companies to remove links to sites that contain material deemed as obscene to minors. At our district, we utilize an internet content filter that is effective at blocking inappropriate sites according to defined categories. Our technology staff can figure the content filter to allow access to education sites. Therefore, the filter is configured to trust these sites and allow access to sites such as Gale and EBSCO. If a student clicks on a link from a resource as located in the Gale or EBSCO databases that goes to a site containing pornography, our internet filter scans the site, does a look-up, and verifies if it has been categorized as pornography. If the filter finds the site in the pornographic list of sites, then it will block it. If it doesn't, the content filter will allow access to the student. It is very likely that the filter will block the site. However, if the site has been recently created, the filter may not yet recognize the site-- or yet categorize the site and therefore allow access. Thousands of new websites-- excuse me-- thousands of new websites are created each day, so a filter is never going to be 100 percent effective at blocking sites. Nebraska schools should have assurances from companies that are providing education resources that the content contained and referenced in their product is free of obscene material. If companies aren't willing to abide by this, they should not be allowed to sell the resources to our schools. So I ask legislators to protect our Nebraska kids by voting yes for LB1213.

**LATHROP:** Senator DeBoer.

**DeBOER:** Thank you for your testimony. I'm particularly interested in this piece where you say that thousands of new sites are created every day and so it may not filter out those sites. So if what you're kind

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of asking for here is for EBSCO to follow more of that if in doubt, block it kind of attitude-- I can't remember what I talked with to the testifier, whatever it was called-- undesignated, maybe, is that the word?

**BRIAN TEGTMEIER:** Yes. If, if there is a site that they-- their, their database is-- they're putting content into their databases or they're procuring that. So when they procure that content, they should index it appropriately saying, well, this, this site is educational or if this-- if-- does this contain pornographic material? It should be indexed appropriately. And so yeah, I would say they should take that--

**DeBOER:** So, I mean, maybe I'm understanding it wrong, but it sounds like what you're saying is the concern is not the, the sites that have been around for a while. The concern is those new sites that have not yet gotten designated by your filter as problematic.

**BRIAN TEGTMEIER:** I would say any, any-- when an education provider is providing a database to our kids, there should not be obscene links--

**DeBOER:** Sure.

**BRIAN TEGTMEIER:** --to-- any, any links to any obscene content in that database, that they should have that indexed.

**DeBOER:** So maybe, maybe I'm not asking this right. I'm just-- are we already blocking the kind of older sites through the filters that already exist or are we not on EBSCO?

**BRIAN TEGTMEIER:** So in the example of the sites that we pulled up, such as the lifestyle link--

**DeBOER:** Sure.

**BRIAN TEGTMEIER:** --that-- our filter was able to recognize that site.

**DeBOER:** So that seems like it's not a problem or is it a problem?

**BRIAN TEGTMEIER:** It is still a problem because we're, we're providing that resource to our families, to our kids and if that student-- if, if they would try to access that on a home device--

**DeBOER:** Sure, OK.

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**BRIAN TEGTMEIER:** They would have, they would have access to that because there's no content filtering on their, filtering on their home device.

**DeBOER:** OK. So in addition-- so those are the sort of older sites that you can filter, but not at home so that's a concern. But then with respect to the newer sites, is what you're asking EBSCO to do-- and Gale and whoever else-- are you asking them to sort of do this always say no until we verify that it's OK, is that what you're wanting?

**BRIAN TEGTMEIER:** We're asking whatever content they're providing to schools in their databases for-- that are-- that is for education for kids, K-12, that that content is appropriate, that it is, it is not obscene.

**DeBOER:** OK. Thank you.

**LATHROP:** I don't see any other questions. Thanks for coming all the way from North Platte to share your thoughts--

**BRIAN TEGTMEIER:** Sure, thank you.

**LATHROP:** --and perspective. Any other proponents? Good afternoon.

**MARILYN ASHER:** Hi. My name is Marilyn Asher, M-a-r-i-l-y-n A-s-h-e-r, and I live in Omaha, Nebraska. For almost two years, I have researched the availability of obscenity and pornography in the public and private school libraries across Nebraska. My focus has been on databases and websites that give K-12 students access to still photos and videos that are considered obscene in statute 28-808 of Nebraska law. I researched over 200 schools from Scottsbluff to Omaha and collected over 1,000 screenshots of pathways to obscene photos and videos, as well as screenshots of the obscenity itself. When I opened the home page of each school, I went to the library or media center to find research databases. Each school was different, but almost all of them had NebraskAccess, which is provided at taxpayer expense by the Nebraska Library Commission. Those schools that publish the password to NebraskAccess opened the door for me to examine databases that were provided by EBSCO, Gale, and ProQuest. Other schools required a secure password and I was not able to look at their databases, but I got a sampling of what could be found if one typed in certain terms to the research databases. In the early days of my research, I used benign phrases such as "toys for mom" or "toys for dad," approaching my research as a child would. I found that sex toys were listed among toys when I researched in NebraskAccess. After a few months, I decided

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to be more direct in my terminology and typed in phrases such as "sexual intercourse" or "nude women," something that an older student may type. The most shocking results that I got were in a Norfolk parochial school and two North Platte middle schools, where I found videos of Pornhub through NebraskAccess. Equally shocking where the porn videos and still shots that I found with no password in Symbaloo, a search engine that is supposed to-- that is supplied to ten Omaha public elementary schools. As I looked at the zip codes of those ten schools, I realized that all of them educate minority or dual-language students. When I recently mentioned this to the Nebraska Library Commission and some IT experts, they expressed the possibility that what I found was a result of not having filters on my home laptop. So yesterday I went to the Omaha public library and used one of the teen computers to find out if the information came up when I typed in the same terms into one of the OPS libraries that contained Symbaloo and it did. Perhaps the most disheartening research that I found was in Westside, District 66, elementary school libraries, the district from which our children graduated. Through using Creative Commons and no password, I was able to find still graphic-- shots of graphic sex. I worked for the Nebraska Department of Correctional Services for 15 years, but what I saw and heard in the prisons did not prepare me for what I am afraid my grandchildren will see as they do research for their homework in Nebraska. If a 70-year-old grandma can find this material online in school libraries, think of what a 12-year-old child can find. I thank you for listening and I ask you to support LB1213.

**LATHROP:** OK, thank you. Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you, Ms. Asher, for being here. So when you said research, what, what do you mean by that? Do you mean you went to the, to the schools and requested access to their networks or how-- what--

**MARILYN ASHER:** I went through the school database-- the school web pages, went to the library page. I documented each step that I took. I have it on spreadsheets if anybody likes-- wants to see it and to get to certain items that a child might be curious about. And yeah, it's not re-- I guess that's what you would call research.

**SLAMA:** Yeah, no. I was just trying to clarify what, what your methods on that were. OK, thank you.

**MARILYN ASHER:** Yes.

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

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

**LATHROP:** Any other proponents? Seeing none, is there any opposition testimony? Good afternoon. Welcome.

**EMILY NIMSAKONT:** Good afternoon. Thank you for having me, Chairman and the committee members. My name is Emily Nimsakont. That's E-m-i-l-y N-i-m-s-a-k-o-n-t and I'm the current president of the Nebraska Library Association and I'm a resident of Ashland, Nebraska. I'm speaking on behalf of both the Nebraska Library Association and the Nebraska School Librarians Association. Both organizations oppose this bill. The first point I would like to raise about this bill is that while we, of course, are concerned about our students accessing harmful material, this bill is largely redundant due to measures that are already in place. As you've heard, CIPA, the Children's Internet Protection Act, requires all Nebraska schools and public libraries who receive E-Rate funds to have filters in place to prevent children from accessing harmful materials. And data from the most recent Nebraska Public Library survey indicates more than half of the public libraries in our state filter according to these standards and all public schools and some private schools filter according to CIPA standards. So, you know, and as we've seen, most of the, the testimony of districts that do have sheltering in place, they catch most of the, the content that is out there. I would also like to highlight the care taken by library staff members in the selection of resources, both traditional print resources and these online databases, for their libraries. Trained professionals in both school libraries and public libraries curate and select resources to meet the needs of their communities. We're not sending our kids into a vast wasteland of dangerous content. This is a meaningful collection of resources chosen to inform and educate them. In terms of technology, the provision for individual accounts that this bill proposes are, quite frankly, a logistical nightmare. The maintenance of these accounts and resetting passwords for kids who forgot them and things like that, seems to me like it will be a huge burden on teachers and librarians. Current technology allows for things like authentication by IP address for a whole school or a whole library and requiring individual accounts, even if it's possible and the vendor's end, which I'm not totally sure it always is, that might be something they need to get introduced and that will take time. Even if it is possible, it would introduce one more hurdle that children have to overcome in order to access these specially curated resources. It will provide one more opportunity for frustration that will lead the children away from these resources and toward Google and the open web for their resource where they're going to encounter much more questionable content. I don't know about you,

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but in my experience, I have not heard of many instances of people accidentally encountering obscene content on EBSCO databases. And I think we all know that children are not going to purposely go to EBSCO to look for obscene content when they have Google and the phones in their pockets and the computers in their bedrooms. And one thing I did want to note on technology is that my colleagues at the Nebraska School Librarians Association have assured me that their districts filter on devices when they are home, not just at school. And finally, this bill is a threat to the intellectual freedom of Nebraska students. The term "obscene content" as it is used is broad enough to allow for varying interpretations. We at the Nebraska Library Association believe that because the Supreme Court has already defined what constitutes obscenity in regards to the materials available to minors and because the Bill of Rights defines our intellectual freedoms, LB1213 is not needed in our state and we oppose this bill.

**LATHROP:** OK. Senator Slama.

**SLAMA:** Thank you very much for being here today, Ms. Nimsakont. Nimsakont, is that--

**EMILY NIMSAKONT:** Nimsakont, you got it.

**SLAMA:** Perfect. Thank you for taking the time to testify. Have you had a chance to see the white-copy amendment by chance?

**EMILY NIMSAKONT:** Yes, yes, I have.

**SLAMA:** OK. I'm not seeing any definition of obscene-- obscenity in this white-copy amendment. Do you, do know where that is in this bill because I'm just not seeing it.

**EMILY NIMSAKONT:** I don't have-- know off the top of my head.

**SLAMA:** OK.

**EMILY NIMSAKONT:** I may be misremembering from the original version. I'm not sure.

**SLAMA:** Yeah.

**EMILY NIMSAKONT:** But it just seemed-- I got the impression that it was fairly vague. And, you know, it's one thing that-- we can, of course, all agree we don't want our children accessing pornography, but, you know, what parents get to decide what is obscene content for their individual--

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**SLAMA:** Well, I'd say we draw the line at porn somewhere in there.

**EMILY NIMSAKONT:** Well, yes, obviously. Yeah.

**SLAMA:** Like, there's--

**EMILY NIMSAKONT:** We're on the same page on that.

**SLAMA:** I mean, if there is a gray area, there's definitely a black and white--

**EMILY NIMSAKONT:** For sure, I agree to that.

**SLAMA:** --problem with that side. So can you help me understand why your, your group's position is so ardently opposed talking about the logistical issues associated with this? And we just had two representatives representing Omaha and Millard walk us through how this would be relatively simple to do. Like, what's the, what's the rub there?

**EMILY NIMSAKONT:** Sure. I don't know for sure-- I mean, again, you're hearing from them and not directly from the database providers.

**SLAMA:** Sure.

**EMILY NIMSAKONT:** I think Rod Wagner from the library commission is coming after me and he has talked directly to EBSCO and will probably have more information--

**SLAMA:** Sure.

**EMILY NIMSAKONT:** --on the ease or not of the, you know, the simple fix supposedly. I don't believe that it is that easy. You know, they talked about those new websites that are rising every day and have not been evaluated. If it's hard for the school's filtering system to keep up with that, how is EBSCO going to be able to do it any better?

**SLAMA:** Fair enough. All right. Well, I will save my questions for the next one up. Thank you.

**LATHROP:** Senator DeBoer.

**DeBOER:** Thank you. I just-- I wanted to clarify or ask you to clarify something. You said that, you said that you're concerned that the-- EBSCO will get more complicated or something so the children won't use it.

**EMILY NIMSAKONT:** Sure, as I--

**DeBOER:** Can you clarify that?

**EMILY NIMSAKONT:** Yeah. As I understand, the bill wants the vendors to allow for individual user accounts for each student so the, the parents can monitor what their students are looking at and, you know, that is a far cry from how it is currently run. As I mentioned-- I mean, I don't know the specifics for each district, but, you know, things like filtering on devices and allowing access through IP authentication to recognize that if you're on campus or you have a proxy access that tells you-- the computer to think you're on campus basically, it, it lets you in. Having students individually log in on their own is another barrier to access. And I don't know about you, but I have a, a fourth-grader and he can't remember, you know, to put his shoes on the right feet in the morning all the time. Having him remember his password all the time and not have to go to the teacher or the librarian for help, it just-- it introduces another barrier that I see is sending them out to Google and the open web and encountering who knows what out there and so accomplishing the exact opposite effect of the intended effect.

**DeBOER:** So is that not-- it's maybe not been as long as for some people here that I have been in school, but is that not how EBSCO works? I remember when I used EBSCO, always I had to put it in my--

**EMILY NIMSAKONT:** Not necessarily.

**DeBOER:** --credentials.

**EMILY NIMSAKONT:** It depends on the district and what they've chosen to do, but EBSCO does have options for IP authentication.

**DeBOER:** Say it again.

**EMILY NIMSAKONT:** IP address authentication. You tell them the IP range for your school and anyone who is affiliated with that school can log in without having to have an individual account. And I don't know for sure that's how it's done in all school districts, but that is an option. It's a, a way that technology has advanced probably since you were in school and I see as moving away from that as-- moving backwards technology wise, frankly.

**DeBOER:** So they're not individual authentications, but it's some way to--

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**EMILY NIMSAKONT:** The school authentication basically.

**DeBOER:** So based on the, the, the location, is that--

**EMILY NIMSAKONT:** And again--

**DeBOER:** --or the--

**EMILY NIMSAKONT:** --the--

**DeBOER:** --the devices?

**EMILY NIMSAKONT:** --director of the Nebraska Library Commission who runs NebraskAccess can probably provide you with-- again, I'm not the super technical--

**DeBOER:** No, no, no.

**EMILY NIMSAKONT:** --person either.

**DeBOER:** That's fine. I--

**EMILY NIMSAKONT:** As many of you have been pleading ignorance, I will join the crowd.

**DeBOER:** OK. All right. I think I understand your objections. Thank you.

**EMILY NIMSAKONT:** Um-hum.

**LATHROP:** OK. Thanks for being here.

**EMILY NIMSAKONT:** Thank you.

**LATHROP:** Next opponent. Good afternoon and welcome.

**ROD WAGNER:** Thank you, Senator. Good afternoon, Senator. I'm Rod Wagner, director of the Nebraska Library Commission. That's Rod, R-o-d, Wagner, W-a-g-n-e-r. A couple of documents for you; a written statement plus an attachment that includes comments about the LB1213 amendment and then a document that kind of summarizes, summarizes the databases the library commission provides through our NebraskAccess service. I'd first of all like to say that the library commission certainly supports efforts toward safe internet practices and especially for K-12 students in this regard. It is-- we are in this position because there are some things in the bill that was introduced and even in the amendment that we have concerns about the ability for

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the library commission to fulfill and those address some of the absolutes that are in the language of the bill. The library commission has licensed and provided statewide online services since 1998, so we have years of experience and we have worked with a number of different providers. These include services that we subscribe to and pay for. We also have a number of information resources that we-- that our librarians select and put together and make available and these are used by thousands of students. They are used by thousands of public members of the public throughout the state. In fact, the, the greatest use of these databases are by college and university students for the coursework they do, the research they do. Second would be the K-12 category from elementary through high school. And I just really want to emphasize the value of this educational content. The focus on this, of course, is about the ability to access harmful-to-minors type materials through these services. And that's unfortunate, but I, but I also want to emphasize the value of these services because they are necessary and we have to provide these for the students across Nebraska. There are-- as a result of the introduction of LB1213 by Senator Albrecht, the commission staff has explored and considered different things we can do, regardless of the outcome of LB1213. One of these is to reorganize and separate the databases so that they can be accessed at the school level based on the level of the-- or the age group, from elementary to middle school to high school, whereas currently they're-- that whole range is available so we can do that. We can also provide information on our website for parents, information about safe practices and how they can work with their kids to assure that they are using the internet appropriately for their schoolwork. I-- it's been said that-- by several of these speakers how easy it would be for the vendors that we work with to come to-- address the ability to block and assure that kids can't access obscene materials. These vendors work with thousands of publishers. They acquire millions of documents continuously and I don't think you can absolutely guarantee 100 percent ability to do that. However, we can certainly explore that and will with the vendors we work with. I know I'm, I'm out of time here. I, I do have a couple of points to make on the document in front of you that's some specific things that we ask the committee to look at for changes in the bill. One involves the K-12 student accounts and we ask that that be clarified such that it is the school district's responsibility for those accounts and the access to those accounts by parents. We also ask for clarification that the wording involving inclusive use of electronic devices be specific to school devices. That is something that the library commission is not in a position to have any control over. And we also ask that the reference to academic libraries that's in Section 9 be

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removed. The library commission does want to be involved from this day forward in working with schools, working with the Legislature, Senator Albrecht, and, and others to find ways that we can make our services available in a safe way to kids and the public.

**LATHROP:** OK, thank you. Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you, Mr. Wagner, for being here. So the NebraskAccess website-- I looked through your databases, especially for K-12 students, and I'm specifically looking at the Points of View Reference Center. Does that-- when I log in with my driver's license, does that take me into, like, an adult's version or is that just the reference center that, like, everybody can see once you log in with your whatever?

**ROD WAGNER:** Yes, Senator, everyone has access to that, yes.

**SLAMA:** To, to the full site?

**ROD WAGNER:** Yes.

**SLAMA:** OK. Well, here is-- and I, I mean, I was oddly on the fence about this bill, but I'm sitting here and during your testimony, I took the time to go to the Points of View Reference Center. And I mean, like, the first main subject in terms of the categories you can pick from are abortion and I-- it took me one click, a mandatory notification of parents in advance of an abortion sought by a minor is dangerous. There's articles, like, right on the front page on sex, abortion, things like-- this is accessible-- it's especially for K-12 students. Are you telling me that that's appropriate for a kindergartner to be reading through?

**ROD WAGNER:** No, I'm not saying that. I'm--

**SLAMA:** OK.

**ROD WAGNER:** These-- and going back to what I said earlier, that we are going to be separating the content available through NebraskAccess so it's specific to grade levels-- elementary, middle school, high school-- so that that would not appear as part of what kids would have access through their school.

**SLAMA:** But you do see this is an issue, right and understand where Senator Albrecht is coming from and this being--

**ROD WAGNER:** Yes.

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**SLAMA:** --an issue.

**ROD WAGNER:** I do, I do and that particular one has many different topics and provides information about them, so yeah, you're-- you, you would come across subjects of that nature.

**SLAMA:** Yeah. I mean, like, it gets into a lot of the subjects that Senator Albrecht has been talking about today; distribution of condoms, sex ed, like, lots of articles about sex and I just--

**ROD WAGNER:** Yeah.

**SLAMA:** I, I, I appreciate your approach in wanting to limit this by grade level, but I just don't see an issue in terms of-- there seems to be a clear gap in how we're approaching this now.

**ROD WAGNER:** The, the other thing that I would say is that the-- those subjects can be readily obtained and accessed by anyone at any age through Google, Bing, Edge or web browsers, so.

**SLAMA:** Sure, but this is the publicly accessible--

**ROD WAGNER:** It is.

**SLAMA:** --Nebraska--

**ROD WAGNER:** It is, yes.

**SLAMA:** --endorsed one, so.

**ROD WAGNER:** Of course.

**SLAMA:** Thank you.

**LATHROP:** Senator Geist.

**GEIST:** Just kind of pinging off of what Senator Slama was, was asking, is this concern in this bill something that's, that's been brought to your attention before or is this new for you?

**ROD WAGNER:** It is new and in the 22 years that we've been providing these services, we have not had people come to us with these concerns and complaints. And I understand they're out there, they just haven't been brought to our attention.

**GEIST:** OK.

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**ROD WAGNER:** They have now and we can work with our vendors and, and find ways that we can address them.

**GEIST:** And I appreciate that you listed some things on the back of your testimony that you would like to see corrected in the bill. If those things-- if Senator Albrecht worked with you on those things and you guys came to some kind of agreement, would that put you in, in a position of being OK with this bill?

**ROD WAGNER:** It could. There are additional things and those are on the, the other document that-- we have comments. We have a number of comments that we've made, so. We'd certainly like to work towards solutions, yes.

**GEIST:** OK, thank you.

**LATHROP:** I have a question for you. What's your relationship to, to this issue? So as the-- your position is director of Nebraska Library Commission.

**ROD WAGNER:** The library commission.

**LATHROP:** So do you set up these-- like, do the-- these vendors come to you and you bless them and now they're available to the school districts? What's--

**ROD WAGNER:** Well, the--

**LATHROP:** Why are we hearing from you, I guess?

**ROD WAGNER:** --the subscription databases are paid for through our budget. We put out an RFP and solicit proposals from vendors for the-- for educational information resources that we want to offer and then we enter into a contract with that vendor to supply those services.

**LATHROP:** So then once you, once you do that, you enter into a contract with EBSCO or whoever these guys are--

**ROD WAGNER:** Right.

**LATHROP:** --then it's now available to the school districts to use?

**ROD WAGNER:** It's available to them and many do. It's their option. They're not required to, but it is to their advantage because many schools don't have the budgets to acquire all the services that they may want to offer and by the library commission providing the access

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statewide, we save millions of dollars in comparison to what it would cost individual libraries and school to do that on their own. A vendor will want to work with one or a few entities rather than hundreds, so.

**LATHROP:** OK. So if the goal is to get these vendors to not have means for a student on one of these sites to get to-- and I'm just going to say pornography because I don't know how we-- I think it's a difficult thing to go down the road on, on-- I'll make up a, I'll make up an issue. Well, Senator Slama brought up abortion. There could be people that have different points of view or different articles one way or the other on that. I don't know how we regulate that, but, but something that's pornography seems to be a little bit easier. Are we asking them to do something they can't do in this bill? If the goal is to eliminate pornography or children's access to pornography from a school computer or one of these sites that apparently start out in your office and end up on the, the tablets or in the school libraries--

**ROD WAGNER:** There could be a search that's done on that subject and that could result in articles about that subject that would have links to publications that could lead them to a pornographic site perhaps. The content that's paid for and acquired by the vendors does not include that type of material, but the material they do provide can--

**LATHROP:** May have links to the--

**ROD WAGNER:** Links to those sources, yes. And that's why, you know, we have to find out more from the vendor about what they can do and what they believe they cannot.

**LATHROP:** OK. So I'm just going to make this point is that the Chair of the committee before whom this bill has been referenced. You can see what Senator Albrecht is after--

**ROD WAGNER:** Yes.

**LATHROP:** --and the people that have testified as proponents. And I think you can see the interest in a particular narrow content, which to me it sounds like we're-- the, the aim is pornography and it's not really points of view on various topics, but this particular narrow lane. You'll check with the vendors, talk to them, work with Senator Albrecht, the people that have been here as proponents? OK.

**ROD WAGNER:** Yes, we do, we do want to work with people who have brought these concerns up and see what solutions we can find. We're very much committed to doing that.

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**LATHROP:** OK and now-- and not to put too fine a point on it, this is a short session and this is, is or will be Senator Albrecht's priority bill, so we're talking about a little bit of a shorter timeline.

**ROD WAGNER:** Yes.

**LATHROP:** OK. All right. Any other questions? I see none. Thank you for being here today. We appreciate hearing from you.

**SPIKE EICKHOLT:** Good afternoon, members of the committee. My name is Spike Eickholt. First name is S-p-i-k-e. Last name is spelled E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska testifying in opposition to LB1213. I was going to testify neutral and I neglected to tell Senator Albrecht anything that I'd be showing up on the bill; and I'm not so sure that I actually even chose the right column, but I just don't think it's fair for me to say that I'm neutral and then offer critical testimony on the bill. That's just not fair in my opinion. I can't speak to the technology part. I can't speak to the vendors and the interplay between the schools, the districts, and, and vending and the filters that the school-provided materials have, and the filtering process that the vendors have. But this bill sort of brings up a number of different themes that are sort of underpinning the discussion we're having today. There's a theme of protecting children, which is an important theme. There's a theme of parental rights. There's sort of an undercurrent, if you will, of academic freedom here and there. And ultimately, I think the purpose of the bill is to curtail access to what some people would consider offensive or objectionable. I have not seen the committee amendment or the amendment that was introduced to the committee, so I don't know. But if you look at the bill, to Senator Albrecht's credit, she does try to narrow the material that's sort of targeted by this bill by referencing Section 28-808. Respectfully-- and that's current law so she can't answer to this-- I don't know if that really meets the same definition of obscenity that our Supreme Court has defined in *Miller v. California*. Obscenity is a term of art in First Amendment law. You don't have any access to distribute, sell, and most cases, even possess obscenity. It's different than pornography. It's different than sexy material. It's obscene. It doesn't have any-- generally summarizing the definition in *Miller v. California*. It doesn't have any redeemable value. That's not necessarily the same definition in 28-808. The concern that we have, even though as the Chair just indicated in the previous questioning, this bill is not about going after everything that we don't like to have kids hear and see and do in schools. It's targeting obscenity or something close to obscenity. I don't think that we can really ignore the political time that we are

in, in which there's a focus on what's happening in schools, what's being taught in schools, parents' access to what's being taught in schools. And the concern that we have is that that is an undercurrent and perhaps not for the proponents' testimony and maybe not even for the introducer, but that is simply a reality in this debate and that's the concern that we have. And I'll answer any questions if anyone has.

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you, Mr. Eickholt, for being here today. So are you saying your position is that your concern that parents are expressing an increased interest in what's going on in public schools? Is that the--

**SPIKE EICKHOLT:** No.

**SLAMA:** OK, then can you clarify the end of that? Because that's the impression I got based on what you were saying is it being an undercurrent of the bill.

**SPIKE EICKHOLT:** What I thought I said or at least tried to say was that-- and I don't mean to pick on what you said earlier in the earlier question. This bill is about obscenity as defined in 28-808 and students' access in it. Respectfully, you asked an earlier question about abortion and access to abortion materials. That's the sort of undercurrent that I was referring to, that there seems to be maybe locally, nationally on issues-- critical race theory being taught in schools. Is it appropriate? Are people in the public eye suitably opposed to that concept enough? That's the theme and admittedly, perhaps I just sort of brought it out here in my testimony, but I don't know that you can-- that discussion can be had before we're in it for very long.

**SLAMA:** So, I mean, what level of content do you think is acceptable to students of all ages? So do you think it's acceptable for us to be drawing a line in terms of what they have access to in public education?

**SPIKE EICKHOLT:** Yes.

**SLAMA:** OK. Where, where in your mind is that line?

**SPIKE EICKHOLT:** Well, obviously it depends on the age. I think you want to also sort of work with the teaching professionals who are going to be teaching these materials. My understanding of the vendors that this bill would impact is that they presumably offer content that

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is appropriate per class and per subject of area that's being taught. So if that answer-- that's responsive to your question, that's what I would suggest that we do, putting something in state statute with a cause of action that may have a consequence-- and I'm just speculating because I can't speak for the vendor providers-- to deter these vendor providers from even offering the services in Nebraska may not be the right way to go.

**SLAMA:** Well, I mean, I-- that's-- that would be encouraging save for the fact we just had a testifier say, well, who are we to police what kids are seeing in schools when that's literally what we're talking about here today of where we draw that line. Just one more question. I don't want to take up too much of the committee or anyone who's testified here's time. What role do you think parents should have in their children's education?

**SPIKE EICKHOLT:** I think they should have as much role as possible. I think they should at least know their teachers. They should at least know what their kids are learning. They should talk to their child about what's being taught in schools and try to support their children to get a good education.

**SLAMA:** [INAUDIBLE]. Thank you.

**LATHROP:** OK. Thanks for being here. Any other opposition testimony? Anyone here in the neutral capacity? Seeing none, Senator Albrecht, you make close. We do have-- I'm going to make sure I'm on the right bill. We do have 16 position letters in support, 9 position letters in opposition. Senator Albrecht.

**ALBRECHT:** Well, thank you, and I appreciate your attention, the questions. I think-- I, I really want to thank everybody that was here today because whether it's the 16 letters; the 9 opponents, 16 proponents, the people who spoke today-- and I tried to limit it because I sat for six hours in Revenue on Friday and it's a long day to hear more than we maybe need to. But I think that the bill speaks for itself. I think that we have to get out there and protect the children. And when it comes to the State Legislature, if an opponent feels that they can't wrap their arms around this, we're going to help them. We're going to help them be able to wrap their arms around it and say no to companies that cannot provide for us what we want for Nebraska and for our children. These are tax dollars at work. These are people who-- I invite anyone on this committee or anyone in the audience to sit down with Marilyn and take a look at what Senator Slama just did. She's very resourceful. It's that age group thing

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going on. But, but Marilyn, again, she was able to go to these school libraries and find out what these kids are being able to look at. I mean, it's appalling. My, my littles are under the age of 11 and it just, it just hits to my core thinking that they can get on these sites looking for toys and go to a site that's going to show them adult toys and how they're used. This is absurd. This is not-- this isn't about all that's going on in our, in our state right now with education. This is about what they have access to. And while people have the right to look and see whatever they want, we have an opportunity to make change for our state as legislators and lead by example that we don't want to see this for our kids. You know, it's just appalling to me that people would, would not understand how that can damage a child's brain. You know, we have all these social workers right now in our schools. I talked to South Sioux City-- I talked to the superintendent. They have five social workers and each one of them has 90 cases each of mental illness problems. And that's not just the students, it's the teachers too and other people in the building. So is it from stuff like this that they have to encounter and don't know how to handle? I mean, you, you-- go take-- I mean, they didn't have to show me but once or twice what they, what they're finding, but Marilyn is happy to sit down with anybody. I'm not interested in taking a look at any more than I've already seen. But to think that a child's going to have to look at this, it's on our shoulders if we don't do something about it. And I want to be able to sit down with, with the library and talk to them. I don't think they know the breadth of what I've already experienced over years' time and understanding what's going on. But I plead with you to take a look at the materials, the handouts. The gentleman has great credentials from California who talked about how this has to be secured and has to be, has to be taken out. I mean, if you're a vendor and, and you're getting money for people to go on your page to, to solicit whether it's toys or drugs or whatever, we have to be able to stop that. So I'll take any questions. Thanks.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** Thank you. Thank you, Senator. Albrecht. So have you talked to-- like EBSCO and Gale, I think are the two. Have you talked to the databases about, about your bill, about--

**ALBRECHT:** No.

**DeBOER:** OK.

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**ALBRECHT:** But again, if it's-- it's the, it's the ESUs that help these schools decide what they want to work or who they want to work with. It's NebraskAccess's choice to, to entertain them as a vendor for the state of Nebraska. You know, it appalls me that they even have something like they do in the libraries that adults can just go into the libraries and check out anything they want to look at and, and it's OK. But if they can do it, the kids can too.

**DeBOER:** Yeah. OK, so you haven't-- I'm just wondering if-- logistically, if they're going to be able to do it. That's the only reason I'm asking.

**ALBRECHT:** Well, I can't imagine on an international level-- every state is going to have a different bill. Quite frankly, the way that we've worked through this one, I think ours could be a model for our country to follow. I really do.

**LATHROP:** OK. Any other questions? I see none. Thank you for being here and--

**ALBRECHT:** Thank you.

**LATHROP:** --we appreciate the testimony of those who came and shared their thoughts for, against and otherwise, that will close our hearing on LB1213 and bring us to Senator McKinney and LB882. Do you want to wait just a second to let it clear out? How many people are going to testify on this bill? One, two, three, four, five, six, seven. Can you let Senator Halloran know that we have probably eight testifiers? Senator McKinney, you may open on LB882, and welcome.

**McKINNEY:** Thank you. Thank you, Chairman Lathrop, members of the Judiciary Committee. Today, we're here to discuss LB882, which will require the disclosure of any dis-- disciplinary action touching on an officer's ethics, integrity, or honesty to defense-- to defense attorneys so that judges may make informed preliminary determinations regarding credibility of state witnesses. The Brady list is a definitive public-facing database of information about police misconduct, public complaints, use-of-force reports and more. To ensure fair trials, the Supreme Court of the United States created the Brady doctrine, obligating the prosecutor of every case to gather and disclose all information about any individual upon whose testimony they would rely. Since the 1960s, prosecutors in the U.S. have been legally required to disclose information that might be favorable to defense in-- in a criminal case, including information about whether a police employee involved had credibility issues. This has been

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interpreted as requiring prosecutors to keep a list of police whose histories prevent them from being credible witnesses. Section 1 would amend Section 81-1414.15 to require that law enforcement agency records of officer misconduct be retained indefinitely. Section 2 of LB882 is a new section that would require all prosecutors' offices in Nebraska to maintain a list of law enforcement officers that have impaired their own credibility due to misconduct. The list would be public and posted on the website. As I stated before, often called Brady list after Brady v. Maryland in the 1963 U.S. Supreme Court case that established them, these lists are also sometimes known as do-not-call, no-call, disclosure or exclusionary lists. Brady lists are ultimately a list of police employees who was involved in any case as arresting officer, investigator, witness, or in another role undermined its integrity. These lists, maintained by prosecutors, should be updated regularly to ensure they include the most recent and comprehensive information. Brady lists are vital public information as they show which police employees have credibility issues and indicate whether prosecutors are following the law by maintaining and updating these records. Brady lists also, however, are important for people beyond those facing imprisonment and their loved ones. Juries should know, for instance, that police employees testifying before them have been repeatedly investigated, for example, for mishandling evidence, especially if they're-- if they were deciding whether to convict someone based on that evidence. Crime victims should know if the police employee handling her case had a history of, for instance, coercing false testimony from people which could prevent the state from getting to the truth, and prosecutors should be aware if a case is unlikely to hold up in-- relies on an unreliable police employee. Our society shouldn't need a Brady list because there should be no such thing as a police agency that keeps cops with histories of lying, brutality, false arrests, fabricating reports or evidence, racism, coercing witnesses, and other misconduct that will land them on the do-not-call list. The purpose of this bill is to create a culture of transparency. It's not to shame anyone. It's not the public's fault that an officer ends up on this list. That being said, the public should be aware of those on this list, and those facing prosecution should know who is and who is not on this list. I deem any efforts to oppose this bill as business as usual from law enforcement and it needs to change. Thank you.

**LATHROP:** Thank you, Senator McKinney. I don't see any questions at this point, and I assume you'll be here to close.

**McKINNEY:** Yeah.

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**LATHROP:** OK, great. We will take proponent testimony at this time on LB882. Good afternoon, welcome.

**KORBY GILBERTSON:** Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Korby Gilbertson; it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of Media of Nebraska, Incorporated, in support of LB882. Media of Nebraska is a nonprofit corporation composed of both print and broadcast media organizations. The primary focus of Media of Nebraska is to advocate for the protection of free speech rights, open meetings, and public records access. LB882 is in the public interest because it would require each law enforcement agency to create and maintain a record that would allow the public to learn about officers who have violated either the law or department policy, thereby further promoting police accountability and public trust. Under current Nebraska law, Section 81-1414.5, sub (3), law enforcement agencies in the state are required to maintain any and all records of off--officer conduct which would constitute grounds for revocation or suspension of law enforcement certification. This law is undeniably in the public interest because it gives defense counsel access to any available evidence to impeach the credibility of law enforcement witnesses and any criminal prosecution as required by U.S. Supreme Court under Brady v. Maryland and Giglio v. United States. I have the cites if you would like those. The ready availability of such evidence forces law enforcement agencies and prosecutors to consider whether officer witnesses can survive cross-examination with their credibility and the prosecution's case is still intact for the jury. LB882 would add teeth to that provision by adding a new section requiring that each agency maintain a Bra-- Brady and Giglio test in accordance with the section that would be updated monthly, posted on the governing body's website. Online publication of the list would mean that members of the public, not just defense counsel, would have access to the information that law enforcement agencies are already required to compile and produce. That way, the public would not have to rely on evidence of law enforcement misconduct being revealed at trial or in court documents to know whether an officer's credibility is suspect. Moreover, any claim that the list would infringe on privacy is surely outweighed by the public's interest in law enforcement accountability, especially given that the information currently provided to defense to den-- to the defense counsel under existing law is already admissible in court. For these reasons, we support the legislation, and I'd be happy to try to answer any questions.

**LATHROP:** OK. Any questions for Ms. Gilbertson? Senator Geist.

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**GEIST:** I'm just curious, if then something like this passed, then would every state employee's discipline records or national politician or any-- any position that's paid for by taxpayer dollars, should their employment history be put on a public website?

**KORBY GILBERTSON:** I think that's a further policy decision. I think the decision on law enforcement was already made by this- by creating this statute, which required the data to be collected and kept and provided to defense counsel upon request, so I think that that would be a step further. We've already made the policy decision to collect and keep this data.

**GEIST:** And is there any assumption of a-- of a safety issue with publishing that publicly or a concern about that?

**KORBY GILBERTSON:** As opposed to the public's interest in being able to know if there is someone that has broken the law that is handling their case? I think that's the-- that's the weighing that we-- that I talked about in my testimony, that we think the public's right to understand the people that their taxpayers-- or their tax dollars are paying, on what they're doing, that outweighs the right of privacy.

**GEIST:** To be safe. OK, thank you.

**PANSING BROOKS:** Any other questions for Ms. Gilbertson? I don't see any. Thanks for coming.

**KORBY GILBERTSON:** Great. Thank you.

**PANSING BROOKS:** Next proponent. Welcome.

**SPIKE EICKHOLT:** Good afternoon. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on both-- on behalf of both ACLU of Nebraska and the Nebraska Criminal Defense Attorney Association in support of LB882. Law enforcement has such an influence on the criminal justice system. Many times, when an officer makes an arrest, that officer will complete a probable cause affidavit or initial report. And in many respects, that's the sole thing that the prosecutor will rely upon in deciding what to charge somebody with and deciding what to set a bond on. And many times, the law enforcement officer's testimony is really the only witnesses that the state has to prove a case at trial, so they are fundamentally important to the law, and I think in other contexts the Legislature and the state has recognized that. For instance, law enforcement officers are afforded certain protections. If you assault an officer, a law enforcement officer, you're subject to a higher penalty; law enforcement officers'

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individual home addresses can be withheld from the public record at the county level and other certain things; and other indications that the state has made that recognizes that law enforcement officers are different. So to the extent that this bill holds those law enforcement officers to that standard, that if they somehow, due to misconduct or otherwise, have done something in their professional capacity that's impacted their credibility, that there should be a list that the prosecutors maintain. I would submit that this list duty is in the prosecutors' best interest because prosecutors have a duty under Brady v. Maryland and under Giglio to disclose evidence that is materially helpful to the defense. Whether they are requested to or not, prosecutors have an ethical duty under Brady and subsequent Supreme Court cases to disclose information that could be helpful to a defense, that somehow reduces culpability to the defendant, or could somehow mitigate the punishment somehow. Even if the person is completely guilty, if the prosecutor has some sort of information that might lessen the possible sentence they get, they have a duty to disclose it to the other side. And if it deals with law enforcement officers' credibility, prosecutors still have that duty. Having a list that they keep, that is publicly available, will make sure that they fulfill that obligation. So for those reasons, we'd encourage the committee to advance the bill.

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

**PANSING BROOKS:** Is-- I have one.

**LATHROP:** Oh, I'm sorry. I didn't see your hand.

**PANSING BROOKS:** That's OK. Thank you for coming today.

**LATHROP:** I should say Senator Pansing Brooks so the transcriber knows.

**PANSING BROOKS:** OK, thank you. Thank you, Senator Lathrop. I am just trying to-- why is it that the-- I guess I just don't know the process. Why are the names not kept?

**SPIKE EICKHOLT:** Well, they may be kept somehow informally in-- when I did a lot of public defense work, particularly, prosecutors would disclose Brady material to me and it could come in all shapes and forms. And the common one would be in a domestic case where my client was going to be arrested for assaulting his wife. For whatever reason, she gave a statement, subsequent to the initial arrest, what she first told the officer, she gave a statement to the prosecutor or to law enforcement that was different, maybe, that somehow minimized what my

client allegedly did or somehow mitigated it or somehow. And prosecutors then would just send me an email or even a formal letter saying, just so you know, pursuant to Brady, I'm letting you know that alleged victim told Officer X this on this date, attached is a copy of the report. You don't see a lot of-- I've never gotten a Brady disclosure until recently regarding a law enforcement officer or at least an employee of the state. I've got one for that State Department-- State Patrol evidence tech for an old case that I had. Even though my client had already completed their sentence, the prosecutor, to their credit, sent me a Brady disclosure, so I think there could be some sort of-- and maybe the prosecutors have something that's not public, some sort of listing of officers who they know perhaps have falsified a report or perhaps have testified improperly under oath. I'm not sure if they keep that. This bill sort of removes that by requiring them to keep a public list available for the public and defense counsel.

**PANSING BROOKS:** On each case, is what you're saying?

**SPIKE EICKHOLT:** I don't know if it's meant to be on each case, but just perhaps all law enforcement officers who presumably are still certified and still practicing or have-- maybe not necessarily still practicing or still licensed, but at least they keep a list of identifiable law enforcement officers who do the misconduct or otherwise impair the credibility that would require disclosure under Brady.

**PANSING BROOKS:** OK. What's-- can you tell me what kind of argument we're going to hear against this?

**SPIKE EICKHOLT:** I suppose-- well, I can't-- it's not fair for me to speak for the opposition.

**PANSING BROOKS:** OK, I know.

**SPIKE EICKHOLT:** And they certainly wouldn't appreciate that.

**PANSING BROOKS:** Tell, tell me their argument against you. OK.

**SPIKE EICKHOLT:** Can I answer my own questions? Yes. I'm kidding. I'm kidding.

**PANSING BROOKS:** OK. Well, OK, I just, I guess-- OK, we'll wait until they come forward.

**LATHROP:** Senator DeBoer.

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**DeBOER:** Thank you. Can you tell me what the Brady standard is? What, what would require disclosure under Brady?

**SPIKE EICKHOLT:** Any favorable evidence to a defendant with respect to culpability, whether they committed the crime, and any favorable evidence to the defendant with respect to mitigation or a level of punishment. It's open-ended, anything that is material. So in other words, say I have a case where the prosecutor learned some other facts. It doesn't mean my client is any less guilty. It doesn't mean that he's not going to get the same kind of defense. That would perhaps not be a Brady thing because that's subsequent information that's not material. In this context, it would be the, the-- law enforcement officer X was the arresting officer. That person authored the probable cause affidavit and then perhaps, on a subsequent unrelated thing, we find out that the officer is falsifying time sheets, that he's falsifying his record, maybe where he's at, and that's repeated and it rises to the level of misconduct and it deals with credibility. In other words, if you're-- if the Officer X is writing a report relating to my case, attesting to the truthfulness of those things in the report, and then he's filling out unrelated paperwork attesting to the truthfulness of this and it's found out that he's not truthful, arguably, under Brady, the prosecutor has an obligation to disclose it to me. It may not matter. I may not be able to show that the officer actually did anything wrong, but that-- that still is a duty of the prosecutor to let me know.

**DeBOER:** So wouldn't this be a pretty broad array of activities, right? Because if I'm trying to show that the officer is not credible because I'm defending somebody, I could say he cheated on a spelling test and I can prove it, right? I could, I could create a whole huge amount of things that would be intended to impeach this guy, right? So is there any limiting factor on this? I mean, it says due to misconduct or otherwise, so is this-- I mean this-- I could probably make that argument for anyone, right?

**SPIKE EICKHOLT:** You could. But if you look at the Brady cases, there's still that material-- that requirement that it be material, that it be relevant, that it matter. In other words, if you get information about an officer's spelling bee, maybe that is disclosable. Maybe I can use it. I don't know if I can somehow show the failure to disclose that to me is prejudicial to my client. That may be too far removed, but I, I guess I see your point. And maybe it could be tightened, and it's Senator McKinney's bill so I can't do it, perhaps to maybe officers, the supervising officer, sort of determine that the officer was, you know, found-- not guilty, necessarily, but had committed official

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misconduct, some sort of lesser standard than actual crime, but maybe document it somehow. Maybe that would be a relevant standard.

**DeBOER:** So a different standard than, than Brady, perhaps, but not-- so what is-- and I don't-- I just don't know. What is Giglio?

**SPIKE EICKHOLT:** Giglio is another case that dealt with, as long as I read it, basically, the prosecution called a witness, that witness had a plea deal to testify, that plea deal was not disclosed to that second defendant, therefore, that was material because the jury may care that the guy was testifying pursuant to a plea deal. It was withheld. They said it didn't matter, the guy's guilty, and the Supreme Court expanded, if you will, the rule on Brady.

**DeBOER:** So this is-- these are 1963 and 1972 cases--

**SPIKE EICKHOLT:** Right.

**DeBOER:** --so presumably there's rather a lot of jurisprudence about it.

**SPIKE EICKHOLT:** There's a lot of cases, state and federal, that have followed it, and, and that's what I talked about, the materiality factor. I suppose that's the, that's the debate, if you will. You know, prosecutors have an obligat-- if you don't-- pass the bill or not, prosecutors have an obligation under Brady. They have to follow it. Sixth Amendment requires it. Logistically speaking, I think this would help them do that because I don't know that-- we have different law enforcement agencies around the state. Even though the law enforcement agencies work closely with the prosecutors, they are separate offices. You have turnover in the prosecutors' offices. Unless you have some sort of, like Senator Pansing Brooks asked, some sort of repository or some sort of database, prosecutors may not be able to live up to what Brady expects of them because they just may not know.

**DeBOER:** Right, they may not know about the-- the evidence. But, I mean, even if I'm a prosecutor who's trying really hard to comply with Brady, even if there is this database and I'm-- even if I'm a-- an officer who has witnessed a fellow officer doing something, how do I know whether or not I'm within the materiality, for some future case or not, to put them on the list? Because if it's-- you know, I mean, right, like, wouldn't it be fact-specific, whether or not I was within the materiality range?

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**SPIKE EICKHOLT:** Yeah, it would be. I suppose the bill speaks to that because it at least requires you put them on the list. You give a description or reason why they're on the list, so maybe that would, not necessarily prioritize, but maybe that would accurately capture why that law enforcement officer was on the list if it was something as simple as a spelling bee deception, something like that.

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

**LATHROP:** I don't see any other questions. Thanks for being here today. Any other proponents of LB882? Anyone here to speak in opposition? Good afternoon.

**ANTHONY CONNER:** Good afternoon. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Anthony Conner, A-n-t-h-o-n-y C-o-n-n-e-r, and I serve as president of the Omaha Police Officer's Association. I'm here today to express our staunch oppo-- opposition to LB883. Regardless of the stated intention here, this bill does, does absolutely nothing to enhance public safety. The clear purpose of LB883, in our view, is to publicly and punitively jeopardize the reputations and careers of those who serve in law enforcement. Nationwide, there are no standards for what conduct can land an officer on a Brady list, whether that conduct must be sub-- substantiated, whether the officer is notified, and whether they are entitled to any kind of hearing or appeal. Just as there is no standard to get on the list, there is no standard or due process to be removed from a list, either. The Iowa Legislature recently convened a Brady list study committee who heard the examples of an Altoon-- Altoona police officer who was put on the list for stealing firewood as a college fraternity prank before he became a police officer. There are countless examples around the country where the Brady lists have been weaponized to terminate officers or political personal grudges or whistleblower retaliation reasons without any of the procedural protections of the department's official disciplinary process. Making such a list public, whether there is no-- where there is no transparency or due process protections afforded to the officer who appears on the list can only serve the interests of anti-police activists who will seek such information to wage personal and political attacks against a police officer. The Brady and Giglio court decisions resulted in city prosecutors and county attorneys keeping these lists of officers with demonstrably-- demonstrably credible-- credibility issues. We understand why disclosing an officer's history would allow for a fair trial and potentially provide exculpatory evidence to a defendant. However, Brady information is not always used to impeach an officer's credibility because, like the Iowa example I

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provided, the Brady des-- designation may not even be relevant to a criminal trial. And so making Brady lists public suggests a lack of respect for prosecutors, that they cannot be trusted to provide all the relevant evidence to the defense. This insinuation is a slap in the face of the hardworking men and women we trust to uphold the law and administer justice. LB883 is an extension of the Defund the Police movement, led by anti-police activists uninterested in the real public safety needs of our community. These continued attacks on law enforcement have real consequences, and I'm available for any questions.

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you, Mr. Conner, for being here. So I, I just started looking up the Brady list and issues associated with. Do any other states have this information as public information?

**ANTHONY CONNER:** Not that I'm aware of.

**SLAMA:** OK.

**ANTHONY CONNER:** And one of the issues with the Brady list is, like I described in my testimony, a prosecutor with an agenda against a police officer. For example, let's, let's, let's use a relevant example that we all understand. Don Kleine's running for county attorney. If his opponent wins and I supported Don Kleine, his opponent could put me on the list without any type of due process. And now, because I supported his opponent, I'm on this Brady list. And now if we make this list public, it's only providing an opportunity for me to be publicly shamed in front of the entire community.

**SLAMA:** Absolutely. And there's-- wait, what's the route to getting off of the Brady list?

**ANTHONY CONNER:** There is no route. There-- as far as I'm-- I understand, even anywhere across the country, there's no process, no due process to get your name off the Brady list, that I'm aware of.

**SLAMA:** And, I mean, what's the, what's the range of things that can get you on the Brady list? You brought up the Altoona guy who was stealing firewood. Are there smaller infractions like that, that can get you on a Brady list?

**ANTHONY CONNER:** It is-- it is-- every jurisdiction looks at things a little bit differently, and that's-- that's kind of the unfortunate

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part of the Brady list. I think at some point they're going to have to be some sort of ruling from the Supreme Court to clarify some of these issues. But there is examples, like an example I gave, that is, that is a true example of--

**SLAMA:** Yeah.

**ANTHONY CONNER:** --someone who supported a county attorney candidate and that, that candidate lost and then all of a sudden that officer is put on the Brady list immediately. That happens at times, and that's where we got to be very careful with where we-- what we do, trying to publicly shame, you know, the men and women that serve our community--

**SLAMA:** Ab--

**ANTHONY CONNER:** --and sacrifice everything for perfect strangers.

**SLAMA:** Absolutely. And I think that standardization and the process for removal, all of these things need to be worked out with the Brady list before we're making this stuff-- like no other state does this and we're looking at including-- like California doesn't do this, New York doesn't do this, and I think that's for good reason, because across the board, you don't have any kind of standardization of how you get on there, how you get off, and I agree with your points.

**LATHROP:** Senator Geist.

**GEIST:** And I'll just add one additional point, that I have just huge concern about what you brought up and that is making this public. I don't see the benefit in a trial, to that specific trial and to that-- that judge, of this being public information. I don't see that happening in any other arena of public life where your-- something that's happened in your past is public information. I just think that's very-- that's dangerous territory.

**ANTHONY CONNER:** And I agree. Yeah, I agree, Senator.

**LATHROP:** Can I ask a practical question?

**ANTHONY CONNER:** Yes, sir.

**LATHROP:** And not necessarily about being on the list, but if you were involved in arresting somebody for a shooting and you're the person on the scene and you put the handcuffs on him and he's in the back of the cruiser and he says some things to you, OK, so now you're, now you're kind of an important witness.

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**ANTHONY CONNER:** Um-hum.

**LATHROP:** He says something incriminating. You're going to testify in a case that goes to trial. What's the process between you and the county attorney? How does the county attorney know whether there's anything in your particular past? Let's say that, and, and I'm not suggesting this is the case, but let's say that you have been disciplined for writing up a phony police report somewhere. Does the county attorney sit down with you and go, OK, let's have the conversation?

**ANTHONY CONNER:** The way it works in Douglas County, we have our city prosecutor. They have a committee, so city prosecutor and county attorney and our internal affairs unit, they will provide basically a blacked-out sheet to the county attorneys and city prosecutors to review the internal affairs incident that happened because most, most of the times, officers that are going to be on the Brady list, it's because of something through internal affairs, not necessarily something that will get them fired but certainly some-- something that a lot, a lot of times, it's just not telling the truth in internal affairs. So they-- they go through that process and then they determine that the person's on the Brady list. We also had issues with even how that committee was set up. We weren't part of the conversations. The officer has to come up, come in and defend themselves. They're not allowed an attorney. So once again, a lot of that due process, it's just, it's just missing from the process, even in Douglas County.

**LATHROP:** I get that.

**ANTHONY CONNER:** OK.

**LATHROP:** I'm trying to understand, if Brady requires that the prosecutor disclose potentially helpful things to the defense, how does the prosecutor, in your case in Douglas County, go about determining? Do they do that case to case, or does the prosecutor have a directory of the law enforcement people and they're like, oh, we better talk to--

**ANTHONY CONNER:** Yes, sir.

**LATHROP:** --Officer Conner?

**ANTHONY CONNER:** Yes. So if Officer Conner's name is on the list, for example, and I'm, I'm going to be a key witness in the case, then a prosecutor is going to look and say, Officer Conner is on the Brady list and he'll disclose the information to the defense attorney. One

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of the-- once again, like I said to this, this, this case in Iowa, is that relevant to that arrest for a shooting? It may not be relevant, so that defense attorney will likely not even use that evidence that was presented to him. But the prosecutor still has the obligation to provide that to that defense attorney, so they just-- they just-- they'll have-- they do have a list that the prosecutors keep right now, so they-- there is a current list right now that the prosecutors keep.

**LATHROP:** So we have a list.

**ANTHONY CONNER:** Yes.

**LATHROP:** The, the problem is, your opposition is, that list shouldn't be public and, by the way, I have no way of getting off of it.

**ANTHONY CONNER:** You have no way of getting off of it. Once again, how you put on the list, I, I have a lot of issues with how that is, that is done. There's not really-- in my opinion, it's not as fair as it should be; the process is not as fair as it should be. And also, once again, there's no rules on saying how a prosecutor can put someone on that list. I mean, we've seen a lot of examples across the country where--

**LATHROP:** if you're a prosecutor, though, you kind of have to err on the side of inclusion, right, or somebody can get their conviction reversed three years later?

**ANTHONY CONNER:** You know, I don't, I don't know. There's a lot of prosecutors--

**LATHROP:** OK.

**ANTHONY CONNER:** --that make decisions that I don't agree with, so.

**LATHROP:** And I just want to be clear. I'm not implying anything about you in, in my questions with that.

**ANTHONY CONNER:** I appreciate that, because I'm not on the list, for the record.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** I just want to ask one clarifying question about the exchange you just had with Senator Lathrop. So there is currently some kind of a list so that if the prosecutor is making sure they've done their due

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diligence and that they've done all their reporting about all sorts of different things that might be Brady worthy, they also would say, oh, here's-- I need to check on this officer because I should look into this thing that's been flagged for me? Is that correct?

**ANTHONY CONNER:** The-- that's probably the simplest way to describe it is a flag. So if Tony Conner's name come up, for example, if I'm on the list, my name comes up as a witness in a case, the prosecutor will now pull that report where-- with the conduct that, that landed me on the list and then give that to the defense attorney, then the defense attorney can make a decision on whether they're going to use it to--

**DeBOER:** Sure.

**ANTHONY CONNER:** --impeach my testimony.

**DeBOER:** So-- so this list already exists--

**ANTHONY CONNER:** Yes.

**DeBOER:** --to some extent.

**ANTHONY CONNER:** Yes.

**DeBOER:** So the, the sort of additional piece that's happening here is the publication of the list in this bill.

**ANTHONY CONNER:** Yes, that's the biggest issue we have with this, with this bill.

**DeBOER:** All right. Thank you.

**LATHROP:** OK. I don't--

**PANSING BROOKS:** I have a question.

**LATHROP:** Oh, I'm sorry.

**PANSING BROOKS:** Yeah, that's OK. Thank you for being here.

**ANTHONY CONNER:** Thank you.

**PANSING BROOKS:** I was just-- so I'm looking at the bill and trying to talk a little bit about what Senator DeBoer just asked. So the list that you're talking about is kept right now-- I mean, they crossed off that it's retained for duration of law enforcement officer's

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employment with the agency and for ten years following his or her separation from the agency. That's the law right now.

**ANTHONY CONNER:** I'm not sure.

**PANSING BROOKS:** It--

**ANTHONY CONNER:** From what I understand, you're on the list until you retire basically. You're always on the list.

**PANSING BROOKS:** Well, it says also, for-- I mean, we-- he's crossing off that it's ten years after as well. But I guess I'm, I'm trying to figure out, because it shall include the name of the law enforcement officer, if it doesn't have the name of the officer, how, how is that list used?

**ANTHONY CONNER:** The current list that is used right now, there is the name of the officer.

**PANSING BROOKS:** Oh.

**ANTHONY CONNER:** Like I said, if Tony Conner happens to be on that list, when I come up as a witness in that trial, the prosecutor is going to know that I'm on that list and know they have to disclose what landed me on that list to the defense attorney.

**PANSING BROOKS:** And it says here that, that in the law that, as it is now, they'll maintain any and all records of officer conduct which could constitute grounds for revocation or suspension of a law enforcement certification by the commission. So if there is that kind of action that constitutes grounds for revocation or suspension, and it's before the-- by the commission, isn't, that's not appealable? That's what you're saying?

**ANTHONY CONNER:** That part, if your-- if your revo-- if your certification is, is removed, you're not a law enforcement officer anymore in the state of Nebraska.

**PANSING BROOKS:** OK.

**ANTHONY CONNER:** So, I mean, you're, you're going to be terminated. I don't know if that makes-- if that's-- if I'm answering your question.

**PANSING BROOKS:** No. Well, what I'm really saying is that it describes that an officer that's going to be-- that his name is-- his or her name is going to be on the list for the duration of their employment

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and ten years following, it says that the grounds for revo-- that the officer does-- acts in a way that would constitute grounds for revocation or suspension of law enforcement certificate, so it isn't, it isn't just for any action. It's for something that the commission would-- would find actionable for, I guess, suspension or termination.

**ANTHONY CONNER:** That-- that's not the way the law is-- is now. So, for example, the Brady list that is-- that exists right now, there's officers that's on there that still have their certification, that still are serving as police officers.

**PANSING BROOKS:** Yeah.

**ANTHONY CONNER:** So that's not-- that's not necessarily, at least the way I'm understanding you explaining it.

**PANSING BROOKS:** No, it-- all it says is that-- I mean, I think the law enforcement agency may retain the person, but the conduct was something that they could have been suspended or revo-- had their license revoked and they didn't have it done, so it's not like just some minor infraction, I don't think.

**ANTHONY CONNER:** And in-- and in most of those cases, that officer is going to be terminated. I guess that's where I'm-- I'm leaning towards, where it's, if an officer is, is-- their certification is pulled, they're not going to be a law enforcement officer anymore. They're to be terminated from their employment.

**PANSING BROOKS:** OK, but I-- what I'm--

**ANTHONY CONNER:** So in those cases, certainly--

**PANSING BROOKS:** It's certainly a serious infraction if, if an officer is placed on that list.

**ANTHONY CONNER:** Not necessarily. The Iowa example, that's a kid in college doing a-- doing a fraternity prank. He's on the Brady list in Iowa. The example I gave of, and I want to say it may have been California or Washington State, where an officer was basically representing or supporting a candidate for county attorney and that other person won, the opponent won, and that opponent immediately put him on a Brady list, those cases happened where it's not necessarily misconduct that would have removed a person's certification.

**PANSING BROOKS:** OK, well, that-- those instances aren't appropriate and-- but all I would say is that they don't-- I don't know what the

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law is in those two other states, and our law states it has to be for a serious offense that that would happen here. So just so you know, if any of your colleagues have-- end up on the list, it's, it's only grounds where they could be-- have their licenses revoked or suspension, so not, not for those other infractions that you're talking about.

**ANTHONY CONNER:** Well, maybe we can have a conversation with the county attorney and let's take some people off the list then--

**PANSING BROOKS:** Yeah.

**ANTHONY CONNER:** --so.

**PANSING BROOKS:** Well, thank you for your service and all that you do. Appreciate it.

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Mr. Chairman. And I'm sorry, Mr. Conner. I think it's just important that if we're reading through this, I have a different interpretation of what the list scope is based on Section 2 as required under Brady and Giglio in terms of Nebraska law and the applicability of those cases to the scope of the Brady, but that is neither here nor there. I just want to say there's ambiguity there as to what that means.

**ANTHONY CONNER:** Thank you.

**LATHROP:** OK. I see no other questions. Thanks for being here.

**ANTHONY CONNER:** Thank you, sir. Appreciate it.

**LATHROP:** Good afternoon.

**MIKE JENSEN:** Good afternoon, Mr. Chairman. Mike Jensen, deputy Douglas County attorney, on behalf of the Nebraska County Attorneys Association. The association is in opposition to this bill. We're not in opposition to our duty under Brady and Giglio. The portion of the statute, particularly Section 2 of the legislation that talks about the public disclosure, is what we're opposed to. I was initially just going to talk about my duties as a prosecutor, but I, based upon the questions of Mr. Conner, I currently serve on the Brady/Giglio committee in Douglas County, so I'm just going to walk you through how the process works in Douglas County, OK? So the Brady/Giglio committee is formed of four people, two of which are city prosecutors and two of

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which are county attorneys. When there is a case that is to be presented to the Brady/Giglio committee, typically that comes from internal investigations. And during the meeting, a representative of the city presents the case after names have been removed from the reports so that you are able to review it without having a bias towards, you know, if I recognize the officer's name or parties involved. So the committee will each individually review the entire reports. We'll discuss it. We'll ask questions of both the internal investigations individual who's there, who led the investigation, and also the city official who's overseeing like their work status for the city of Omaha. After we have discussed the-- we take a vote. If all parties are in favor, that name then is designated as Brady/Giglio. If it's a split decision of 2-2, we defer to that they will be listed as a Brady/Giglio officer. If it's anything less than a 2-2, we do not list that officer. In my time on the committee, we haven't had any split votes. Now I've been a prosecutor for 17 years, 15 of those in Douglas County, so I have encountered cases which involve officers that find themselves as designated Brady/Giglio, and so I have had to disclose that information to defense attorneys under my obligation of Brady/Giglio. I will also tell you that in every trial I've gone forward on, there's a motion in limine that is heard, and the judge makes a determination as to whether or not the material that got them on their Brady/Giglio designation is even relevant. And in my experience, none of that information ever come in at the time of trial. That doesn't mean it shouldn't be turned over. The person we're trying to protect here is the citizen accused. All right. They need to make sure that they have any and all information they would need necessary for their defense. The Brady/Giglio determination then associates with that officer's badge number. When you pick up discovery as part of your process of representing a criminal defendant, on the receipt, you are informed of the database. You are allowed to search badge numbers that correspond with the case that you receive reports. So, officer, you know, 1948, you go to the database, you punch in "1948," that will tell you whether or not they're Brady/Giglio; and if they are, you get that disclosure information. I see I also have a red light. Go ahead. Sorry.

**LATHROP:** Senator Slama. And you're taking my job, Mike. [LAUGHTER]

**SLAMA:** Thank you, Mr. Chairman.

**LATHROP:** And I run this place. I know you guys sometimes think you do, but I'm still the Chairman. Senator Slama.

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**SLAMA:** Thank you. Could you walk me through-- and thank you so much for being here and for your work. Could you walk me through, if somebody is on the Brady/Giglio list in another jurisdiction, what the process would be if that officer, say California, or we heard the other case from Officer Conner, that officer who was stealing firewood, he's on the Brady list in another jurisdiction, how does that transfer to Nebraska when he comes here?

**MIKE JENSEN:** So first and foremost, it would be odd that I would, you know, have a case that would involve, but it could happen, where there's like a homicide that there's evidence that's dumped across state lines, right? So your duty as a prosecutor is not limited because there's this database that exists or doesn't exist. It's always your job to discern with each and every witness, whether or not they're a law enforcement officer or not, if they have information that needs to be turned over, per Brady/Giglio. Oftentimes, when you're preparing for hearings and you're meeting with officers or witnesses, there comes a certain point in time where you have to turn them and you say, OK, we're going to have a candid conversation now. In your past, have you had anything in which you were convicted of a crime, been found to be dishonest; have a judge ever found that you were lying; have you ever been caught lying on the job, right? The kind of stuff that we don't talk about is what I call a candid conversation. And, you know, that-- that candid conversation should happen whether or not you're a law enforcement officer, whether you're a DV victim, whether you're the lifeguard at the local pool. That's my job, before I put you on the stand, to determine that what you're going to testify to is credible and accurate.

**SLAMA:** Sure, absolutely. I was thinking more on like the technical side in terms of you got an officer in Altoona. He comes to work with OPD and he's got this Brady list for stealing firewood, like would that transfer to the new jurisdiction that he's working in?

**MIKE JENSEN:** So, yeah, so if we-- if they were going to be hired in a jurisdiction here, certainly, they would have to pass a background check and to get a certification here in Nebraska.

**SLAMA:** Sure.

**MIKE JENSEN:** And if I were encountering a situation such as you described, I would be calling the prosecutor's office in Altoona, Iowa--

**SLAMA:** OK.

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**MIKE JENSEN:** --and say, hey, I have officer, you know, Jim Maguire, and he just transferred here, do you-- do-- has he ever appeared on any of your lists?

**SLAMA:** Sure.

**MIKE JENSEN:** And that would be a way to find the information. If you're asking me, technically, is there some database I log into for my computer at work, no.

**SLAMA:** No.

**MIKE JENSEN:** No.

**SLAMA:** But it's the transition of information--

**MIKE JENSEN:** Yeah.

**SLAMA:** --more informally than that. Thank you.

**LATHROP:** OK. Thanks for being here. I appreciate your testimony

**MIKE JENSEN:** Thank you.

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

**JEFF SORENSEN:** Good afternoon. Excuse me. Senator Lathrop and all members of the Judiciary Committee, my name is Jeff Sorensen, J-e-f-f, Sorensen's S-o-r-e-n-s-e-n, and I am currently the President Lincoln Police Union. The Lincoln Police Union is here to oppose LB882. In the interest of time and previous testimony, we-- I would like to just say that we support that testimony. I would just like to highlight two things, three things that we are extremely concerned about, one being there's no time limit for this list. Without a time limit, we could retire from law enforcement. We could get another job in a completely different industry, and our name is still out there, as the bill is written, on a public page, which has nothing to do with our new current job outside of law enforcement. This, as well, goes to the public list. No timeline, your name's there on this public list with no recourse for any sort of appeals, which has already been discussed and mentioned. Our other concerns come from a lack of criteria being defined within the bill, being set for how this is carried out. And most importantly, the bill does not address any appeals process for an officer that wants to contest any of these allegations, which, as you've heard here before, there are processes in place with different agencies and jurisdictions; however, some of those can be

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interpretations, and if those interpretations are you disagree with them, you have no, no recourse to contest it. So again, Lincoln Police Union is here to oppose LB882, and I'm happy to answer any questions you guys may have.

**LATHROP:** OK. I don't see any questions, but I appreciate your testimony.

**JEFF SORENSEN:** Perfect.

**LATHROP:** Thanks for being here.

**JEFF SORENSEN:** Thank you, sir.

**PANSING BROOKS:** I have one.

**LATHROP:** Oh, I'm sorry.

**PANSING BROOKS:** No, that's OK.

**LATHROP:** You know what? You do this with your hand.

**PANSING BROOKS:** OK. Well, I tried not to interrupt you.

**LATHROP:** Throw it out there so I can see it, Senator Pansing Brooks.

**PANSING BROOKS:** I'll try and yell. I would like to speak now.

[LAUGHTER] Thank you. Well, first off, I don't think that there should be-- I don't think you should have to go without the ability to appeal something like that either. And I think that, you know, I'm not sure that it all needs to be public. It could be, you know, internal within the-- within a case. And, I don't know, I'm, I'm likening it to a rap sheet on somebody that has-- I mean, people, I-- it's my understanding that sometimes police pick up somebody that has a long rap sheet, and some of those things on the rap sheet haven't even been litigated and aren't clearly true. And so this is the same-- I mean, it's not the same, but it is kind of the same, because there-- I think there should be due process. So I'm in agreement with you about that and I appreciate your testimony, and that's all I had to say.

**JEFF SORENSEN:** Thank you.

**PANSING BROOKS:** Thank you.

**LATHROP:** OK, I think that's it. [LAUGHTER] Thank you, sir. I want to be clear. Good afternoon. Welcome--

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**JIM MAGUIRE:** Afternoon

**LATHROP:** --back.

**JIM MAGUIRE:** Thank you. Chairman Lathrop, Senators of the Judiciary Committee, good afternoon. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police, in opposition to LB882. Without being repetitive with a lot of the things that were stated before, I just want to point out, when officers come from out of state, a couple of years ago we passed LB791. It says that if you're coming in from out of state, you have to provide all of your disciplinary records. You have to give that to the, to the agency that you're trying to get hired from. Then last year, which I, I would like to say that our organization had a little say in this, was LB51, which created a public database for serious misconduct that is listed in this bill. It already exists, so we don't have to out people for being on a Brady list because they're already on the list. So it is-- it is repetitive; it is unnecessary. We talk about examples, and I will just give an example that happens to officers far too many times. They go in front of the IA. They're under investigation, let's say for cheating on their spouse, and they want to hide it, so they lie to the-- to the investigator because they don't want them to know about it. You're on the Brady list because of that. So those are the instances that you can be on it. You can be on it based on a prosecutor that says, when you were 17, even though you were not an officer, you had an MIP, you're a Brady list cop because of that. There are no-- there-- there are no rules regarding this. We would absolutely agree that if there are other counties, cities and counties that are not keeping track of these Brady/Giglio cops, they should be. But should it be public? We don't believe so because a lot of the serious misconduct that they're trying to essentially out already happens. Thank you. I'll take any questions.

**LATHROP:** So the consequence of a prosecutor not disclosing someone's-- let's say that you're on the Brady list, or you should be, and the-- and somebody's being tried and their defense lawyer asks for the Brady documents and they don't say, Jim Maguire's on the Brady list, that conviction can be reversed later on. Right?

**JIM MAGUIRE:** Correct.

**LATHROP:** The consequence is pretty-- it's very consequential not to provide Brady documents.

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**JIM MAGUIRE:** Correct. And that's on a lot of the Brady/Giglio things that if you-- if you look at it, it's not necessarily what the officer did. It's what the prosecutor re-- forgot the-- to let the other side know.

**LATHROP:** No question, every case that I've looked at-- and I'm not a criminal defense lawyer, but I have seen enough of them-- as I read advance sheets, it's usually a prosecutor did not disclose something that maybe they knew or never dug into,

**JIM MAGUIRE:** Right.

**LATHROP:** I just wonder, if you are Mike Jensen and you're on the Brady list, voting on somebody, if it's a public list, are you going to go, eh, no, when maybe it should be?

**JIM MAGUIRE:** I would-- I would suggest that the-- what we were trying to prevent, especially when it comes to serious misconduct, is already public knowledge. It's already on-- it's already on a list that's going to be provided through the Nebraska Crime Commission, so that was part of LB51 from last year.

**LATHROP:** OK. That's all the questions. All right. That's it.

**JIM MAGUIRE:** OK.

**LATHROP:** Thanks for being here. Any other testimony in opposition to LB882?

**MIKE GUINAN:** Good afternoon.

**LATHROP:** Good afternoon and welcome.

**MIKE GUINAN:** Thank you. Chairman Lathrop and members of the Judiciary Committee, my name is Mike Guinan; that's M-i-k-e G-u-i-n-a-n. I'm a prosecutor with the Nebraska Attorney General's Office. I appear here before you today on behalf of Attorney General Doug Peterson and the Nebraska Attorney General's Office in opposition to LB882. A prosecutor's obligation to obtain and provide Brady/Giglio information to the defense counsel exists pursuant to U.S. Supreme Court jurisprudence, ultimately rooted in the Fifth, Sixth, and Fourteenth amendments to the Constitution. The reporting requirements mandated in these cases are not-- not to the public but, rather, to defense counsel in order to assure the defendant has a fair trial. Moreover, such obligations are unencumbered by, and exist irrespective of, any statutory provisions enacted in the matter. LB882, which would be an

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amendment to 81-1414.15, starts with a conclusion and that is, "The list shall identify law enforcement officers who, due to their misconduct or otherwise, have impaired their own credibility such that disclosure to the defendant is required under Brady v. Maryland," with a citation, "and Giglio v. United States," with a citation, and subsequent cases of the U.S. Supreme Court and-- of the Supreme Court of the United States and the Supreme Court in Nebraska. In other words, the determination has already been made that the information is Brady/Giglio material. As such, the prosecutor is already obligated to turn over the information to defense counsel. Posting of this information on the public website-- website is not mandated by the case law and, given the nuances in the case law, does nothing to achieve or serve the purposes of Brady, Giglio, or the project. Ultimately, because posting a list on a public website does not achieve or serve the purposes of Brady/Giglio-- Giglio or their progeny, the Nebraska Attorney General's Office respectfully asks that this member-- or, I'm sorry, this committee not advance LB822 [SIC] to General File. Thank you. Be happy to answer any questions.

**LATHROP:** Senator DeBoer.

**DeBOER:** I think what Senator Lathrop was saying was something that I'm thinking, too, is that a concern with, if we-- if we make these Brady/Giglio lists public, that if I'm the people who are deciding whether or not someone's going to be on the Brady/Giglio list, I might kind of pull my punches and say, ah, tie goes to not putting them on the list, and that might cause trouble down the line with disclosures. So I guess my question isn't really a question. It's more of an observation. But is that-- is-- I mean, is that something that you'd be afraid could happen or do-- I mean, I-- I should have asked the gentleman who's on the, the committee, but is that something that you think might happen in terms of, would people be more gun shy about putting people on the list if they thought it was going to be public?

**MIKE GUINAN:** Yeah, I fully agree with that, right. Does it advance the purposes? No, not in that respect. If I'm a local county attorney, now, of course, when I, when I go out to prosecute cases, usually, almost always, out in out-state, and, for instance, I'm out in Chase County just recently, there's a total of ten law enforcement officers in the whole county, if that. So if I'm the local county attorney, do I want to put somebody on the list, especially if it's a questionable judgment call? I mean, does that advance anything? So I would agree, right. Maybe I'm going to pull my punches. Maybe I wouldn't want to put them on the list. Maybe I don't want to inform anybody because I've gotta live in that community. So I would agree. I don't-- I don't

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know necessarily that it-- the list as a public entity advances a lot of the purpose of the-- of the case law.

**DeBOER:** And as a prosecutor right now, if you're looking at something and you're saying, OK, this person is on the list, but, you know, it's really not relevant right now, would you disclose it to defense just out of an abundance of caution?

**MIKE GUINAN:** So that-- if-- what I'm gonna say is this. When-- when you break it down, if I could-- like if I run through a series of questions, right, so-- or if I analyze a case, I think we can all agree that there's going to be certain people that make a list, right? I think of Dave Kofoed, who got convicted of planting evidence, right? He's forever on a list. I don't think anybody would debate that or what have you. But if the-- if the question comes up-- for instance, I think Mr. Maguire talked about somebody who's cheating on their spouse. What if they cheat on their taxes, right? What if they-- what if they drink in uniform? What if they have one shot in uniform? What if they use derogatory language towards a minority group? That may be relevant, depends on the case. Right? If I'm-- if I'm dealing with a case where the officer in a-- in a bank fraud case may be cheating on his taxes, maybe I would owe that to defense, so then-- so you've gotten really-- what-- at least in my mind, you have two lists here. You have the-- the forever list, the obvious list, which probably most of us are not going to debate on that, and you have what in my mind is a transactional list. I mean, that-- that depends on the facts.

**DeBOER:** So do you, do you-- you-- so when you hit a flag that says Brady/Giglio and you're looking at it as a prosecutor, do you have some discretion whether or not you will disclose that or do you just always disclose it?

**MIKE GUINAN:** Well, so let me-- let me give you an example. This wasn't my case but somebody in our office. They had come across the information in a case-- this is a couple of years ago-- and one of the officers on the case in-- it was in a smaller county-- I-- and I don't know how I came across it. But the officer had had some issue with time card reporting and so on, came up within-- somehow it comes out. So the question was, did it have anything-- it was a manslaughter case, but does that have anything to do with the manslaughter? I don't know. But that was-- his judgment was, listen, I'm going to turn it over and then I'm going to file a motion in limine to keep it out, like you've heard other people--

**DeBOER:** Yeah.

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**MIKE GUINAN:** --talk about. I'm just going to-- I'll turn over out of abundance of caution, but I'm going to file a motion in limine to the judge and have them rule that that's not going to be relevant. Or maybe the judge will rule it's relevant, so, I mean, it just kind of depends.

**DeBOER:** OK. Thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you so much for coming, Mr. Guinan. So I'm worried about another issue. It seems to me--

**MIKE GUINAN:** Sure.

**PANSING BROOKS:** --that law enforcement should have an ability to, to have due process rights to appeal any kind of decision that they're going to be on that list. Whether-- and I'm not talking about-- I'm talking about it as it is now. Seems like, seems like the AG's Office would be concerned about the fact that people are getting on a list if it's actually truly for something like an MIP as a child, which is why I've fought for juvenile justice all this time, but-- because it can follow you throughout your career, most people would not expect the fact that you had a-- an MIP as a child or as a, as a young adult or a young-- a child, juvenile, you wouldn't expect that to be something for which someone could have their, their license revoked or suspended.

**MIKE GUINAN:** Right.

**PANSING BROOKS:** Right? So that shouldn't be something that somebody would be on the list for. I think what we're talking about is something more serious, right, that they do something more serious. And then it seems to me that the police have-- should have a right to appeal this and go before the commissioners do some-- why is that not happening?

**MIKE GUINAN:** There's a whole-- there's a lot of stuff there.

**PANSING BROOKS:** OK.

**MIKE GUINAN:** The-- the language of the statute, the keeping it for a longer period of time, that's already in existence, just want to con-- and so there's that whole piece of the puzzle.

**PANSING BROOKS:** Yes.

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**MIKE GUINAN:** But as far as the due process and so on, ultimately, the responsibility, and Senator Lathrop-- Lathrop brought this up, whose responsibility, right? It's me as the prosecutor in this particular case. Why? Because I can get the case reversed, I can-- somebody can go after my bar license, all the rest of these things, so-- and under the Supreme Court case law, the responsibility is mine and mine alone, or prosecutors on the case. And, and since it's the U.S. Supreme Court, it transcends all jurisdictions and everything. So when--

**PANSING BROOKS:** [INAUDIBLE]

**MIKE GUINAN:** --I have to make a determination whether or not an officer is on the list, with regard to OPD, that's a different animal. Right? If you take Omaha Police Department, I think they have around 900 officers. And I've looked at something I found online, a USDOJ study from 2008. There's only 3,700 officers roughly in the whole state. A quarter of all sworn law enforcement officers work for OPD. That's a different animal. I understand why they-- why they do that. But with regard to me, out in that jurisdiction, when I have to turn over information, I don't-- I don't have a list. I-- if I come across what I determine is Giglio information I, I owe that to the defense.

**PANSING BROOKS:** Yes, I understand that.

**MIKE GUINAN:** So I need to know a lot of different things. And if I create a list, you're right, then shouldn't there be some type of due process such that somebody can challenge it? And again, if I create a list, I-- I'm going to have what's called a forever list, which I think everybody's going to-- or most everybody will agree on that, and I'm going to have a transactional, which is only going to be based on the set of circumstances within that case based on what-- what is alleged, what do I know about the officer. So in that case, I don't know that there would be any due process rights. I would just feel like I have to turn something over to the defense counsel.

**PANSING BROOKS:** So did the Supreme Court speak to the question of due process and ability to get your name off that list?

**MIKE GUINAN:** That-- there is no-- there's no mention that you have to create a list.

**PANSING BROOKS:** Well, that should be happening in our state law, I think, so there are-- I'm not here next year, but you should be able to-- to appeal that, in my opinion.

**MIKE GUINAN:** I wouldn't-- I wouldn't disagree with you, Senator.

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**PANSING BROOKS:** Yeah. Police officers need to protect themselves in that regard. So thank you.

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

**MIKE GUINAN:** Yes. Thank you.

**LATHROP:** Any other opposition testimony? Anyone here to testify in a neutral capacity? Seeing none, Senator McKinney, you may close. We do have position letters, two in opposition, no proponent, no neutral.

**McKINNEY:** First, I'd like to say thank you to everybody that came to testify today. There was a lot said. I don't know where to start. I guess, you know, you talk about public safety and protecting officers. What about when officers are harming the community? Who's protecting the community? Where's the accountability there? We hear them come to this committee all the time, talk about saying no to different bills and public safety, but what about when the public wants to be protected from the police? But when-- when individuals like myself and others bring bills to hold police accountable, it's always, oh, that's going too far, but we're trying to protect the , the officers; or they come in and use catch words like "defund the police" to try to rile people up. Very funny to me, but it is what it is. You know, I don't know where to start because it's very-- I don't know. I, I, I would just end it with this. I have another bill later that probably will continue this conversation, so I won't go too long, but I would say I think it's important for the public to know which officers in our communities are on these lists for a multitude of reasons, especially in my community, who has been disproportionately harmed by police for centuries, and that's why it's important to me. You know, saying let's protect officers, I, I-- I'm-- I don't want them to be harmed, but if they con-- but if they have any misconduct, then that should be public. I don't see what's wrong with that. And then, you know, to say, oh, it might create an issue where the prosecutors don't disclose, well, that's the issue. That's against the law. If they-- if they don't want to disclose and are breaking the law, that's the problem. We need accountability and if they're scared to be accountable, we need to hold them accountable. Just because it might be a fear of, oh, a prosecutor that won't disclose or a committee won't say somebody should be on this list because they don't want to publicly put them on the list, that's the problem we're talking about and that's the genesis of this bill, is we need to hold them accountable and we need to have a transparent process and that's, that's where this is at for me. So, you know, police is always going to oppose accountability, as we see. They're going to oppose my bill

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later, and I'm going to get deeper into that later and I'll leave it at that. Thank you.

**LATHROP:** OK. I don't see any other que--

**PANSING BROOKS:** I-- I have one more thing.

**LATHROP:** Oh.

**PANSING BROOKS:** Sorry. I just-- I raised my hand at the last minute, so. Senator McKinney--

**LATHROP:** All right. OK. Senator Pansing Brooks.

**PANSING BROOKS:** --did you-- did you intend for it to cover infractions like, when they were 18, that they had an MIP? How-- how far did you intend that to go or--

**McKINNEY:** I intended it to include any misconduct, violations, or infractions while as an officer.

**PANSING BROOKS:** While em-- while as an officer?

**McKINNEY:** Now, if-- from what I've always understood, it's hard to be a police officer if you have a bunch of stuff on your record. But if-- if they have an MIP as a minor, I don't see how that would come up. If it does, I mean, that's an easy fix of saying anything as a minor should be excluded. That's, that's OK with me. But any-- from the time as an officer until whenever they possibly might end up on this list, to me, that's all fair game.

**PANSING BROOKS:** Do you have a problem with officers being able to appeal placement on that list?

**McKINNEY:** No, I don't have a-- I-- honestly, I was sitting there thinking. I was like, oh, I love this opposition because I'm going to love writing the amendment. So thank you for making a case for the amendment, and I'm still-- if this doesn't go, I'll bring it back and it's going to be a stronger bill because I'm gonna take everything y'all said was wrong and I'm gonna put it into the bill. But then I won't try to come back and say no again, and it's going to prove my point that y'all don't want accountability.

**PANSING BROOKS:** Thank you, Senator McKinney.

**McKINNEY:** No problem.

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**LATHROP:** OK. I think that's it. That'll close our hearing on LB882. Thank you, Senator McKinney, for bringing that bill, and for the people who showed up here to testify. That'll bring us to LB1200. and Senator Halloran. Senator Halloran, sometimes we ask a lot of questions around here.

**HALLORAN:** Well, you should.

**LATHROP:** Yes. It's like branding--

**HALLORAN:** Just raise your hand.

**LATHROP:** --bit like a branding bill around here sometimes. [LAUGHTER]

**HALLORAN:** And since-- it's not a restricted area, so.

**LATHROP:** It's not a restricted area. OK, well, welcome to the Judiciary Committee. You may open on LB1200.

**HALLORAN:** All right. Thank you, Chairman Lathrop and members of the Judiciary Committee. I'm Senator Steve Halloran, H-a-l-l-o-r-a-n, representing the Legislative District 33. Child sexual abuse is a plague that takes place across all sectors of our society. It infests not only our private youth-serving organizations, such as our daycares, scouting organizations, churches, hospitals, summer programs, sports clubs, among others; but also it infests our public institutions, such as our public schools, child wel-- welfare system and juvenile justice system. And while child sexual abuse is prevalent across society in both public and private institutions, our laws fail to provide justice and equity and fairness to all victims. Nebraska law provides rights to certain victims while denying rights to other victims. Currently, the Political Subdivision Tort Claims Act and the State Tort Claims create immunity for public institutions for any claim arising out of an assault. This is part of what is called the intentional torts exemption, which can be found in Nebraska Revised Statutes Sections 13-910 and 81-8,219. In layman's terms, this means that a child who is abused in a public institution is unjustly prohibited from filing a civil lawsuit against the public institution. But a public institution which has failed to, for example, adequately supervise or train its employees or has failed to swiftly respond to suspicious grooming or abusive behaviors, should not be allowed to do so with impunity. LB1200 proposes to remedy this basic and fundamental inequity in our laws by stating that claims relating to child sexual abuse are not subject to the two torts claim acts, and it creates a separate state and political subdivision: Child Sexual Abuse Liability

Act. This act is intended to mirror the current standards for private institution liability when they engage in the same wrongful behavior, which can be found in Nebraska Revised Statutes Section 25-228(1)(b). This standard is that a person may bring a claim related to child sexual abuse for 12 years after they, after they turn 21 years old. In short, LB1200 treats all the victims equally when it comes to holding a third-party public institution responsible for their wrongful actions. So let's talk about why this is needed. In 2004, Dr. Charol Shakeshaft published a report commissioned by the U.S. Department of Education entitled Educator Sexual Misconduct: A Synthesis of Existing Literature. Shakeshaft found that nearly 10 percent of the students are targets of educator sexual misconduct sometime during their school career. In her estimation, she found that in a given year, more than 4.5 million students are subject to sexual misconduct by an employee of a school sometime between kindergarten and 12th grade. This data is consistent with a 2017 case study issued by the U.S. Department of Justice. These scientific studies are made more real through the investigative reporting of the media. In 2007, the Associated Press ran a three-part story in which it found more than 2,500 cases of child sexual abuse over five years that were reported and led to disciplinary action against the educators. Although the investigation recognized countless educators who are faithfully devoted to the educating-- education of children, the investigation revealed a number of abusive educators, which speaks to a much larger problem in a system that is stacked against victims. The AP investigation recognized that clergy abuse has been a part of the national consciousness, but that there has been little sense of the extent of educator abuse. As Dr. Shakeshaft has asserted, the physical sexual abuse of students in schools is likely more than 100 times that abuse by priests. To be clear, my coming here today is not meant to in any way defend the historical clergy sexual abuse problem, it is meant to help us recalibrate our sense of the issue so we can see the whole problem for what it is and find just solutions for the victims. Similar to the AP investigation, our own Omaha World-Herald published a hard-hitting story in 2019 that revealed 56 educators who were linked to sexual misconduct, leading to the abuse of at least 74 students or recent high school graduates over a 14-year period. Important to note, the World-Herald recognized-- the report recognized that those were only the cases that appeared in the disciplinary records. They found that disciplinary action isn't immediately or always taken against a perpetrator. The article also conveyed that fact in many cases of child sexual abuse go unreported, meaning that the actual number of Nebraska victims during that period can be in the hundreds. As Brian Halstead, deputy commissioner in the Nebraska

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Department of Education, was reported to say, we have quote, No way of knowing to what degree misconduct may be underreported, end of quote. As a 2017 case study issued by the U.S. Department of Justice reports, again quote, Victims of school employee sexual misconduct span more-- most demographic characteristics. Those students who are low-income, female and in high school are most likely to experience sexual misconduct by a school employee. And quote, Students with disabilities are most likely to experience school employee sexual misconduct than students without disabilities, end of quote. Similarly, Dr. Shakeshaft found that, again quote, Students of color are overrepresented as targets of educator sex-- sexual misconduct in their representation in the sample, end of quote. Without going into all the details, the list of emotional, physical, social and psychological trauma that accompanies child sexual abuse is extensive. Child sexual abuse not only takes a personal toll on the victim and their family, but its public health and other economic costs are not to be underestimated. This case study also finds that contrary to common conception, school employee sexual misconduct offenders are typically, typically popular, and they often have been recognized for excellence. Offenders, including all types of school employees, such as teachers, school psychologists, coaches, principals and superintendents. Citing a 2010 Government Accountability Office report, the case study finds that one teacher offender can have as many as 73 three victims. As well, a teacher offender can be transferred to three different schools before he or she is reported to the police, a practice called, quote, passing the trash, end of quote. The case study also finds that schools and their employees have serious problems with the failure to disclose abuse, as well as problems with compromising investigations. But the problem of child sexual abuse in public institutions is not reserved for public schools. It is found elsewhere. In 2017, Nebraska Inspector General of Child Welfare Julie Rogers released an investigative report that reviewed cases of child sexual abuse in the state's child welfare system and juvenile justice system. Over the three-year period from 2013 to 2016, Inspector General Rogers identified 50 children who were, who were victims of sexual abuse that had been substantiated. Like Shakeshaft and the U.S. DOJ data, Inspector General Rogers' report found that 1 in 10 children will be subject to sexual abuse. She also noted that youth in the child welfare system are at higher risk of experiencing sexual abuse and exploitation than their peers in general population. In fact, the research estimates that youth living without either parent, including foster care or residential facility, are 10 times more likely to be sexually abused than youth living with their parents. In addition to documenting far too many reports of sexual abuse of children in the state-- in the care of the state, the

report revealed harmful attitudes. Number one, harmful attitudes about the perception of both child sexual abuse and children in the state's care among state employees that left the child welfare system unable to effectively prevent and respond to child abuse of youth in its care. Secondly, repeated instances of a lack of reporting, as well as investigations that were not conducted in a timely and effective manner. Number three, system interventions that were unable to protect youth and had, in fact, made them more vulnerable to sexual abuse. And number four, several deficiencies with how foster and adopted guardian homes are chosen and prepared to care for children to ensure that placement are safe and suitable for children. These findings clearly demonstrate not only that child sexual abuse is occurring with frequency in our public institutions, but also that our public institutions and their employees to whom the care of the state's children has been entrusted are far too often failing to protect children. LB1200 would ensure that our public institutions are held more accountable and responsible for ensuring that they can be held legally liable for their failings. LB1200 does this by providing an exception to State Tort Claims Act and the Political Subdivisions Tort Claims Act. This approach would complement LB991, which I brought in 2020 to address sexual abuse in our schools, and would also complement recent steps that the committee, our Legislature have taken over the last several years to help train, educate and prevent child abuse, sexual abuse in our public institutions. Ultimately, LB1200 is intended to provide justice, fairness and equity for all victims. If we want to give justice to victims of child sexual abuse, then they should be treated fairly and equitably across the board. We cannot have a two-tiered justice system that treats victims who experience their abuse in public institutions as second-class victims. They, like victims who experience their abuse in private institutions, deserve their day in court when their public institutions have failed. Thank you for your patience.

**LATHROP:** Thanks for that opening. I very much appreciate that, Senator Halloran. Any questions for the introducer? I see none. Thank you for being here. Are you going to stay to close?

**HALLORAN:** Certainly.

**LATHROP:** OK, very good. We will take proponent testimony. If you're here in support, you may come forward. Good afternoon.

**NATHAN ARENTSEN:** Good afternoon, Chairman. My name is Nathan Arentsen, N-a-t-h-a-n A-r-e-n-t-s-e-n. Senator Brandt, I thought you made the bravest and most vulnerable comment of anyone on this committee two

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weeks ago, when a similar bill regarding child sex abuse was heard in this room. It was a comment which speaks today to the crucial need to pass LB1200 as well. You asked a proponent whether they had tried to get another public official to act when their county prosecutor refused to try to stop a sexually abusive priest. The proponent replied, Who do you ask? And you said with a real look of sympathy and vulnerability on your face, That is a very good question. It was a very good question, and I commend you for being brave enough to acknowledge that. It is a gap in the law which we are morally compelled to fill. It's a question which I hope will compel you to vote for LB1200. Nebraska sexual assault survivors and their families who, by sheer circumstance, happened to be sexually violated by someone working for the state or local government go through, first, the horrible shock of the statute of limitations and then go through the further tragedy of being denied the most basic human remedy of all in a civilized society: being allowed to tell a judge who hurt them, pointing out their attacker and asking a jury of Nebraskans to determine justice. This is not about the Nebraska municipal insurance pool or school budget formulas or state agency budget supplements or the contest between the insurance industry and the trial lawyers. No, this is not about those things. No matter what lobbyists may tell you. Instead, I will simply close by taking 30 seconds to repeat my own story, what this bill is about for me. A state-hired child welfare service provider came into my home, pinned me down on my couch and brutally, forcibly, sexually tortured me while my one-year-old baby, whom that predator had been assigned to protect, sat a few feet away listening to this nightmare. The predator then threatened me and my young child, saying that they would launch different custody arrangements if I complained about my safety. I ultimately told supervising Division of Children and Family Services staff about this horrible, horrible crime. Those staff workers cruelly shouted at me over the phone that they doubted my account and called my reports about their provider's assault a waste of their time. One of those calls took place just yesterday. This is how state sovereign immunity works and fails our children and families. Please pass LB1200 out of this committee and vote for it on the floor. Thank you.

**LATHROP:** OK, thank you, Mr. Arentsen. We appreciate you being here again.

**NATHAN ARENTSEN:** Thank you.

**LATHROP:** Appreciate your testimony.

**NATHAN ARENTSEN:** Thank you, Mr. Chairman.

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

**LOREE WOODS:** Good afternoon, Chairman Lathrop and Judiciary Committee. In front of you, you have an extended binder of my presentation, I've shortened it down; as well as a picture of my daughter who has been unfortunately sexually assaulted at the hands-- neglect of the Lincoln Public Schools. I hope that you have the opportunity to take a look at that and think about what she endures every day as you make your decisions going forward. Again, my name is Loree Woods, spelling, L-o-r-e-e W-o-o-d-s. I am here today to urge you in the support of LB1200 on behalf of my special needs daughter, Taylor Woods. Unfortunately, LB1200 has become very personal to me and my family because it will remedy equality for-- or equity for all victims of child sexual abuse. My daughter was left with no recourse as she was sexually assaulted by another student as a result of Lincoln Public Schools' neglect. Taylor was born March 28, 1997, with special challenges. She was the most sweet, excited, fearless, loving, outgoing baby. No surprise to me, she grew into a strong, beautiful and trusting young lady with a contagious laugh and plans for her future to graduate, get a job, move into an apartment with staff and her peeps, and to, to facilitate her finding a future employment. Like other special needs children throughout the Lincoln area, Taylor participated in the VOICE program through LPS, Vocational Opportunity in Community Experience program. On October 12, 2016, Taylor's life was forever changed. On that day, LPS experienced a staff shortage in the VOICE program at Abel Hall on the university campus. LPS knew the program would be understaffed, but it proceeded without meeting their staffing needs. Ill-equipped to deal with a group of special needs students as a result of understaffing, four students were left unattended, including Taylor and another student with an IEP requiring consistent supervision due to a history of inappropriate touch, inappropriate language, personal space issues, general misbehavior. The student with propensity for inappropriate touch and behavior warranted and required constant supervision, took my daughter to the 13th floor of Abel Hall, sexually assaulted her. Taylor fought her attacker as best she knew how: Stop. You're hurting me. You're bullying me. The tragic irony of all this in the VOICE program was to assist Taylor in becoming more independent as an adult. Instead, the assist-- the assault arose out of neglect and held Taylor back. For it to come at a formative time in her life where-- in an environment where she trusted the end tax-- to tax those protecting her, it was exceptionally damaging to her well-being, development. She continues to have daily triggers of PTSD, flashbacks, physical and mental pain. I'm almost done.

**LATHROP:** OK.

**LOREE WOODS:** Thanks for the support-- let's see. I'm sorry. Unfortunately, within mere weeks of the scheduled mediation with the prospect of justice for our daughter coming to light with dream-- with dreams of completely-- our dreams were completely crushed by the Supreme Court's decision of Moser v. State. As a result of that decision, LPS escaped any legal accountability for negligence allowed to my daughter. She not only was then-- she not only was then not denied accountability for the sexual assault, but then the state also let her down, our, our legal system let her down.

**LATHROP:** OK.

**LOREE WOODS:** School districts should not be immune for them from their neglect and allow sexual assaults to occur. They cannot provide her closure to the school districts I entrusted her care. Never-- it's very clear that the changes will not affect how Taylor's case comes out, but I promised her and those who without a voice that I would continue to fight to protect so that no other family or parents have to go through what we've been through. Please consider LB1200 as positive.

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

**LOREE WOODS:** Thank you.

**LATHROP:** I don't see any questions at this point. I know coming here and talking to us, a bunch of strangers about something this personal isn't easy, so we appreciate you being here today.

**LOREE WOODS:** I've also included my personal information on the back. So if anyone has any questions or any additional information, please feel free to call or, or email me.

**LATHROP:** OK.

**LOREE WOODS:** Thank you.

**LATHROP:** Thank you.

**LOREE WOODS:** Thank you again.

**LATHROP:** Good afternoon.

**CAMERON GUENZEL:** Good afternoon. Chairman Lathrop, members of the Judiciary Committee, my name is Cameron Guenzel. I'm an attorney practicing in Lincoln, Nebraska, and I'm here testifying on my own behalf. I represent a minor who was a victim of sexual assault at a public school. Specifically, over the course of several months, her teacher targeted and groomed her for the sole purpose of sexually assaulting her. But let's call it what it really is: rape. This teacher raped my client repeatedly over the course of several months. Most shockingly, these acts of rape occurred in the classroom, where, if the school had exercised due care, they would have been discovered and prevented. I hope and pray that my client may one day find healing, but it's no exaggeration to say that, as of right now, her life is ruined. She ran away from home. She tried to commit suicide four times. She spent six months in a group home. She never was able to return to her school, continue with her friends, graduate where she had been going-- been going. Today, you are faced with the basic question: whether a public school or other public institutions should be immune from claims of sexual assaults by minors. To oppose this bill, one must believe that public institutions are less capable of safeguarding children from rapists than a private school or a private institution. Or that public institutions should escape the consequences when they fail to protect children. Or that my client is less deserving of redress because she was raped by a supposedly public servant rather than a private citizen. We as a state should reject all of these. There are times that a public entity should be immune. The city of Lincoln should not be held to the same standard when deicing streets that I should have when deicing my front sidewalk. But this is not such a sit-- such a situation. This is not a situation of budget concerns or balancing competing interests. LB1200 addresses an inescapable fundamental duty to safeguard children. The objection will be raised that this bill will increase costs and raise taxes. The idea that a raped child is too expensive should repulse us. If a public entity does not want to be sued, it should protect those in its charge and supervise those it employs. It is true that frivolous or false lawsuits do sometimes occur, but this is true with the private, private industry and has not crippled private institutions. Truth be told, good procedures and safeguards protect not just children against being victimized, but also against false claims of victimization. In my client's case, my client was left alone with a teacher under alarmingly inappropriate situations. Perhaps if the school had a bit more incentive to supervise its staff, her life would be much different today. For these reasons, I implore this body to support LB1200 and tell every Nebraskan that we have no higher goal than to protect our children. Thank you.

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

**CAMERON GUENZEL:** Thank you.

**LATHROP:** Next proponent. Anyone else here to testify in favor of LB1200? Anyone here to testify in opposition? Good afternoon and welcome.

**CHUCK WILBRAND:** Good afternoon. My name is Chuck Wilbrand, I am an attorney with the Knudsen Law Firm, and I represent the Nebraska Association of School Boards.

**LATHROP:** Could you spell your last name for us?

**CHUCK WILBRAND:** W-i-l-b as in boy-r-a-n-d as in dog. I also represent school districts across the state of Nebraska. I sit here to oppose LB1200 for multiple reasons. First, LB1200 completely subverts the Nebraska Political Subdivisions Tort Claims Act and begins the delusion-- the dissolution of sovereign immunity. Currently, as you've heard, schools and political subdivisions are immune from any claims arising out of an assault. This includes sexual assaults. This bill creates a new liability for political subdivisions and school districts that has never been-- under an, under a negligence standard that has never been recognized before previously. And it's also broad enough that this bill could create liability for school districts of any sexual assault that occurs on their premises, even if it's not done by an employee or by another student, or even by a student that isn't-- or by a person who doesn't even attend that school. LB1200 then also removes sexual assault claims from the Political Subdivisions Tort Claims Act, and this will start creating an inconsistency of how to bring tort claims against political subdivisions. And the next question from that goes, is what other of these immunities would then be dissolved with this? Does discretionary immunity in political subdivisions, does that get thrown out the window with this? The bill creates unequitable results. You've heard that there's no remedy for these victims. These victims do have remedies. Section 19-- 1983 and Title IX claims can be brought against public entities. Those claims cannot be brought against private entities. A Title IX claim can be brought by a victim. Title IX prohibits sexual harassment by students on other students, and employees on students. Again, sexual assault falls under this category. Title IX does not have damages caps, and this is an appropriate avenue for those victims to seek redress. Finally, LB1200 will force taxpayers to pay more money. It will lead to, one, more

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claims will be brought under the statute; it will remove damages caps that will then result in high-- larger judgments. Larger judgments will then lead to higher insurance premiums. If-- to get an additional \$5 million in coverage, it will cost a particular school district anywhere between \$250,000 to \$500,000 per school district. If there is insurance coverage, they could still exceed those damages, and then that would be up to the taxpayers to pay for that. I ur-- I ask that this committee not advance this bill. Thank you.

**LATHROP:** I don't see any questions. Thanks for being here.

**CHUCK WILBRAND:** OK, thank you.

**LATHROP:** Oh, I'm sorry. Senator McKinney.

**McKINNEY:** Thank you. I'm just sitting here listening to your testimony and I'm thinking in my head as a father of a young lady, if my daughter is assaulted at a school by a school employee, I would be upset that I couldn't sue the school. And I know you made the claims about the Title IX, but I just-- there's something about not being able to do that kind of just rubs me the wrong way as a father of a young lady. I know, I understand your testimony, what you said that the law is currently, but I don't know. I just wanted to say that, thank you.

**CHUCK WILBRAND:** No, I understand. But Title IX is a remedy and 1983 is also a remedy. Which, if you would talk to a plaintiff's attorney, they could help you. If that was the case, they could help them understand the law on that.

**LATHROP:** OK. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you for your testimony. How many other states have a law like this?

**CHUCK WILBRAND:** Have a Political Subdivisions Tort Claims Act law or have a law that you-- they are trying to re-- that's being introduced right now?

**BRANDT:** The law that's being introduced right now that rolls back the protection.

**CHUCK WILBRAND:** I could not answer that. I don't know.

**BRANDT:** OK, thank you.

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**CHUCK WILBRAND:** Because I think that's also dependent on how-- what other states have the political subdivision tort and state claims act like we do. There are federal tort claims act statutes as well, which ours were modeled after.

**BRANDT:** All right. Thank you.

**CHUCK WILBRAND:** You're welcome.

**PANSING BROOKS:** I have a question.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for coming. So is part of-- you got under issue number one with your bill-- or with the bill, the negligence claim. Is that because you wanted a higher standard like gross negligence or--

**CHUCK WILBRAND:** No, that's what this would-- under the bill right now--

**PANSING BROOKS:** OK, would you have the same issue if it were a higher standard of negligence?

**CHUCK WILBRAND:** Well, that's not how the Political Subdivisions Tort Claims Act works. It's not a higher standard, it's not, I mean, it's a tort claim and negligence is a typical tort claim.

**PANSING BROOKS:** That's true. Yeah.

**CHUCK WILBRAND:** So that's, that's the problem right now is as the law sits in the Political Subdivisions Tort Claims Act and the State Tort Claims Act, there's immunity. But that's all just a regular simple negligence standard. And so that's why this type of cause of action hasn't been recognized against the entity, [INAUDIBLE] in my case, the school district previously.

**PANSING BROOKS:** I'd just say that in light of the trauma which we've heard today, that the amount of money is, is really inconsequential in my opinion. But thank you.

**LATHROP:** Currently under the tort-- the State Tort Claims Act or the Political Subdivisions Tort Claims Act, if an employee sexually assaults a student, a minor student, rapes a minor student, the-- even if the school district saw it coming, they knew this person needed to be discharged and they didn't do anything about it and that student is

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then raped by a teacher, there is no cause of action against either the student-- or pardon me, either the school for their negligence or the teacher under the State or Political Subdivisions Tort Claims Act, isn't that true?

**CHUCK WILBRAND:** There is the immunity up for that right now.

**LATHROP:** Right. And so that person who is dealing with the consequences of a sexual assault by a trusted teacher has no remedy under state law. Is that true?

**CHUCK WILBRAND:** They would have a remedy under Title IX and 1983.

**LATHROP:** That's not state law, is it?

**CHUCK WILBRAND:** That-- not under the Political Subdivisions Tort Claims Act, no.

**LATHROP:** It's, it's not-- it's not state law. It's not a-- it's not the remedy of a tort claim against either the perpetrator or the school district that negligently permitted that rape to occur to a child, isn't that true?

**CHUCK WILBRAND:** There is-- they would be immune under state law.

**LATHROP:** Did you bring with you any statistics on these insurance rates you just testified to?

**CHUCK WILBRAND:** I do not have any. The statistics were provided to me by my client. I do not have documentation on them.

**LATHROP:** OK, so you're telling us that a school district would have to pay \$500,000 to get a policy that would ensure them from negligence claims of this type? They already need a negligence claim policy, but they would need to spend \$500,000 for \$5 million in coverage to cover them for sexual assault claims?

**CHUCK WILBRAND:** I believe it was for an additional \$5 million.

**LATHROP:** Just for sexual assault claims?

**CHUCK WILBRAND:** It could be, but like I said, from ranging from \$250,000 to \$500,000.

**LATHROP:** What basis do you have for that statement?

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**CHUCK WILBRAND:** Again, that information was provided to me by my client.

**LATHROP:** OK. That's all the questions I have.

**CHUCK WILBRAND:** OK.

**LATHROP:** I don't see any more from the committee either. Thank you.

**CHUCK WILBRAND:** Thank you.

**LATHROP:** Anyone else here to testify in opposition? Good afternoon.

**ELAINE MENZEL:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, I'm here today on behalf of the Nebraska Association of County Officials and the League of Municipalities-- Nebraska Municipalities to record our opposition to this legislation for the reasons that the prior opponent testified to. And as I understand, some additional opponents will be testifying too. A couple of things that I would like to ask you to contemplate as you look at the Political Subdivisions Tort Claims Act and why it is applicable to political subdivisions, the-- in a court case that was decided in 1989, it was articulated that the Legislature frequently has a basis to make such distinctions between political subdivisions and private entities, such as in cases like the Political Subdivisions Tort Claims Act. And then I would also take you back to over 50 years ago, when the Political Subdivisions Tort Claims Act was enacted. And within the declarations of that, the legislative declarations in Section 13-902, it talks about the basic premise that the rationale for having the Political Subdivisions Tort Claims Act is to have a uniform basis for applying tort claims to political subdivisions. And for those reasons and the additional reasons that opponents will be testifying to, I ask for your opposition to this legislation. If you have any questions, I'd be glad to attempt to answer them.

**LATHROP:** I'm struggling with this one, and I don't want to be argumentative with people who come before this committee to testify for or against a bill. But I'm imagining somebody who is, and we'll make it a young lady in a county detention center, and just for the purposes of my hypothetical, we'll say she's 14. And there is somebody at the detention facility who they know or they've been told is sexually assaulting some of the young women who are detained at that county facility. And our detainer now has made good on the trajectory he's been on for a while and sexually assaults a girl who is detained

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at a county detention facility, and now she has obvious injuries and obvious emotional consequences from that sexual assault. And do you think it's good policy that she shouldn't be compensated and be able to pay for the care she will need? Is that the county-- NACO's position?

**ELAINE MENZEL:** I would agree with you, Senator, that that is an egregious situation. However, as I understand it, there would be other remedies available how-- outside of the state provisions.

**LATHROP:** Well, that may be-- that may be a talking point circulating among the opponents, but it doesn't do any good for someone who is trying to make a claim for their injuries. I'll just say that.

**ELAINE MENZEL:** I understand and appreciate your sentiments.

**LATHROP:** Anyone else have any questions? I see none, thank you for being here.

**ELAINE MENZEL:** Thank you.

**LATHROP:** Good afternoon.

**BRANDY JOHNSON:** Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Brandy Johnson. For the record, that's B-r-a-n-d-y J-o-h-n-s-o-n. I serve as general counsel for Nebraska Intergovernmental Risk Management Association, which is a risk management pool owned and operated by Nebraska counties. I appear representing NIRMA and its county members in opposition to LB1200. I can attest with, in my work with NIRMA, we do work very hard at risk management efforts on the educational side, helping counties develop policies and procedures. One area-- these risk management efforts can be very effective in my experience, but in our world there are some people who are really terrible bad actors. Sadly, it's very difficult to reach those kinds of people who are motivated by evil intent internally, and that would do something so shocking as hor-- and horrible as child sexual abuse. It's very hard to, to reach that kind of an individual with risk management efforts because, in my experience, which is more in the adult context in the county jails, but they're trying very hard to hide what they're doing. Which makes it very difficult to predict that kind of behavior in this environment. In those rare situations, as you described, Senator Lathrop, where there is an egregious circumstances where we know that there is a bad actor, in my view, Section 1983 federal law is designed to address just that kind of circumstance. LB1200 would create a

different kind of civil lawsuit under state law, but it would be a less rigorous legal standard than in a federal civil rights claim. And the, the concern about that is those kinds of claims, current immunity prevents them because in part, the policy judgment has been that these are cases that are really based on 20/20 hindsight. There can be a bias involved in that when you've got a lower standard. And so the policy existing has been, to my understanding, the rationale is that judges and juries second guess how public entities operate in response to these incidents that are very sad, where someone's harmed, and it can involve catastrophic circumstances. This isn't the kind of claim I normally see affecting counties, but one claim can be very catastrophic. And I'd be happy to answer any questions.

**LATHROP:** Catastrophic for the victim.

**BRANDY JOHNSON:** Absolutely.

**LATHROP:** And you're concerned about the consequences to the county.

**BRANDY JOHNSON:** We are all concerned about victims, and that's why the remedy under 1983 exists. But yes, the taxpayers are impacted by any, any kind of chipping away at sovereign immunity.

**LATHROP:** OK. And in the interest of not being argumentative, I will not ask any questions of the testifier so that we can move on. Senator DeBoer.

**DeBOER:** I just wanted to clarify something. You said that the judge and jury might be something-- you might want to repeat this. You-- judge and jury might be something about how the, the political subdivision works. What did you say?

**BRANDY JOHNSON:** Second-guessing the operations, operational decisions of the public entity. For instance, in a jail context, how the jail was operated.

**DeBOER:** Wouldn't they do that in a private? I mean, isn't that the same concern legally with respect to evidence with the private entity as well? I mean, wouldn't a judge and jury have the same kind of-- I mean, how does that differ between a public and a private institution?

**BRANDY JOHNSON:** Well, I guess it's just the concern that in a particular incident, there can be-- it's different in the public entity context because we, we have these elected officials or appointed officials that we charge with running these operations. It's not necessarily different than the private context, but that's been--

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because we're talking about public dollars, that's been the consideration and the difference between the two.

**DeBOER:** OK.

**LATHROP:** Senator McKinney.

**McKINNEY:** Can you, can you-- thank you, Senator Lathrop. Can you clarify what you meant by 20/20 hindsight in your test-- in your statement?

**BRANDY JOHNSON:** Just that there can be a bias involved when you're, when you're doing things through the lens of 20/20 hindsight, it's easy to see--

**McKINNEY:** Bias on behalf of who?

**BRANDY JOHNSON:** I'm sorry?

**McKINNEY:** Bias on behalf of who? Who would have the bias, the victim or the victim's parent?

**BRANDY JOHNSON:** Just that with the benefit of hindsight, it's easy to look back and say, well, this could have been changed, this could have been done differently with operations. Whereas the entity might not have been able to foresee that, foresee that this incident was going to happen and predict that that kind of policy was necessary.

**McKINNEY:** But for example, in the testimony that was given by-- I forget your name, and I apologize, but there was a situation where they knew they were short-staffed and they also had a population of students that dealt with special needs or had IEPs. How could you-- it, for me-- I just want to say, how do you not foresee the possibility of something going wrong when you're short-staffed and you have a population of students with those needs and not being supervised properly? You could say-- I would just, as a coach, I know that some wrestlers I coach, I cannot leave them by themselves. You know what I mean? Like I just know if I leave this group of individuals by themselves, we're probably going to have some issues and somebody is going to be making some calls later. So I just don't see how you don't for-- how they could not have foreseen possible issues. And I'm-- I don't know, but--

**BRANDY JOHNSON:** I guess I would just note that every, every single case is going to be different.

**McKINNEY:** Yeah, it is.

**BRANDY JOHNSON:** There would be certain situations that we could come up with where it would be foreseeable, there would be deliberate indifference, where someone turned a blind eye and that, that would be where the federal remedy [INAUDIBLE].

**McKINNEY:** Well, even the situation that happened in OPS with the teacher, I think it was at Fontenelle, they were aware, I believe, of that teacher's conduct and they still allowed the teacher to work with the kids. So how could you not foresee that it would, possibly would happen again? And if that's the case, I-- me, as a parent of a young lady, I would be upset that I couldn't sue the school district. I'm just being honest, because I would be-- I can't even express the words. But thank you.

**BRANDY JOHNSON:** I understand and I'm not familiar with the particular case that you referenced.

**McKINNEY:** Thank you.

**LATHROP:** Did you just say the federal remedy requires a burden of proof of deliberate indifference?

**BRANDY JOHNSON:** To my understanding, yes.

**LATHROP:** Much, much higher than just negligence? Would you agree?

**BRANDY JOHNSON:** I would agree.

**LATHROP:** And would you also agree that negligence requires that they not provide for the safety and necessarily involves a foreseeable risk? In other words, they are not strictly liable for the acts of their employees, but liable for those foreseeable acts that they don't take precautions for.

**BRANDY JOHNSON:** Under 1983 or under a state--

**LATHROP:** Under a, under a state claim-- state tort claim.

**BRANDY JOHNSON:** I think that's accurate.

**LATHROP:** OK, I don't see any other questions. Thank you for being here. Any other opposition testimony? Welcome. Good afternoon.

**JENNIFER HUXOLL:** Good afternoon. Is it still afternoon?

**LATHROP:** Evening.

**JENNIFER HUXOLL:** It's not quite evening yet. Good afternoon, senators and Chairperson Lathrop, my name is Jennifer Huxoll. I'm an Assistant Attorney General with the Nebraska Attorney General's Office, and I'm here-- I actually manage the Civil Litigation Bureau of the Attorney General's Office. We testify in opposition to LB1200, and I, because we are running so late in the day, I won't repeat many of the concerns. We share the concerns that have been expressed by others. Ultimately, we see the issue being a question of multiple bills which are-- and which appear to be chipping away at sovereign immunity. Sovereign immunity is a core principle. It allows the state to govern in, in many different areas where, where obviously the most difficult individuals are placed in, in, in the, in the care and the custody of the state. And so the challenge for you as senators, obviously, is, is a policy consideration and how the funds of the taxpayers will ultimately be, be appropriated. Our concern is that the stories that are told here today are horrible. Sexual abuse of children is abhorrent. It doesn't, doesn't matter what the context is. The question is, who should be responsible for ultimately compensating victims? And at the core of this issue is the fact that there is a perpetrator who's responsible for the action, that commits the assault, that commits the sexual abuse. The next question, then, is whether the state knew or should have known or should have done something differently, if you're talking about the State Tort Claims Act. And in a scenario where you are, where you're-- where essentially you will be waiving sovereign immunity, then we would, we would submit that an adequate remedy actually already exists at law. And let me just apologize. I do struggle with this issue a little bit, just because of my own past history. So it may affect my testimony today. I feel very strongly about sexual abuse of children. I know that AG Peterson feels very strongly about sexual abuse of children as well. And I don't want our comments to be misconstrued as a lack of care about that issue. The question is, is just essentially whether or not the perpetrator will be responsible for it or if the state is deliberately indifferent and looks the other way, which is, is the standard that Ms. Johnson has told you about today for a Section 1983 claim. If you have a state actor who's deliberately been indifferent and looked the other way, that is a situation where a victim has a remedy, a lawsuit can be filed and allegations can be made under Section 1983. And so we are not leaving victims of sexual abuse without a remedy at law. And I understand you disagree with me--

**LATHROP:** Well--

**JENNIFER HUXOLL:** --Senator Lath-- Lathrop.

**LATHROP:** --to suggest that everybody has a remedy when this-- because they can go down to the federal court if they can prove deliberate indifference, which you and I both understand is much more than simply being careless for somebody's safety. That is-- that is in some instances, it may be an adequate remedy in the most egregious of cases, but not in every case where the state or the political subdivision has been careless and their carelessness has set the stage for a sexual assault of a child.

**JENNIFER HUXOLL:** And the other remedy at law, of course, is Title IX, and the standards are different in that scenario. We've talked quite a bit about schools and assaults that happen in school. But you are correct, it is a higher burden of proof.

**LATHROP:** Much higher.

**JENNIFER HUXOLL:** And that higher burden of proof, though, it is there-- essentially it's there because it's acknowledging that sovereign immunity has been a critical tenant of state government, allows state and local governments to continue to operate. And in, in, in this, in the situation where these, where these things can occur, because they have been.

**LATHROP:** We can, we of course can amend the Tort Claims Act any time we choose and make policy.

**JENNIFER HUXOLL:** You can certainly do that. It is a policy consideration. But if you are going to make that determination, you need to understand the, the increase in the number of claims which may ultimately result. Those are claims which we would be defending the state against or the political subdivisions against. And for those most egregious cases which we have heard described today, there is an adequate remedy at law.

**LATHROP:** For the egregious circumstance.

**JENNIFER HUXOLL:** Right. And what Ms. Johnson was talking about, the hindsight standard, thinking about it as hindsight. It's just natural for you, Senator McKinney, for example, as a coach to think about, well, who would have done something like that? Why would you have done that? What, you know, that seems so obvious in hindsight, it seems obvious. That is essentially the standard under the State Tort Claims Act and is whether or not it's foreseeable.

**LATHROP:** Whether it's foreseeable. Yes.

**JENNIFER HUXOLL:** That's a much lower burden. So and Senator Lathrop, I don't mean to be disrespectful. We just-- I'm sure we will have to agree to disagree.

**LATHROP:** No, but I'm-- but I got to tell you, I'm struggling with something. We had a bill in here a couple of weeks ago that was a direct result of the work done by your boss, the Attorney General, when he, when he went through the Catholic Church and went way back and identified all these sexual assault circumstances, which I think they should have been-- they should have been aired. But the point of that was that, that there are a lot of victims and these victims need something. And it is little consolation to have them locked up afterwards, because that doesn't pay for the counseling and that doesn't provide the remedy for the individual who's been assaulted, who's going to live with the consequences of that for the rest of their life. And we can agree that in the egregious case, you can go down to the federal court if you can show deliberate indifference. Which, for my friends that haven't been through law school, we know that is a really high burden. But to not have a, an avenue for a claim for people who are sexually assaulted-- I listened to Senator Halloran's opening. It is startling. And he's provided a list of these different instances where teachers have engaged in sexual assault of students. And we're just supposed to say to the student, good luck. We'll try to prosecute the guy, but good luck and good luck with living with this for the rest of your life. But, by the way, we have sovereign immunity. We don't want to change a policy because our insurance rates may go up.

**JENNIFER HUXOLL:** I don't believe I've said anything about insurance rates, Senator Lathrop.

**LATHROP:** No, you wouldn't, because the state is self-insured. We deal with those claims. And honestly, somebody does something with a, one of those orange trucks at the Department of Roads and we pay those claims. And somebody gets sexually assaulted through carelessness and we, we say sovereign immunity. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Ms. Huxoll, for your testimony today. In your testimony, you said this would chip away at the sovereign immunity. So is Nebraska's sovereign immunity totally in the hole today? Are there areas in state law where we've already chipped away at it?

**JENNIFER HUXOLL:** There are exceptions to the State Tort Claims Act and the Political Subdivisions--

**BRANDT:** Can you give me an example?

**JENNIFER HUXOLL:** Where you-- well, essentially you can bring any tort claim against the state or against a political subdivision unless one of the exceptions applies. And there are several enumerated exceptions. So it's sometimes difficult to talk about the Tort Claims Act because you have to think about it in reverse. You can sue under the act unless you fall under one of the exceptions.

**BRANDT:** So would this law essentially be another enumerated exception in order to pass?

**JENNIFER HUXOLL:** I think that the law would stand outside the political-- outside the State Tort Claims Act. It would take it completely out of the procedural elements of the State Tort Claims Board, because it would, it would take it completely outside of the Tort Claims Act. So right now, the tort claim is brought, an individual has to give notice to the state, and then those notices go through a state claims board and where they are investigated. And it gives the opportunity for-- to the state or to this political subdivision to examine the claim, to see if it should be-- if there's merit to it and it should be paid under current law. And sometimes those claims are going through the claims process, and that's when the risk manager comes and testifies and talks to you about all of the claims that go through the State Claims Board. It appears, the way this LB is written, that that would-- this would all be happening outside of the State Tort Claims Board and the political subdivisions, so--

**BRANDT:** So this would be like the first law that would be outside of that, that Board because we get a report at the end of every session, just like Senator Lathrop said, some convicts broke out and assaulted some people, somebody hit somebody with a snowplow, somebody fell down the steps of the Capitol, we total that up, and every year we pay X hundred thousand, million dollars in claims. So this would be the first one to go outside of that structure or we have other ones in statute now that are already outside of that structure?

**JENNIFER HUXOLL:** I don't know the answer to that question--

**BRANDT:** OK.

**JENNIFER HUXOLL:** --Senator Brandt.

**BRANDT:** OK.

**JENNIFER HUXOLL:** And that particular question, I think it's very unusual to go outside of the-- of the claim-- of the State Tort Claims Act. And I will also-- just to help you understand, when those claims come to you at the end, that's because the state has determined that there's a legal reason or a legal-- they've reached a conclusion to settle those matters and that there are matters that are going to come before you for approval this year that have arisen out of the Moser case, which are essentially going to be claims that we're going to ask you to pay-- to pay. And that was on a Section 1983 remedy asserted in federal-- in the federal court. I'll-- one other clarification is you don't have to go to federal court to file a Section 1983. You can file that in state court, so you don't have to go to the court-- the federal courthouse. You can go to the state courthouse and file it and you're essentially saying that state actors, act-- acting under color of state law, has caused you some harm that's a violation of your constitutional right.

**BRANDT:** All right. Thank you.

**JENNIFER HUXOLL:** You bet.

**LATHROP:** Senator DeBoer.

**DeBOER:** Thank you, Senator Lathrop. So it's been a really long time since I was in law school. But as I recall, the purpose of tort law was sort of twofold: one, to compensate the victims; and two, to kind of prevent the behavior from happening to the best of the ability, to kind of enforce the kind of duty of care that we all sort of want to have to each other. So if I'm understanding this right, and this is not an area of law that I'm super educated in, a 1983 case would be deliberate indifference, which is a pretty high standard. Negligence is a pretty low standard. I-- and then in the middle is something like recklessness, right? Reckless would be a kind of a middle standard. Is that right?

**JENNIFER HUXOLL:** Possibly, yes--

**DeBOER:** OK.

**JENNIFER HUXOLL:** --or maybe gross negligence.

**DeBOER:** Gross negligence? Sure.

**JENNIFER HUXOLL:** Right, and--

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**DeBOER:** So-- so I'd like to be able to stop political subdivisions from acting in gross negligence, right? In cases of child sexual assault, I'd certainly like to be able to stop political subdivisions from being grossly negligent. Do they current-- do, do victims of political subdivision gross negligence currently have any kind of avenue of recourse?

**JENNIFER HUXOLL:** I believe Title IX would be available as a-- I am not a school lawyer, so-- but Title IX, in the scenario that was explained earlier, would be available readily.

**DeBOER:** Sure. What if it's not in a school though?

**JENNIFER HUXOLL:** So deliberate indifference doesn't really fit neatly into a tort category. What it, what it means is that someone knew and essentially deliberately disregarded the danger or the--

**DeBOER:** Sure.

**JENNIFER HUXOLL:** --known harm, so that may be closer to your gross negligence standard than you think. It's someone who is-- was aware of-- of the potential injury, knew of the potential injury, and looked the other way and did nothing about it. That would--

**DeBOER:** OK.

**JENNIFER HUXOLL:** --I think, arguably, meet the deliberate indifference standard, and that's a case that I think would fall clearly under Section 1983.

**DeBOER:** So we've been talking a lot about making sure that victims get compensated. But my concern right now is that I want to make sure that this doesn't happen in the first place.

**JENNIFER HUXOLL:** I wish, I wish we could.

**DeBOER:** And, and one of the things that we can do-- we can't stop it all. Sure, maybe that's true. But one of the things that we can do is make sure that people are looking out to try to stop it. And so wouldn't it-- I mean, as a society, don't we want to have really harsh consequences for people that are allowing this sort of thing to happen and kind of know that it could happen?

**JENNIFER HUXOLL:** I think Ms. Johnson provided some really good testimony on one issue, that there are bad actors among us who no amount of supervision or or foresight is going to help you recognize

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those people. We're never going to eradicate, unfortunately, sexual abuse of children. What we can do is try to implement the best policies and procedures that we can, and I believe, on behalf of the-- the institutions that I represent, that they try very hard to do that, with--

**DeBOER:** But--

**JENNIFER HUXOLL:** --often with limited resources.

**DeBOER:** But then shouldn't the, the trier of fact, and I don't-- I don't want to belabor this any more, but shouldn't the trier of fact be the one who's determining whether or not, you know, they've done what they're supposed to do? And, and, and we put in this kind of incentive for them to do a good job and not kind of make them immune so that they don't have an incentive. This is what I'm struggling with, so thank you.

**JENNIFER HUXOLL:** Yeah, and it's-- I think the struggle-- I, I recognize what you're saying. There are a few different-- there are some things that are slightly different about 1983, where some might-- might actually claim it's a better remedy. You are entitled to a jury in a 1983 action, whereas under the State Tort Claims Act, if you were to bring this under the State Tort Claims Act, you're not. I think the biggest difference, and where I think the greatest risk is in these cases, is it's always very easy for us to sit in judgment and say, why didn't you do more, why didn't you-- you should have seen that coming, you should have-- you, you should have known that this individual was going to, to cause harm to someone. And it's just really easy-- hindsight is--

**DeBOER:** I--

**JENNIFER HUXOLL:** --it sounds cold--

**DeBOER:** I get that, but--

**JENNIFER HUXOLL:** --but hindsight is 20/20 in these situations.

**DeBOER:** I get that. But we also have these laws against private entities, so why shouldn't they be the same because we're trying to prevent these sorts of things across the board? It's not going to be productive, probably.

**JENNIFER HUXOLL:** No, but that did remind me of one thing. This law is not the same. This law would make the state vicariously liable and

actually has a provision for respondeat superior. This actually goes much further than what is applicable to private entities, and so it's not the same. It's not just extending the statute of limitations for governmental entities; it's actually creating what is arguably a higher standard, respondeat superior or vicarious liability. Vicarious liability means that if it's-- it's very, very close to strict liability, so that is not the case for what private entities are currently held to.

**DeBOER:** OK. Thanks.

**JENNIFER HUXOLL:** OK.

**LATHROP:** Yeah. Thank you.

**JENNIFER HUXOLL:** Thank you, Senator Lathrop.

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

**JENNIFER HUXOLL:** I appreciate it. I appreciate your time.

**BO BOTELHO:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Bo Botelho, B-o B-o-t-e-l-h-o. I am general counsel for the Department of Health and Human Services. I'm here to testify in opposition LB1200, which will create the State and Political Subdivisions Child Abuse-- Sexual Abuse Liability Act. The bill would impose liability on state agencies in the same manner and to the same extent as a private individual entity under like circumstances for all claims arising out of child sexual abuse. This means that a state agency could be liable under theories beyond respondeat superior of vicarious liability, negligence, and be liable for the acts of a third-party perpetrator. It would expose state agencies to liability for child sex-- sexual abuse perpetrated by others. The bill would not require the victim to have been under the state agency's supervision, let alone under its care, custody and control, when the abuse happens. LB1200 would also increase the statute of limitations beyond the period by an additional ten years. This will likely result in increase in litigation and potential liability, while at the same time making the presentation of a meritorious defense more difficult. Currently, a suit must be filed within the two-year limitations period. If passed, the bill extends the limitations period for claims brought against any person or entity who is not directly involved in the sexual abuse to 12 years after the victim's 21st birthday, or until the child reaches the age of 33 years of age. Extending limitation period would make it much more difficult

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to defend any such claims. Witnesses' memories of relevant facts would fade, and witnesses may longer be-- may no longer be available to testify. Finally, LB1200 does not identify the source of funds to pay any settlements or judgments for sexual abuse claims. Currently, tort settlements or judgments are paid from the state's General Fund rather than by individual agencies. In summary, LB1200 would increase litigation against the state agencies while reducing the likelihood that state agencies can put forth defenses to that litigation. It would result in increased costs to state agencies, irrespective of whether the suit is filed or a settlement or judgment follows. Thank you.

**LATHROP:** Any questions? Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Botelho, for your testimony. Do we have any idea what this would cost us? I mean, we've heard all the opponents come up here and it's going to cost us, it's going to cost us, it's going to cost us. Nobody's given us a number. I mean, you said here it's going to increase the cost to the agency. I read the fiscal note on this looking for an estimate, and we're going to add one Attorney General and other agencies are going to add people because we're going to have increased claims against the state. But what's your professional opinion here?

**BO BOTELHO:** I don't know, Senator. It would-- it, it creates new causes of action, which could result in more litigation, which would increase cost.

**BRANDT:** And then your viewpoint is pretty much from the perspective of what happens in the Department of Health and Human Services. Is that right?

**BO BOTELHO:** That's correct, sir.

**BRANDT:** OK. All right. Thank you, sir.

**LATHROP:** I see no other questions. Thanks for being here.

**BO BOTELHO:** Thank you.

**LATHROP:** Anyone else here to testify in opposition? Anyone here to testify in a neutral capacity? Seeing, none, Senator Halloran, you may close. We have one proponent letter, a position letter that's been offered, and no opponent or neutral.

**HALLORAN:** Well, again, thanks for your patience and thank you for all the testifiers. This is one of those "Houston, we have a problem." Ever since I sponsored this bill and announced this bill, I've had, I've had individuals representing every agency in the state, county, schools, approach me and say, oh, liability on this, liability on this is going to be huge. And I said, if it's huge, you got a problem right now, right? I agree with Senator DeBoer. This isn't a question of just finding out who's doing it. It certainly is a question about who is a perpetrator now, taking care of it so that they're not entrusted with children, so they don't do damage to children, but more im-- but most importantly, to make sure it doesn't happen in the future or to minimize it. Right? Well, all these people are coming to me and they're pulling their hair out and say, oh, my gosh, we're going to go-- you know, this is terrible liability. Well, it shouldn't be. You know, I'll give you an example. St. Cecilia, it's my alma mater back home, high school, right? We had a coach there-- this is a couple years ago-- a coach there that was, was grooming a young girl there in high school and eventually bedded, bedded her and her mother. Now, let me tell you, they should probably have seen that coming. But as soon as they found-- soon as they found out about it, beyond the rumors and they had some means of substantiating it happened-- in other words, they cornered him and interrogated him and said, are-- what-- are you doing this? And he, and he admitted he was, but they took care of it quickly, right? As quickly as they-- they were able to under the circumstances. That's what this is-- partially, that's what this is all about. Plus, it's, it's all about making-- creating parity, you know, being on a par level. Private institutions and public institutions should be treated the same in, in, in cases such as this. They shouldn't be subject to just the difference between negligence and deliberate indifference, as you pointed out, Senator Lathrop. There's a huge difference. It's a high bar, deliberate indifference. Well, let's make the bars the same. I don't care how high the bar is. Well, I do, but it should be the same for both. And so I was sitting over here thinking, I, I kind of wish my dad and mom would have name-- named me, you know, "Adams County" Halloran, so I could have had sovereign immunity, you know-- [LAUGH] gotta make light of this sometimes. But I-- you know, Senator McKinney, you're absolutely right. You know, if it's my daughter or granddaughter in high school and they're subject to this and I find out that, that, that people understood that this grooming was going on and, and didn't stop it, yeah, there's a problem. So anyway, if there's questions, I'd certainly be glad to try to address them.

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**LATHROP:** Any questions for Senator Halloran? I don't see any. Thanks for bringing the bill. Appreciate the hearing. That will close our hearing on LB1200 and bring us to LB1276 and Senator McKinney. Senator McKinney, welcome back, and you may open on LB1276.

**McKINNEY:** Thank you, Chairman Lathrop and members of the Judiciary Committee. I'm back here before you today to discuss LB1276, which, which establishes a process for filing a civil action against law enforcement officers for serious misconduct or actions that could result in suspension or revocation of the officer's certification. This bill allows for appropriate relief, including a declaratory relief and attorney fees. The bill also allows for a civil fine, not to exceed \$10,000, paid to the State Treasurer for distribution. Those who oppose LB1276, as I imagine, thinks nothing needs to be done in the world of police and it's perfect. To that I say, if everything is perfect, then why are you sitting here today opposing this bill and other measures to hold police accountable? If law enforcement officers is tasked with protecting and serving the public, why can't the public hold them accountable? This bill clearly outlines the rights of citizens pursuant to causes of action and processes for a civil action against law enforcement officers. Grounds for civil action include: serious misconduct when officer certification could be suspended or revoked; aiding or abetting or threatening such actions. The subsection-- subsection (1) also provides definition of government employees, law enforcement officers, and misdemeanor domestic violence. Subsection (2) describes the relief available, including attorney fees and costs. Subsection (3) allows for an additional civil penalty up to \$10,000-- \$10,000, as I've mentioned before, to be remitted to the State Treasurer for distribution. Subsection (3)(b)-- no, subsection (4) established a four-year limitation after the discovery, or should have been discovered, the violation. Subsection (6) provides that the section is not subject to the Political Subdivision and State Tort Claims Act. You know, if-- you know, those who'll come up in opposition will say, if, if-- to you guys I will say, if your police departments are operating properly-- and I was reading the comments online. They were saying, oh there's gonna-- there's gonna be a flood of lawsuits. And I'll say to this, if your, if your departments are operating properly, there shouldn't be a flood of lawsuits. But the elephant in the room is that we all know that isn't true. Currently, because of prior hearings this year, we know that officers lie to kids, or deceive them. They also don't want, as stated prior in LB882, they don't want a list of questionable or noncredible officers public. They also oppose another bill of mine, LB515, which I introduced last year to

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create a municipal police oversight committee in Lincoln and Omaha. They also support a bill that would disproportionately have a database of DNA of black and brown individuals from communities like mine, and they also oppose constitutional carry because it would limit their ability to target black and brown communities. But they don't want any accountability. In communities like north and south Omaha, where there is a history behind the distrust of law enforcement, it is important that we take measures to improve the relationship regarding community policing. In my time here at the Legislature, I've brought bills-- bills that concern matters that are close to my heart and that I feel would increase the quality of life for my constituents. I ask, for those who's saying we're willing to work with Senator McKinney, as stated in the online comments, to create a fair system, I ask, if you are admitting that we need to create a fair system, are you admitting that the system isn't fair and just currently? If that is so, that provides more justification for LB1276 and other attempts to hold police accountable. If you fear this would expose officers of political subdivisions to endless lawsuits, then hopefully you-- you will clean up your acts because the public, especially in my community, is tired of waiting for change and lip service. And, you know, they'll come and say, you know, our police departments are great, we're doing great community policing. But if you get on the ground in my community, you will realize that their claims of having great community-police relationships are not valid. And I also-- you know, you see what happened in Minneapolis where Amir Locke was killed. And I just think of those situations and, you know, when people tell me that we-- this is going too far or we're doing too much to try to hold police accountable, I just think of the situations where young men and women are killed by police but there is little accountability. You know, thankfully, Derek Chauvin was convicted, you know, but that's rare. That, that doesn't happen a lot. When you look at the statistics of convictions versus acquittals, it's-- it's not the greatest, especially when it comes with police. So I think this is something that, you know, one of my ideas that I had, you know, while driving home one day, that I think is needed because we need things in place to hold police accountable and I think the public should be able to hold police accountable. And I'll answer any questions.

**Unidentified:** OK. Any questions? I see none.

**JENNIFER HUXOLL:** Thank you for introducing LB1276, and we'll take proponent testimony.

**SPIKE EICKHOLT:** Good evening, members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on

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behalf of the ACLU of Nebraska, testifying in support of LB1276, and we want to thank Senator McKinney for introducing the bill. What Senator McKinney is-- is attempting to do with the bill is hold bad officers accountable, to hold the bad apples that you've heard about during last year's debate on some of the police reform bills accountable. And what this bill would do, at least the proposal, is, for officers who do something that results in-- or constitutes serious misconduct as defined in the law, that-- you could look at that cross-referenced statute. That includes excessive force; it includes fabrication of evidence; it includes causing injury to somebody while the officer is on duty doing their jobs; that a person who is injured or aggrieved can bring a cause of action within four years to recover whatever damages they can quantify, or up to \$10,000 that could be assigned to the school fund. I think what this bill is-- is attempting to do is try to figure out a way to get past the bar that law enforcement officers generally enjoy to 1983 claims under a qualified immunity defense. And that's what I, I presume Senator McKinney is attempting to do with the bill or maybe does do with the bill. You heard on the earlier bill some talk about 1983 claims that you can pursue in federal court; you can pursue them in state court. That's an adequate remedy of law for when state actors do some things, but the courts have broadly interpreted this notion of qualified immunity in a law enforcement set-- setting to basically provide for almost automatic protection from law enforcement officers if they do something while performing their job duties. They adopted what they call a reasonable person standard, which generally means that the law enforcement officer whose actions are in question is entitled to qualified immunity unless they can somehow show that the law violation that they committed was clearly established. And the reasonable person saying that they use is basically every reasonable-situated law enforcement officers would know or understand that what the law enforcement officer was doing in question was unconstitutional, was an unconstitutional violation of that person's rights. If you read the case law, you heard some of the discussion about this, there's an argument for qualified immunity in the law enforcement setting, but the interpretation is, we would submit, is-- is very broad, and it does shield officers from being personally liable for instances that result in serious misconduct to others. I'll answer any questions if anyone has.

**LATHROP:** Any questions? Senator Geist.

**GEIST:** Just being big.

**LATHROP:** Thank you.

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**GEIST:** Plus, I need to move a little bit. So in your opinion, does this erode qualified immunity?

**SPIKE EICKHOLT:** I think the bill does, and I think that's its intent--

**GEIST:** Yeah.

**SPIKE EICKHOLT:** --at least at some-- or somehow put that into a slightly different perspective or slightly different way of holding the bad apples, the bad officers accountable.

**GEIST:** And in your opinion, is this in response to a local problem or a national problem?

**SPIKE EICKHOLT:** Well, I think Senator McKinney's introduction talked about some local situations, and it could be that maybe the, the doctrine of qualified immunity is a national issue. Some people say it's not a national problem. Others would say it's a national problem. But that principle of law applies everywhere, not just in Nebraska but in all the courts.

**GEIST:** No, but my point is, is rampant police misbehavior a local problem?

**SPIKE EICKHOLT:** Well, you do see some instances. There's a Lincoln police officer who's in prison for sexually assaulting a woman.

**GEIST:** Which has been--

**SPIKE EICKHOLT:** Which has been--

**GEIST:** --taken care of.

**SPIKE EICKHOLT:** That's-- that's true. You had some instances a number of years ago where I think four Omaha police officers were fired for--

**GEIST:** It was taken care of.

**SPIKE EICKHOLT:** Taken care of, that's true. Now, whether-- in the Omaha instance, whether anyone could bring a cause of action, civil cause of action, I'm not sure that they did or whether they were successful in it.

**GEIST:** OK. Well, that's all, thank you.

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**LATHROP:** I don't see any other questions. Thank you. Any other proponents of LB1276? Seeing none, we'll take opponent testimony. Good evening once again.

**JEFF SORENSEN:** Yes, sir. Thank you for having me once again. Appreciate your time in this matter, again, as well. My name is Jeff Sorensen, for the purposes of today, J-e-f-f, Sorensen, S-o-r-e-n-s-e-n, and I am currently the president of the Lincoln Police Union here in Lincoln. The Lincoln Police Union would like to express strong opposition to LB1276. We believe any bill of this nature would have disastrous effects on hiring and retention, employee morale, and community safety. Currently, law enforcement is in a crisis of hiring qualified officers, as well as retaining the good men and women currently serving in their communities. This bill would effectively make being a police officer financially unwise. We believe any bill of this nature would deter future qualified candidates from applying to serve their communities as law enforcement officers. This could create an unprecedented-- could create unprecedented vacancies, resulting in inability to provide even a basic emergency response. This shortage could also lead to lesser quality candidates filling these openings. We also believe any bill of this nature would force many current police officers to leave the job for other opportunities. Many of these officers are the current leaders in their agencies and the officers who would be responsible for training our next generation of current officers. Most importantly, the Lincoln Police Union believes any bill of this nature would have a strong negative impact on our day-to-day community safety. We are already seeing effects of the anti-law enforcement movement across the nation with violent crime spikes and violent assaults against officers. Officers will become fearful of being falsely accused of misconduct for the financial gain of others, making them hesitant to go out into their communities to proactively address the violent criminal behavior. Officers will become reactive in nature, only responding to calls they are dispatched to, in order to maintain their employment status. This self-preservation will lead to a continued decline in officer morale, exacerbating the issues highlighted in this testimony. This impact will not only be felt by the Lincoln Police Union members, but we believe it will be felt among law enforcement officers across the state. Again, the Lincoln Police Union strongly opposes LB1276. I appreciate your time on this matter and would be happy to answer any of your questions.

**LATHROP:** OK, any questions? I see none. Thanks for being here tonight.

**JEFF SORENSEN:** Thank you, sir. Appreciate all of your time.

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**LATHROP:** Welcome back.

**ANTHONY CONNER:** Thank you. Thanks for having me back. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Anthony Conner, A-n-t-h-o-n-y C-o-n-n-e-r, president of the Omaha Police Officer's Association. I'm here today to oppose LB1276. By creating a category for police officers, separate from all other professions, this bill creates a cause of action limited only to law enforcement and based only on our vocation. This is yet another example of the anti-police activism in legislative form, looked-- looking to implement a punitive higher standard on police officers than any other public or private sector employee. Let me be clear. The OPOA supports the need to hold officers accountable and has worked tirelessly-- tirelessly to find common ground to implement reforms. Many in the community view us as allies, not adversaries, for change. We have supported the department's body-worn camera deployment, the automatic activation with the tasers and cruiser lights, and automatic camera activations with a signal sidearm. Within our last contract negotiations with the city, we supported the civil-- civilian complaint review board and have negotiated an easier path for citizens to file complaints against officers. Our association and our department has embraced commonsense reforms and responded accordingly. Despite these efforts, legislative proposals like LB1276 seek to enforce the intent of the Defund the Police movement and jeopardize our ability to recruit and retain qualified recruits and a professional police force. Our association has worked to support reciprocity changes to make attracting police officers from across the country easier. This has been possible because of the legislative attacks on law enforcement in other jurisdictions, causing frustrated law enforcement professionals to seek employment elsewhere. When qualified immunity was stripped from law enforcement officers in Colorado, an excess of police officers cited the new law as their reason for leaving the profession. As a result, the Denver Pulse recently reported shocking spikes in violent crime and a 2020 homicide rate that surged to a 25-year high. Meanwhile, in Omaha, we're one of the few major cities in the country that reduced the homicide rate in 2021. The professionalism of our department and our collaboration with city leaders-- leaders, combined with the attacks on off-- officers in states like Colorado and Minne-- Minnesota, have made it possible for us to attract professionals from those places. Our pro-- our progress will absolutely evaporate if LB1276 becomes law. Requiring officers to pay \$10,000 penalties and attorney fees while facing constant litigation from aggrieved parties will devastate our ranks, destroy our ability to recruit and retain qualified officers, and drastically

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decrease public safety. I also wanted to push back on just a couple of things that have been said about our organization and police officers. One thing that's important to, to add is I, I sit on the board of the Center for Workforce Development, where we allow-- we help just-- justice-involved individuals get connected with jobs, including trade jobs, which is, which is good middle-class wages. The OPOA, we, we came down and supported Senator Wayne's, my senator's, north Omaha improvement bill. We were down here to support that bill. And I get a little bit frustrated when I, I hear testimony and comments as if the police are the, the, the enemy of the black community. That's not true. I know what the polling shows and I know what it shows when I worked the streets a police-- of North Omaha the majority of my almost 22-year career. And we get nothing but love and respect from the, from the community of north Omaha. Thank you. Any questions, I'll answer

**LATHROP:** Any questions for-- yeah, Senator Geist.

**GEIST:** I'm wondering, do you have a number of openings in the Omaha Police Department for officers?

**ANTHONY CONNER:** We are going to hire a class. I believe it's going to start in April and it's going to be around 20. It's going to be about half laterals, half brand-new officers. We exhausted our list, so we're going to have to start a whole application process starting in March. We're going to have to hire, I believe, anywhere from 40 to 60 by the end of the year, just to get us to our authorized strength by end of the year.

**GEIST:** And you see something like this would erode that?

**ANTHONY CONNER:** Absolutely. In Colorado, there was over 200 officers immediately left the force across the state after their qualified immunity law passed.

**GEIST:** OK, thank you.

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

**ANTHONY CONNER:** Thank you.

**MATT BARRALL:** Thank you, Chairman Lathrop.

**LATHROP:** Good evening.

**MATT BARRALL:** Members of the committee, my name is Matt Barrall, M-a-t-t B-a-r-r-a-l-l. I'm here representing the Fraternal Order of

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Police Lodge 3 from Sarpy County. I'm the past president. I am also the current vice president for the State FOP. When I was apprised of this bill, I decided I was going to do research on exactly what qualified immunity was affecting people in the state of Nebraska, and I, I applaud Senator Geist for asking is this a national problem or is this a local problem, because I went through hours and hours of data, over 100 cases that I could find with qualified immunity. Predominantly, the amount had nothing to do with law enforcement. They were for cities; they were for universities. The ones that did involve law enforcement, predominant amount of cases, law enforcement was not given qualified immunity in the state of Nebraska. The case that I'd like to highlight is the Beatrice Six. I think you guys are all familiar with that, where investigators were found to have fabricated evidence. They were not given qualified immunity. I had to search all the way back to 2007 for an Omaha case in which two officers were given qualified immunity in regards to an arrest. It was not anything of a egregious nature as is under this bill. The one that I did find that occurred out in Gage County was deputies where a woman was running at another person in a case where they thought an assault was going to happen, and the deputy grabbed her and he did slam her onto the ground. The district did not give her qualified immunity. Who ultimately ended up giving her qualified immunity under a 1983 case was the circuit federal court, the Eighth Circuit Court. So on-- Nebraska courts, Nebraska judges have a history of not giving qualified immunity when it isn't warranted. When there is a violation of the Constitution, when there is a violation of state law, they inarguably end up making a decision that says that an officer will not have qualified immunity in a case where someone's civil rights are violated or when state law is violated.

**LATHROP:** OK. All right. Any questions? I see none. Thanks for being here. Anyone else here in opposition? Good evening.

**JIM MAGUIRE:** It is evening.

**LATHROP:** Good evening.

**JIM MAGUIRE:** Good evening, Chairman Lathrop, senators of the Judiciary Committee. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police, in opposition of LB1276. A lot of the testimony before me has already been said. I'm not going to repeat it. I just wanted to be on record saying that we oppose. The one thing that I wanted to leave with everybody is that qualified immunity does not mean absolute immunity. A better term might be "limited immunity." If you're out there knowingly violating the law or

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if you are going egregiously outside the bounds of your policies, you're not going to be covered. The city's not going to cover you, the department's not going to save you; a lot of times, the unions aren't going to save you. You went out, knowingly did something, and you're going to have to pay for it civilly. But this, this section of the bill is just a step too far, and it appears, in my, in my opinion, that we're trying to fix a problem that simply does not exist. Thank you.

**LATHROP:** I see no questions. Thanks for being here.

**JIM MAGUIRE:** You bet.

**LATHROP:** Any other opposition testimony? Good evening.

**ELAINE MENZEL:** Good evening, Chairman Lathrop and members of the Judiciary Com-- Judiciary Committee. For the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association and the Nebraska League of Municipalities, appearing in opposition to LB1276. Yes. And I would-- primarily of concern relates to-- well, there's many aspects that, as the prior testifiers and the subsequent testifiers will point out to you, but one of the provisions that I would like to discuss relates to the notice provisions in terms of it being exempted from the Political Subdivision Tort Claims Act. And notice-of-claim provisions have been found to serve several legitimate state interests, such as, most commonly, the statutes are said to allow prompt investigation while the evidence is still fresh. And I would just suggest that potentially, in these cases, that they are cases that we would like to be brought to our attention earlier in the process so that we can address potentially bad behavior, police misconduct. So for those reasons, I would encourage you to not advance this legislation as written at this time. If you have any questions, I would be glad to attempt to answer them.

**LATHROP:** I do not see any questions. Thanks for being here.

**ELAINE MENZEL:** Thank you.

**LATHROP:** Welcome back.

**BRANDY JOHNSON:** Thank you. Good evening, Chairman Lathrop and members of the Judiciary Committee. Again, my name is Brandy Johnson, for the record, B-r-a-n-d-y J-o-h-n-s-o-n. I serve as general counsel for NIRMA, Nebraska Intergovernmental Risk Management Association, comprised of counties, in opposition to LB1276. Without belaboring the points already made by folks that have already testified, I would just

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note that LB1276 seems to contemplate-- it's broader than just this, but, to my understanding, it could contemplate that once the usual disciplinary and criminal proceedings for officer misconduct are completed, the door would then be open under this bill to an essentially limitless number of citizen plaintiffs under the umbrella of a-- that could be under this umbrella of aggrieved parties, to obtain all kinds of uncertain and open-ended additional forms of damages, remedies, and penalties using the new type of civil lawsuit that would be available under this bill. Typically, the officer involved in the misconduct would have no funds at that point to respond to a lawsuit, so the focus seems to be more on the employing agency. It is important to remember, as others have noted, that 42 U.S.C. 1983 is a federal remedy that's available. Qualified immunity would not apply to agencies. And in my practice experience, qualified immunity likely wouldn't apply in egregious circumstances where an officer has been convicted of misconduct or had a license revoked for misconduct. Just a couple of particular concerns with the remedy provisions, as well, would be the "appropriate" damages phrase is also without bounds, yet counties don't have unlimited powers of taxation to pay judgments. That's why our Tort Claims Act, our Political Subdivision Tort Claims Act has a damages cap. This, this bill would disregard that, that provision. The bill also refers to equitable relief, but this is a category where judges-- there could be a request for relief, like changes in policy, changes in personnel decisions, that would essentially invade the role of-- of the folks that make those decisions without knowing what the operational constraints or budget restraints of the agency might be. The bill also refers to declaratory judgments as a cumulative remedy, but that would disrupt existing law because under current law declaratory relief is not available as a cumulative remedy where other legal remedies already exist. So those are some of the particular damages concerns that we would have. We urge the committee not to advance this legislation to General File. I'm happy to answer any questions.

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

**BRANDY JOHNSON:** Thank you very much for your time.

**JENNIFER HUXOLL:** Good evening. Jennifer Huxoll, H-u-x-o-l-l; Jennifer is J-e-n-n-i-f-e-r. I think I neglected to spell my name when I was here on LB1200. I'm opposing-- I'm here on behalf of the Attorney General's Office in opposition to LB1276. We've been here a long time, so I will just state some concerns that haven't yet been brought forward by any of the other testifiers. This is an example of, what I have indicated earlier, appears to be an effort to chip away at

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sovereign immunity, to create actions that are going outside the State Tort Claims Act. I had a brief opportunity to visit with Senator Brandt about how the State Tort Claims Act operates to help funnel those claims in, allow opportunities for investigation for the state, and then for the state to manage its risk. So it really does serve a purpose to run things through the State Tort Claims Act, and this bill would take us outside of that act completely without really providing a process for how those claims would be investigated or potentially paid. The other concern we have at the Attorney General's Office is that it-- and I'm sorry that Senator Pansing Brooks left because this serious misconduct statute that referenced is the same one that she had concerns about when we were discussing the, the Giglio bill earlier today, LB883. And so the potential harm to law enforcement is, is similar as it is in-- with regard to that statute and just how far-- how expansive that could become and the types of things that con-- could constitute serious misconduct, which could ultimately lead to actions brought against law enforcement. And lastly, the state is concerned that it may potentially compromise defenses that we might have in separate actions because this-- the bill does provide for separate causes of action to still be brought. There's something-- there's a term of art in law called "collateral estoppel," where, if you've already had an issue decided, you may be prohibited from bringing it as a defense in a subsequent case, so we are concerned about how this might potentially have a collateral, collateral estoppel effect and make it so that we couldn't defend the state in a-- in a separate action, which the, the LB certainly contemplates could happen. So it's-- in simplest terms, if something's already been decided, you don't get to litigate it again. And so if this has already been decided, potentially, we would be prohibited from trying to liti-- litigate it again in a separate cause of action brought. Does that make sense?

**LATHROP:** OK.

**DeBOER:** Can I?

**LATHROP:** Senator DeBoer.

**DeBOER:** So how would we write-- so how do we modify the State Tort Claims Act then, if not this way? What-- I'm now looking at this with the kind of nuance that, that you have. So, so what would, what would we do differently if we wanted to modify the State Tort Claims Act that this doesn't do?

**JENNIFER HUXOLL:** This act specifically goes outside of the State Tort Claims Act, and so I think you would have to--

**DeBOER:** Is that because it's not within the statute of the State Tort Claim-- OK.

**JENNIFER HUXOLL:** Yeah.

**DeBOER:** So what I would need to do is I would need to write-- go within the State Tort Claims Act, within that title, and say-- because we list the exceptions.

**JENNIFER HUXOLL:** Right.

**DeBOER:** An exception would also be where I guess the police officer has done whatever it says in here, so that would be the way that we would then be within the structure of the State Tort Claims Act that you were talking about with the investigations and everything?

**JENNIFER HUXOLL:** I believe so. And it would really depend on how it's written. But it sounds like if you're really wanting to modify the State Tort Claims Act, that's where you want to make the changes. We would certainly discourage that because it's cert-- anytime you modify the State Tort Claims Act, you-- you do open the state and the political subdivisions, under the Political Subdivisions Tort Claims Act, to additional, not only lawsuits but claims, which the more claims there are, the more chances that the taxpayer--

**DeBOER:** Sure.

**JENNIFER HUXOLL:** --will ultimately have to pay those claims.

**DeBOER:** OK, I just wanted to know how you would do it.

**JENNIFER HUXOLL:** I hope I answered your question.

**DeBOER:** Yes, thank you.

**JENNIFER HUXOLL:** Sometimes lawyers are not very concise. Any other questions?

**LATHROP:** I don't see any more. Thank you for being here.

**JENNIFER HUXOLL:** Thank you.

**LATHROP:** Anyone else here to testify in opposition? Anyone here in a neutral capacity? Seeing none, Senator McKinney, you may close. We do have position letters, one as a proponent and three in opposition.

**McKINNEY:** Thank you, everyone who came to testify, either as a proponent or opponent. It's good to hear from all y'all, honestly, but thank you. I would say, you know, if an officer doesn't want to be held accountable and they decide to leave because there's more accountability, then, in my opinion, those are officers that we don't need in our state. Someone mentioned it's disastrous for retention and morale. If you're doing a good thing or you're doing a good job and you're not serious-- doing any serious misconduct, you shouldn't have anything to worry about. This isn't anti-law enforcement. This is pro-community. That's the way I look at this. It's making sure that, you know, the community can hold officers accountable and that, you know, we have officers in our community that aren't seriously offending the community. This isn't an effort to defund the police because the state can't defund the police. The civi-- the civilian complaint review board that was mentioned in Omaha is a joke. It has no teeth. So I would hope that you guys one day support LB515, the Mu-- the Municipal Police Oversight Committee. And I'll just repeat again that currently officers, and even officers that came and testified in opposition, they think it's OK to deceive kids. They don't want the Brady and Giglio lists public. They also opposed the municipal police oversight in Lincoln and Omaha. They support the DNA bill that would disproportionately impact my community. They oppose constitutional carry, so they-- because they want the ability to target black and brown communities. They want no accountability, but they want to be able to hold people accountable. And the police, for my whole lifetime, hasn't been viewed, especially from my lens, as, you know, someone that I could trust or somebody I could rely on, because I just think back to my childhood and being a kid and watching the officer call my mom out, her name, in front of me as I was a kid and I was just crying, and they was treating my mom like she was less than human. So that's a story of a lot of people I've grown up with and that's why we want real police accountability, because we know-- when I know from experience that that hasn't existed. And to stand up here and say, oh, we do good poli-- policing, we have a good relationship, yes, you might have a good relationship with some people in a community, but that's not everyone and that's what I'm trying to do. So I would just tell you guys that, you know, this probably won't go nowhere this year. I'll reintroduce more bills next year and the years as long as I'm here, because I want to do all I can to try to hold you guys accountable. And you can continue to spend a lot of your

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days in the State Legislature opposing my bills to try to hold police accountable, so get used to it. Until you are willing to come to the table, act in good faith and be held accountable, there will be more bills coming in the future. Thank you.

**LATHROP:** I do not see any questions after that close. That will close our hearing on LB1276. Thank you, Senator McKinney. Thank you to everyone who came down today.